

AGENDA

CITY COUNCIL

10300 Torre Avenue and 10350 Torre Avenue and via Teleconference Thursday, July 6, 2023 5:00 PM

REGULAR BUSINESS ITEMS WILL BE HEARD BEGINNING AT 8:00 PM

Special Meeting Non-Televised Closed Session (5:00) and Televised City Council Meeting (8:00)

IN-PERSON AND TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION

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

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

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

1) Appear in person for Closed Session in City Hall, Conference Room C or for Open Session in Cupertino Community Hall. Members of the public may provide oral public comments pertaining to the agenda prior to the beginning of Closed Session and after Roll Call.

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

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

Members of the audience who address the City Council must come to the lectern/microphone, and are requested to complete a Speaker Card and identify themselves. Completion of Speaker Cards and identifying yourself is voluntary and not required to attend the meeting or provide comments.

2) E-mail comments for Closed Session or Open Session by 4:00 p.m. on Thursday, July 6 to

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the Council at citycouncil@cupertino.org. These e-mail comments will also be posted to the City's website before and after the meeting.

3) Open Session Teleconferencing Instructions

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

Online

Register in advance for this webinar:

https://cityofcupertino.zoom.us/webinar/register/WN_7xgB_IIRSxetH6tquSq74Q

Phone

Dial: 669-900-6833 and enter Webinar ID: 971 7240 5483 (Type *9 to raise hand to speak, *6 to unmute yourself). Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 971 7240 5483

SIP: 97172405483@zoomcrc.com

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

Please read the following instructions carefully:

- 1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
- 2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter "Cupertino Resident" or similar designation.
- 3. When the Mayor calls for the item on which you wish to speak, click on "raise hand," or, if you are calling in, press *9. Speakers will be notified shortly before they are called to

speak.

- 4. When called, please limit your remarks to the time allotted and the specific agenda topic.
- 5. Members of the public that wish to share a document must email cityclerk@cupertino.org prior to speaking. These documents will posted to the City's website after the meeting.

NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino City Council is hereby called for Thursday, July 06, 2023, commencing at 5:00 p.m. for Closed Session in 10300 Torre Avenue, Conference Room C and at 8:00 p.m. for Open Session regular business items in 10350 Torre Avenue, Cupertino, California 95014 and via teleconference. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting."

SPECIAL MEETING

ROLL CALL - 5:00 PM 10300 Torre Avenue, Conference Room C

CLOSED SESSION

- 1. <u>Subject</u>: Conference with Labor Negotiators pursuant to Government Code § 54957.6 (Kristina Alfaro and Christopher Boucher)
- 2. <u>Subject</u>: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Attorney
- 3. <u>Subject</u>: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Manager

RECESS

OPEN SESSION

CALL TO ORDER - 8:00 PM 10350 Torre Avenue, Community Hall and via Teleconference

PLEDGE OF ALLEGIANCE

ROLL CALL

CLOSED SESSION REPORT

City Council Agenda July 6, 2023

CEREMONIAL ITEMS

4. <u>Subject</u>: Presentation from Midpeninsula Open Space Regional District ("Midpen")

<u>Recommended Action</u>: Receive presentation from Midpen Board member Craig

Gleason on district activities update

<u>A - Presentation</u>

POSTPONEMENTS AND ORDERS OF THE DAY

5. <u>Subject</u>: Brush abatement for public nuisance and potential fire hazard pursuant to Cupertino Municipal Code (Section 16.40.200) regarding defensible space (brush) and Resolution No. 23-053

Recommended Action: Remove this item from the agenda since there are no properties reported as being non-compliant in removing brush

Staff Report

A - 2023 WUI Enforced Safety Regulations List of Non-Compliant Properties

B – Approved Resolution No. 23-053

ORAL COMMUNICATIONS

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

CONSENT CALENDAR (Items 6-12)

Items appearing on the Consent Calendar are considered routine City business and may be approved by one motion. Typical items may include meeting minutes, awards of contracts, the ratification of accounts payable, and second readings of ordinances. Any member of the Council may request to have an item removed from the Consent Calendar based on the rules set forth in the City Council Procedures Manual. Members of the public may provide input on one or more consent calendar items when the Mayor asks for public comments on the Consent Calendar.

6. <u>Subject</u>: Consider approval of the June 12 City Council minutes <u>Recommended Action</u>: Approve the June 12 City Council minutes

City Council Agenda July 6, 2023

A - Minutes

7. <u>Subject</u>: Consider approval of the June 21 City Council minutes <u>Recommended Action</u>: Approve the June 21 City Council minutes <u>A - Minutes</u>

8. <u>Subject</u>: Consider the adoption of City Council Grant Policy

<u>Recommended Action</u>: Adopt Resolution No. 23-081 approving the City Council Grant Policy

Staff Report

A – City Council Grant Policy

B - Grant Authority and Reporting Matrix

C - Draft Resolution

9. <u>Subject</u>: Consider awarding a contract to Grassroots Ecology for the maintenance of McClellan Ranch Preserve and Stevens Creek Corridor.

<u>Recommended Action</u>: 1. Award a contract to Grassroots Ecology for work related to maintenance of McClellan Ranch Preserve and Stevens Creek Corridor in the amount not to exceed \$104,240 per year for three years, totaling \$312,720; and

- 2. Authorize the City Manager to execute the contract with Grassroots Ecology when all contractual obligations have been met; and
- 3. Authorize the City Manager to extend the contract for up to two additional years, totaling \$208,480, for a five-year total of \$521,200, provided pricing and services remain acceptable.

Staff Report

A - Draft Agreement

10. <u>Subject</u>: Consider rejection of all bids received for the Bridge Preventative Maintenance Program.

<u>Recommended Action</u>: Authorize the Director of Public Works to reject all bids received for the Bridge Preventative Maintenance Program.

<u>Staff Report</u>

11. <u>Subject</u>: Award a construction contract for the Regnart Road Improvements Phase 1 Project to Brannon Corporation for road reconstruction to mitigate roadway embankment failure.

<u>Recommended Action</u>: 1. Award a construction contract for the Regnart Road Improvements Phase 1 Project (Project No. 2019-08) in the amount of \$1,290,120 to Brannon Corporation;

- 2. Authorize the City Manager to execute the contract;
- 3. Authorize the Director of Public Works to execute any necessary construction change orders up to a construction contingency amount of \$129,012 (10%) for a total authorized contract amount of \$1,419,132; and
- 4. Adopt Resolution No. 23-082 approving budget modification #2324-285, increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-068) and the Capital Reserve (429-90-001) by \$876,765.99, and transferring said funds from the Capital Reserve to Capital Improvement Program Capital Projects Fund (420-99-068).

Staff Report

A - Draft Resolution

B - Draft Contract

C - Project Manual

D - Project Drawings

E - Project Addendum 1

F - Project Addendum 2

12. <u>Subject</u>: Award a contract for the Creekside Park School Age Play Area to Ross Recreation Equipment, Inc. for the purchase and installation of themed playground equipment.

<u>Recommended Action</u>: 1. Award an equipment procurement and installation contract for the Creekside Park School Age Play Area (Budget Unit 420-99-085) in the amount of \$283,873.50 to Ross Recreation Equipment, Inc. using pricing established through the National Purchasing Partners;

- 2. Authorize the City Manager to execute an equipment procurement and installation contract when all conditions have been met; and
- 3. Authorize the Director of Public Works to execute any necessary change orders up to a contingency amount of \$28,388 (10%) for a total contract amount of \$312,261.50. Staff Report

A - Representation of Proposed Playground Equipment

B - Draft Contract

PUBLIC HEARINGS - None

Effective January 1, 2023, Government Code Section 65103.5 (SB 1214) limits the distribution of copyrighted material associated with the review of development projects. Members of the public wishing to view plans that cannot otherwise be distributed under SB 1214 may make an appointment with the Planning Division to view them at City Hall by sending an email to planning@cupertino.org. Plans will also be made available digitally during the hearing to consider the proposal.

ACTION CALENDAR

13. <u>Subject</u>: Introduction of Ordinance No. 23-2249, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities)

Recommended Action: Conduct a first reading of Ordinance No. 23-2249; "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTER 2.100," (Regulation of Lobbying Activities)

Staff Report

A – Draft Ordinance Amending Chapter 2.100 (clean)

B – Draft Ordinance Amending Chapter 2.100 (blackline)

14. <u>Subject</u>: Consider actions for the surplus determination and disposal of 10301 Byrne Avenue, Assessor Parcel Number (APN) 357-11-020

<u>Recommended Action</u>: 1. Authorize the City Manager to record a Roadway Dedication (Attachment A) for a portion of 10301 Byrne Avenue, APN 357-11-020 (Property); and

- 2. Adopt Resolution No. 23-083 (Attachment B) declaring the remaining property at 10301 Byrne Ave, APN 357-11-020 surplus to the needs of the City and direct the City Manager to proceed with outreach as required by the Surplus Land Act; and
- 3. Authorize the City Manager to offer the Property for sale subsequent to completion of the requirements of the Surplus Land Act

Staff Report

A - 10301 Byrne Ave - Plat And Legal Description

B - Resolution Byrne Surplus

C - 10301 Byrne Ave Aerial

15. <u>Subject</u>: Consideration of a resolution amending the established City Council meeting calendar through January 2, 2024

<u>Recommended Action</u>: Adopt Resolution 23-084 amending the established City Council meeting calendar through January 2, 2024

Staff Report

A - Draft Resolution

COUNCIL REPORTS AND COMMENTS

16. Subject: Councilmember Reports

Council Report, Fruen

Council Report, Moore

Council Report, Mohan

Council Report, Wei

CITY MANAGER REPORT

ORAL COMMUNICATIONS - CONTINUED

City Council Agenda July 6, 2023

INFORMATIONAL ITEMS - None

Information items are intended to provide background information and routine reports to Councilmembers and the public, without discussion by Council. Members of the public wishing to comment on informational items should do so during oral communications.

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

ADJOURNMENT

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

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

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

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

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

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code section

City Council Agenda July 6, 2023

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



Agenda Item

23-12444 Agenda Date: 7/6/2023

Agenda #: 1.

<u>Subject</u>: Conference with Labor Negotiators pursuant to Government Code § 54957.6 (Kristina Alfaro and Christopher Boucher)



Agenda Item

23-12334 Agenda Date: 7/6/2023

Agenda #: 2.

Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Attorney



Agenda Item

23-12311 Agenda Date: 7/6/2023

Agenda #: 3.

Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Manager



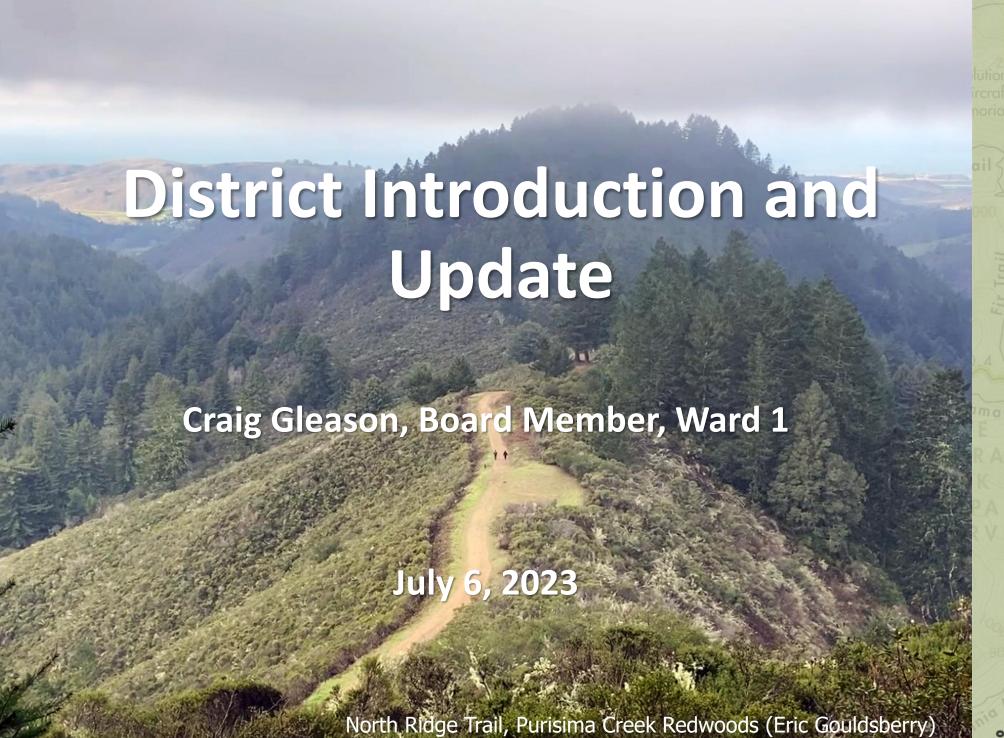
Agenda Item

23-12332 Agenda Date: 7/6/2023

Agenda #: 4.

Subject: Presentation from Midpeninsula Open Space Regional District ("Midpen")

Receive presentation from Midpen Board member Craig Gleason on district activities update





PRESERVE

PROTECT

RESTORE

EDUCATE

Midpen's Mission(s)



Midpen's mission: to acquire and preserve a regional greenbelt of open space land in perpetuity, protect and restore the natural environment, and provide opportunities for ecologically sensitive public enjoyment and education.

On the Coast, Midpen has an expanded mission to acquire and preserve agricultural land of regional significance, preserve rural character and encourage viable agricultural uses of land resources.





PRESERVE

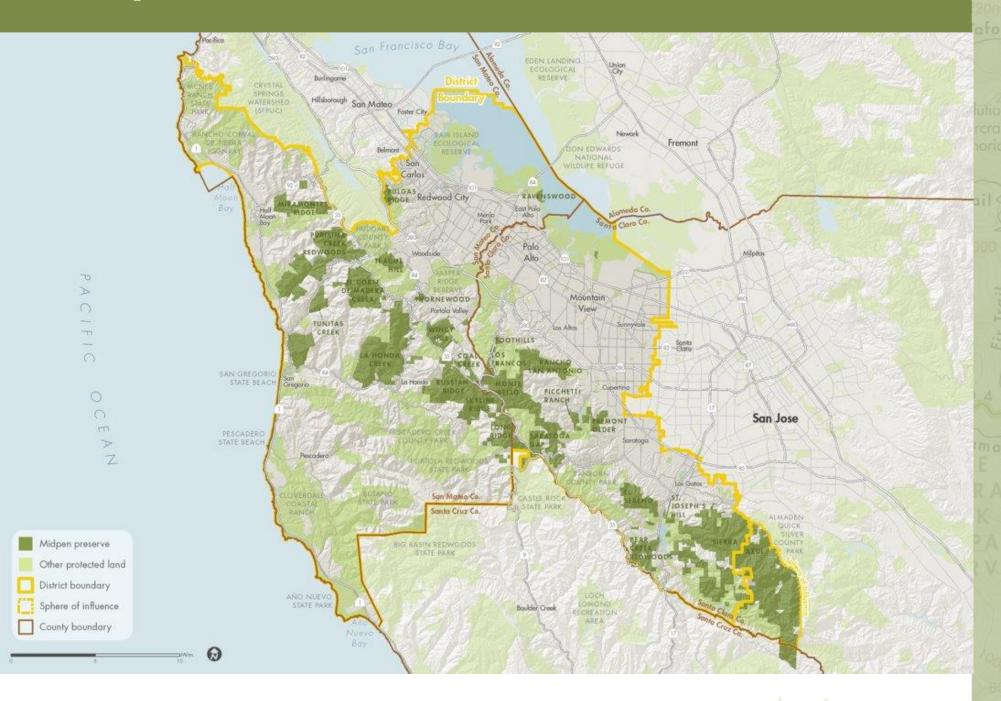
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EDUCATE

ENJOY

15 nspace.org

Midpen's Lands





Some Midpen Facts

- Public agency, created in 1972 by a grassroots voter initiative
- 763,000 constituents (2020)
- Elected board: seven directors
- Funded primarily through property tax
- 26 Preserves in Santa Clara, San Mateo and Santa Cruz counties
- Preserved almost 70,000 acres, 250+ miles of trails
- Preserves are free and open to the public
- Main office in Los Altos + field offices
- 180 employees, ~1000 volunteers
- \$300 million voter-approved general obligation bond passed in 2014 to support public priorities









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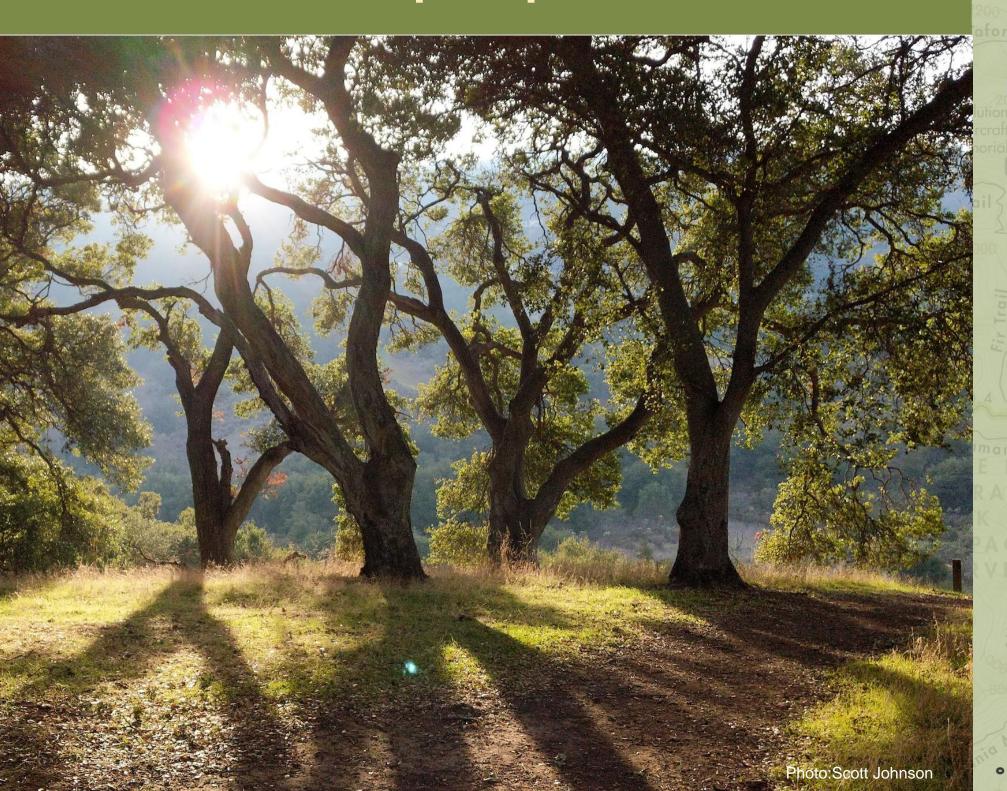
Fremont Older Open Space Preserve





PRESERVE PROTECT RESTORE EDUCATE

Picchetti Ranch Open Space Preserve





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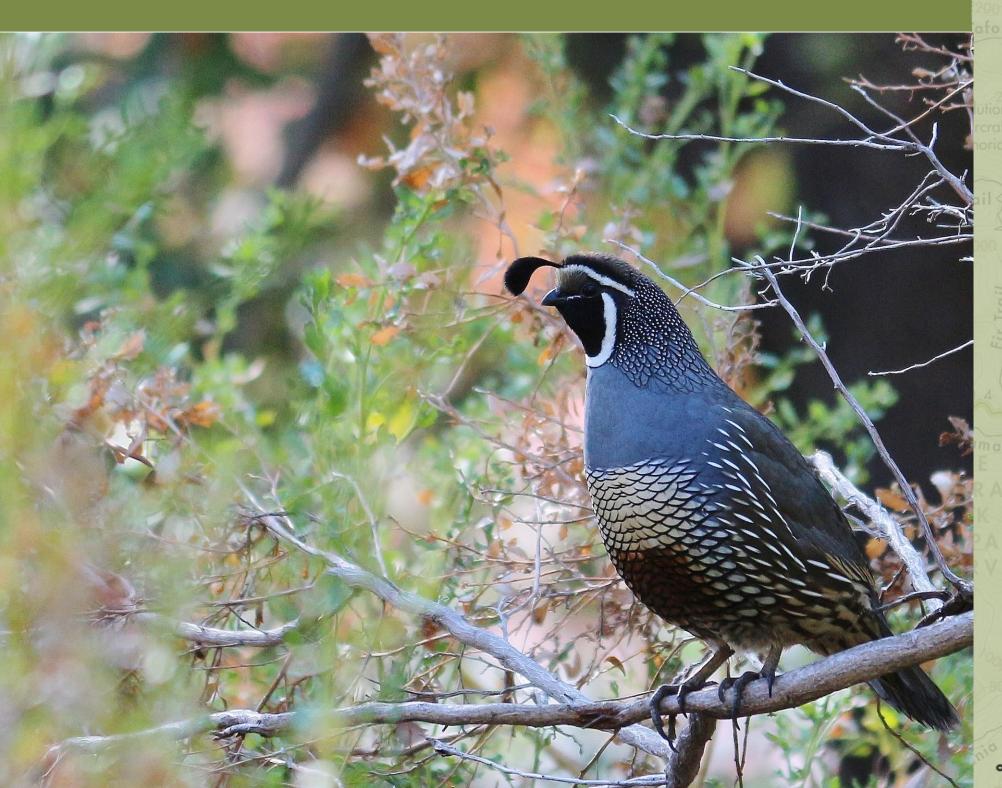
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Project Updates





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openspace.org

Wildland Fire Resiliency Program Implementation





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Wildland Fire Resiliency Program





Rancho San Antonio Multimodal Access Improvements

Project Description

Project explores non-motorized mobility, transit options and parking alternatives for Rancho San Antonio Open Space Preserve.

Status

- Staff is implementing Priority 1
 recommendations including bike racks and electronic parking signage.
- Staff is presenting proposal for shuttle and ride hail program and reviewed public feedback from surveys to Board committee on May 23.

Get real-time parking info at: https://www.openspace.org/rsa-parking







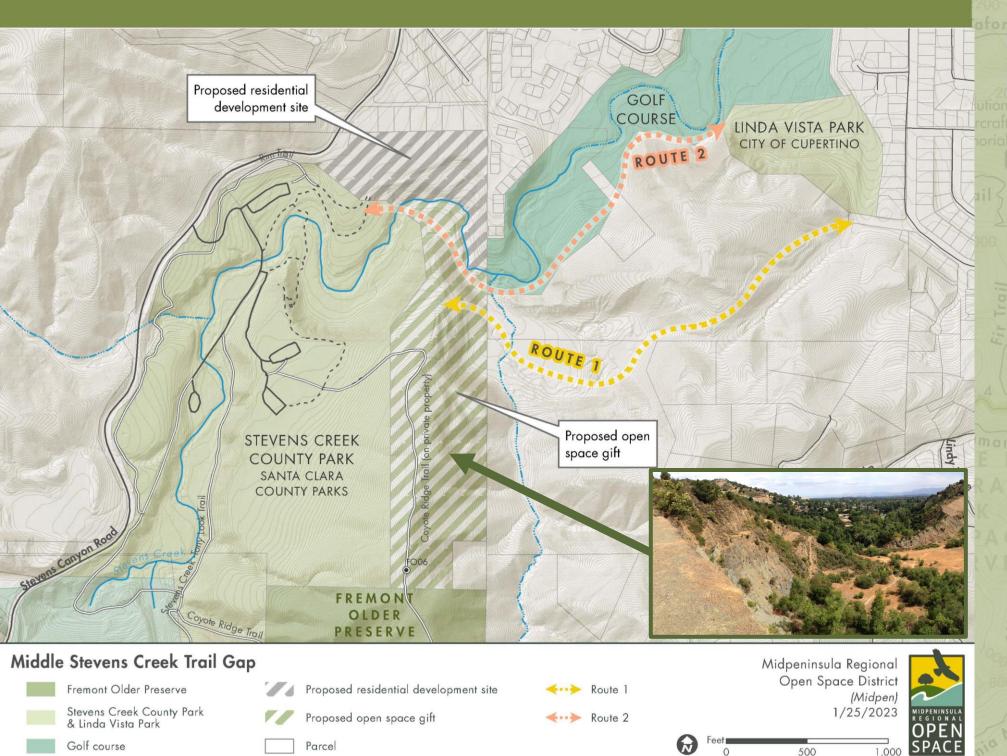
CC 07-06-2023 25 of 344

Proposed Recommendations: Transportation Demand Management

TDM Category	TDM Strategy
Visitor Demand Management	Parking Reservation System
Bicycling	Bicycle Parking at Trailheads
Education / Outreach	Social Media Outreach
Transit	Shuttles from Satellite Parking Lots
Parking Management	Priority Parking
Parking Capacity Enhancements	Reconfigure Existing Parking
Traveler Information / Wayfinding	Real-time Parking Lot Occupancy
Parking Capacity Enhancements	Provide Additional Parking Supply

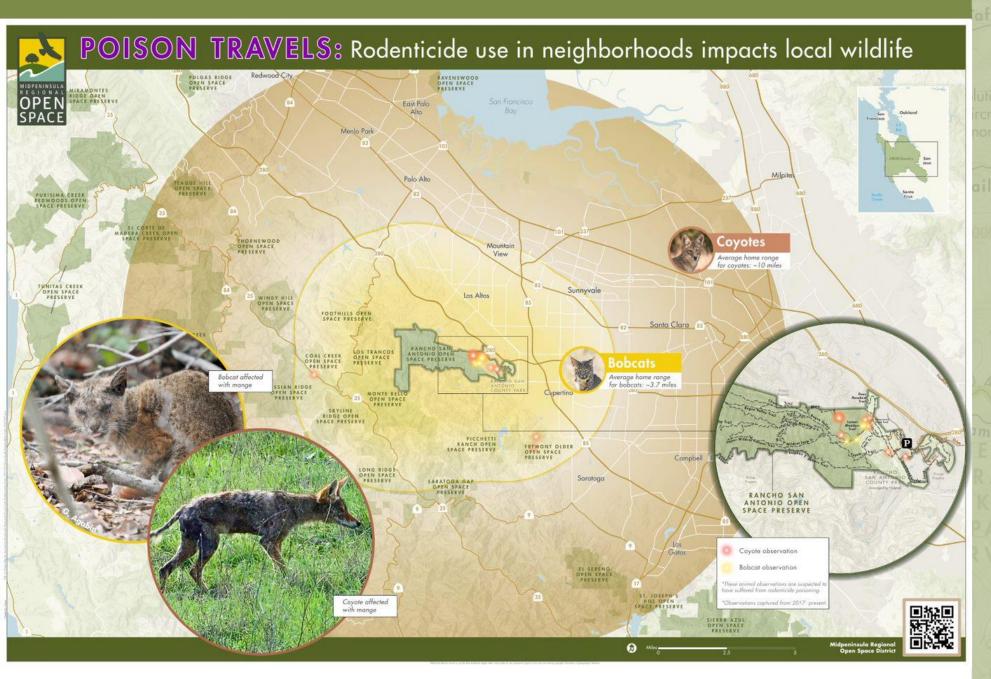


Middle Stevens Creek Trail





Rodenticide Outreach



For more information visit openspace.org/rodenticides.



Questions?





PRESERVE

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Agenda Item

23-12225 Agenda Date: 7/6/2023

Agenda #: 5.

<u>Subject</u>: Brush abatement for public nuisance and potential fire hazard pursuant to Cupertino Municipal Code (Section 16.40.200) regarding defensible space (brush) and Resolution No. 23-053

Remove this item from the agenda since there are no properties reported as being non-compliant in removing brush



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: July 6, 2023

Subject

Brush abatement for public nuisance and potential fire hazard pursuant to Cupertino Municipal Code (Section 16.40.200) regarding defensible space (brush) and Resolution No. 23-053.

Recommended Action

Remove this item from the agenda since all parcels have complied with the Wildland Urban Interface (WUI) enforced safety regulations.

Reasons for Recommendation

Cupertino Municipal Code Section 16.40.200 requires property owners in the locally adopted Wildland-Urban Interface Fire Area (WUI) to maintain effective defensible space by removing brush, flammable vegetation and combustible growth when required by the Fire Code official due to steepness of terrain or other conditions. The Cupertino Brush Abatement Program is a separate program from the County Weed Abatement Program and authorizes the Santa Clara County Fire Department (SCCFD) to remove the brush if the property owner does not, and to recover the costs of abatement.

On May 16, 2023, Council adopted Resolution No. 23-053 declaring brush to be a public nuisance and potential fire hazard and setting a hearing date of July 6, 2023 to hear property owners having any objections to the proposed removal of brush (Attachment B).

The SCCFD Community Risk Program Director informed the City Clerk's Office that the City of Cupertino has zero properties reported as non-compliant with the WUI enforced safety regulations (Attachment A). With this information, there is no need to conduct the public hearing to consider objections scheduled for July 6, 2023. It is recommended that City Council remove this item from the agenda.

Sustainability Impact

There is no sustainability impact.

Fiscal Impact

There is no fiscal impact.

California Environmental Quality Act

There is no California Environmental Quality Act impact.

Prepared by: Kirsten Squarcia, City Clerk

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A - 2023 WUI Enforced Safety Regulations List of Non-Compliant Properties

B – Approved Resolution No. 23-053



SANTA CLARA COUNTY FIRE DEPARTMENT

14700 Winchester Blvd., Los Gatos, CA 95032 | (408) 378-4010 | www.sccfd.org

Wildland Urban Interface (WUI) Enforced Safety Regulations 2023 Non-Compliant Properties

June 07, 2023

CITY OF CUPERTINO

The City of Cupertino currently has zero properties reported as non-compliant with the WIIdland Urban Interface (WUI) enforced safety regulations.

RESOLUTION NO. 23-053

A RESOLUTION OF THE CUPERTINO CITY COUNCIL DECLARING PROPERTIES AS HAVING POTENTIAL FIRE HAZARDS FROM BRUSH AND SETTING A PUBLIC HEARING TO DECLARE A PUBLIC NUISANCE AND FOR OBJECTIONS TO PROPOSED REMOVAL

WHEREAS, brush is growing in the City of Cupertino upon certain streets, sidewalks, highways, roads and private property; and

WHEREAS, said brush may attain such growth as to become a fire menace or which are otherwise noxious or dangerous; and

WHEREAS, said brush appears to be a public nuisance;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino does hereby declare:

- 1. That said brush does now appear to be a public nuisance and potential fire hazard;
- 2. That said condition and potential fire hazard exists upon all of the streets, sidewalks, highways, roads, and private property more particularly described by common names or by reference to the tract, block, lot, code area, and parcel number on the report to be provided by the Santa Clara County Fire Department;
- 3. That the 6th day of July, 2023, at the hour of 6:45 p.m., or as soon thereafter as the matter can be heard, in the Council Chamber in the Community Hall, City of Cupertino and via teleconference, with details on how to attend the meeting appearing on the City Council agenda for that date, are hereby set as the time and place to determine whether the condition is a public nuisance and where all property owners having any objections to the proposed removal of such brush may be heard;
- 4. That the Santa Clara County Fire Marshal is hereby designated and ordered as the person to give notice of the adoption of this resolution in the manner and form provided in Section 16.40.200 of the Cupertino Municipal Code.

Resolution No. 23-053 Page 2

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of May, 2023 by the following vote:

Members of the City Council

AYES: Wei, Mohan, Chao, Fruen, Moore

NOES: None ABSENT: None ABSTAIN: None

SIGNED:	
Hung Wei, Mayor City of Cupertino	06/01/23 Date
ATTEST:	
Kirsten Squarcia, City Clerk	6/6/23 Date



Agenda Item

23-12055 Agenda Date: 7/6/2023

Agenda #: 6.

Subject: Consider approval of the June 12 City Council minutes

Approve the June 12 City Council minutes



DRAFT MINUTES CUPERTINO CITY COUNCIL

Monday, June 12, 2023

SPECIAL MEETING

At 5:00 p.m., Mayor Hung Wei called the Special City Council Meeting to order in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue.

ROLL CALL

Present: Mayor Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen and Kitty Moore. Absent: none.

COMMISSION INTERVIEWS

1. <u>Subject</u>: Teen Commission Interviews

<u>Recommended Action</u>: Conduct Teen Commission interviews and make appointments for five vacancies and at least two alternates

Written Communications for this item included an amended Attachment A – Interview Schedule.

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

Councilmembers asked questions and made comments.

Council conducted interviews for five vacancies on the Teen Commission.

Council voted for their top five candidates.

Round One:

Rory Hu (Wei, Mohan, Fruen, Moore) Saanvi Halambi (Chao) Harly Liu (Wei, Fruen) Lakshman Deolalikar (Chao) Shivika Biswari (Mohan, Moore) Aleeza Khan (Wei) Anika Mukherjee (Mohan, Fruen, Chao)

Anushree Misra (Wei)

Saailey Palekar (Moore)

Aaryan Doshi (Mohan, Moore)

Grace Cho (Mohan, Chao)

Nichole Go (Chao)

Peter Chen (Fruen, Moore)

Rohin Garg (Wei, Fruen)

Council unanimously consented to appoint Rory Hu and Anika Mukherjee as primary members to the Teen Commission for two-year terms (2023-2025).

Council voted for up to five candidates to appoint three additional primary members.

Round Two:

Harly Liu (Wei, Fruen, Moore)

Shivika Biswari (Wei, Fruen, Moore, Chao)

Kalyaa Pradeep (Moore)

Aaryan Doshi (Wei, Mohan, Fruen)

Grace Cho (Mohan, Chao)

Nichole Go (Moore)

Peter Chen (Wei, Mohan, Fruen, Moore, Chao)

Rohin Garg (Wei, Mohan, Fruen, Chao)

Council unanimously consented to appoint Rory Hu, Anika Mukherjee, Peter Chen, Shivika Biswari, Rohin Garg, as primary members to the Teen Commission for two-year terms (2023-2025); and to appoint Aaryan Doshi as first alternate and Harly Liu as second alternate.

ADJOURNMENT

At 8:55 p.m., Mayor Wei adjourned the Special City Council Meeting.

Lauren Sapudar, Deputy City Clerk



CITY OF CUPERTINO

Agenda Item

23-12050 Agenda Date: 7/6/2023

Agenda #: 7.

Subject: Consider approval of the June 21 City Council minutes

Approve the June 21 City Council minutes



DRAFT MINUTES CUPERTINO CITY COUNCIL

Wednesday, June 21, 2023

At 5:00 p.m. Mayor Hung Wei called the Special City Council Meeting to order and led the Pledge of Allegiance in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue and via teleconference.

ROLL CALL

Present: Mayor Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen, and Kitty Moore. Absent: none.

CLOSED SESSION REPORT - None

CEREMONIAL ITEMS - None

ACTION CALENDAR

- 1. <u>Subject</u>: Consider the Memorial Park Specific Plan conceptual design <u>Recommended Action</u>: Staff recommends the City Council to:
 - 1. Receive the Memorial Park Specific Plan design updates;
 - 2. Confirm the Memorial Park Specific Plan design direction of the Conceptual Plan; and
 - 3. Proceed with the Memorial Park Specific Plan schematic design.

Presenter: Susan Michael, Capital Improvement Programs Manager

Written communications for this item included a staff presentation, supplemental report with staff responses to councilmember questions, and emails to Council.

Interim Public Works Director Chad Mosley and Capital Improvement Programs Manager Susan Michael, and Gates + Associates Consultants Michael Freitag and Rebecca Flanegan, gave a presentation and answered questions.

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

Larry Kubo opposed removal of the softball field at Memorial Park.

Ron Routh opposed removal of the softball field at Memorial Park.

Shani Kleinhaus (representing Santa Clara Valley Audubon Society) supported biodiversity and integrating nature at Memorial Park. (Submitted written comments).

Chris O'Reilly (representing LGCS Softball) opposed removal of the softball field at Memorial Park.

Nico Avlas (representing LGCS Softball) opposed removal of the softball field at Memorial Park.

Harlan Jackson opposed removal of the softball field at Memorial Park.

Ronny Tey opposed removal of the softball field at Memorial Park.

John Leong (representing Vintage Softball Club of Santa Clara) opposed removal of the softball field at Memorial Park.

William Bonin opposed removal of the softball field at Memorial Park.

Alesia Hacker opposed removal of the softball field at Memorial Park.

Lucy Howng (representing LGCS Softball) opposed removal of the softball field at Memorial Park.

Mahesh Pakala (representing Cupertino-Bhubaneswar Sister City) supported including a healing garden as part of the Memorial Park Plan.

Louise Saadati supported a Dog Off-Leash Area (DOLA) at Memorial Park that is larger than Mary Avenue Park, with a wide fence gate opening, and featuring grass surface.

Mike Stanek opposed removal of the softball field at Memorial Park.

Donny Garber opposed removal of the softball field at Memorial Park.

Jean Bedord supported improvements including expanding the Senior Center courtyard, better park access, a fitness station, gardens, a DOLA, and a vehicle lot on Anton Way.

Jennifer Rutherford opposed removal of the softball field at Memorial Park.

Rick Adkins (representing Geezers) opposed removal of the softball field at Memorial Park.

Annie Yang (representing Santa Clara Valley Audubon Society Environmental Action Committee) supported Memorial Park as an urban biodiversity hotspot by supporting local pollinators and planting native plants. (Submitted written comments).

Deepa Mahendraker supported a DOLA featuring grass surface and multipurpose area options, nature walk, and additional water fountains.

Nori supported modifications including a larger playground and locating the pickleball and basketball courts away from the playground and the picnic areas.

San R was concerned about the survey questions and outcomes resulting from input and supported no changes to Memorial Park and retaining the softball field as is.

Padma Garimella supported a DOLA with a large enough grass or clover surface and additional water fountains.

Lisa Warren opposed removal of the softball field and supported it as a potential multipurpose space for dogs.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported bike parking locations and bike traffic garden and considering Parks and Recreation Commission input.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Wei moved to revise the schematic design to retain the existing softball field but find a location to add pickleball. Chao seconded with a friendly amendment to bring back another Conceptual Plan to retain the existing softball field, find locations for pickle ball and basketball court, explore options to reduce the size of the extra parking lot area on Anton Way; and include native plants and gardens, especially for the nature walk, as presented by the Audubon Society. (Wei accepted Chao's friendly amendment).

Chao made a second friendly amendment to come back as another Conceptual Plan but include an economical option with some additions, but most existing park features remain in the original locations, if possible. (Wei declined Chao's second friendly amendment and

it was not included).

Wei modified the motion to bring back another Conceptual Planrevise the Schematic <u>Design</u> to retain the existing softball field; prioritize finding a revised location for pickle ball and basketball court; consider options to reduce the size of the extra parking lot area on Anton Way; and include native plants and gardens, especially for the nature walk, as presented by the Audubon Society. (Chao accepted Wei's modification).

Final Motion:

Wei moved and Chao seconded as amended and modified to proceed with the Memorial Park Specific Plan design process into Schematic Design with the following revisions to the Conceptual Plan:

- Retain the existing softball field;
- Prioritize finding a revised location for pickle ball and basketball court;
- Consider options to reduce the size of the extra parking area on Anton Way; and
- Include native plants and gardens where feasible, especially in the nature walk area, as presented by the Audubon Society.

The amended and modified motion carried unanimously.

Councilmembers also provided the following comments for consideration when contemplating plan revisions:

- Consider installing temporary fence to fully enclose the existing softball field at Memorial Park for a pilot Dog Off-Leash Area (DOLA) program to evaluate the efficacy of a combined Softball/DOLA use for the area. (Moore)
- Provide Softball Field utilization data for use pre-pandemic. (Moore, Chao)
- Consider a small water feature/fountain for birds. (Chao)
- Consider a more economical features for the Specific Plan. (Chao)
- Consider reducing the parking or loop turnaround along the westerly property line if it could facilitate other amenities. (Fruen)
- Consider adopting a maintenance plan for native vegetation. (Fruen)
- Consider a covered area near the Quinlan Community Center. (Moore)
- Consider removing the central event lawn space to minimize the loss of other proposed amenities due to the inclusion of the softball field. (Fruen)
- Consider incorporating a bicycle garden as opposed to a tricycle track. (Fruen)
- Consider reducing the passive garden area to minimize the loss of other proposed amenities due to the inclusion of the softball field. Consider placing native vegetation in other passive areas throughout the park. (Moore)

Council recessed from 6:59 p.m. to 7:08 p.m.

POSTPONEMENTS AND ORDERS OF THE DAY – None

City Council Minutes June 21, 2023

ORAL COMMUNICATIONS

Planning Commissioner Muni Madhdhipatla (representing self) opposed Senate Bill 403: Discrimination on the basis of caste and supported the City sending a letter opposing the Bill.

Toby Leavitt (representing San Francisco Shakespeare Festival) supported the approved budget funding for Free Shakespeare in the Park and continued program participation by the City.

Rhoda Fry was concerned about City spending and values, budgetary pressures, councilmember conflicts of interest, and supported spending reductions and funding for Shakespeare in the Park.

Louise Saadati supported Council meeting efficiency with shorter durations, streamlined processes, shortened debate, and transparency and changes resulting from the Grand Jury Report.

San R supported working with corporate leasing offices to attract certain retail tenants to move into vacant retail spaces and permitting food trucks in vacant shopping malls.

Giresh Thobi opposed SB-403: Discrimination on the basis of caste and supported the City adopting a resolution opposing the Bill, and expediting Council consideration.

Lisa Warren supported collaboration, opposed limiting consideration of councilmember questions and input, and was concerned about the consent calendar public comment process.

Call-In User_1 was concerned about litigation involving the removal of an illegal structure on their property and supported fair treatment and new representation.

CONSENT CALENDAR (Items 2-9)

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

San R (Item 2) supported amendments prohibiting any profitable transactions and incentivizing compliance until the ridgeline repairs, soil cleanup, and reclamation plan is complete.

Jennifer Griffin (Item 2) supported securing all details and opposed dividing up the land for housing and was concerned about fire hazard potential and inadequate roads.

Mayor Wei closed the public comment period.

Fruen moved Mohan seconded to approve the items on the Consent Calendar, except for Items 7, 8, and 9 which were pulled for discussion. Ayes: Wei, Mohan, Chao, and Fruen. Noes: None.

Abstain: Moore. Absent: None.

Items 7, 8, and 9 were placed after Public Hearings for consideration.

- 2. <u>Subject</u>: Consider a Joint Policy Framework Agreement Regarding the Restoration and Potential Future Development of the Lehigh Quarry Property between the City of Cupertino and Santa Clara County

 <u>Recommended Action</u>: Authorize the City Manager to execute a Joint Policy Framework Agreement Regarding the Restoration and Potential Future Development of the Lehigh Quarry Property between the City of Cupertino and Santa Clara County
- 3. <u>Subject</u>: Consider approval of the June 6 City Council minutes <u>Recommended Action</u>: Approve the June 6 City Council minutes
- 4. <u>Subject</u>: Consider ratifying Accounts Payable for the periods ending May 5, 2023; May 12, 2023; May 19, 2023; and May 26, 2023

 <u>Recommended Action</u>: A. Adopt Resolution No. 23-071 ratifying Accounts Payable for the Period ending May 5, 2023;
 - B. Adopt Resolution No. 23-072 ratifying Accounts Payable for the Period ending May 12, 2023;
 - C. Adopt Resolution No. 23-073 ratifying Accounts Payable for the Period ending May 19, 2023; and
 - D. Adopt Resolution No. 23-074 ratifying Accounts Payable for the Period ending May 26, 2023
- 5. <u>Subject</u>: Consider authorizing the City Manager to execute a Second Amendment to the Professional Services Agreement with Moss Adams, LLP <u>Recommended Action</u>: Authorize the City Manager to execute a Second Amendment to the Professional Services Agreement with Moss Adams, LLP for continued internal auditor services, extending the current contract term by three years to June 30, 2026, and increasing the total contract amount to \$500,000 (\$100,000 annually)
- 6. <u>Subject</u>: Consider authorizing the City Manager to execute a Professional Services Agreement with The Pun Group, LLP for professional auditing services <u>Recommended Action</u>: 1. Award a Professional Services Agreement for auditing services from June 2023 through June 2025 in a total not to exceed contract amount of \$420,859, with an option to extend the contract for two additional years in the amount of \$316,813 for a total contract amount of \$737,672, to The Pun Group, LLP;
 - 2. Authorize the City Manager to execute a Professional Services Agreement with The Pun Group, LLP, when all conditions have been met; and
 - 3. Authorize the City Manager to extend the contract for up to two years

City Council Minutes June 21, 2023

PUBLIC HEARINGS

10. <u>Subject</u>: Consider a proposed mixed-use redevelopment project consisting of 34 residential units and approximately 7,482 square feet of commercial space. Project includes the removal and replacement of 51 development trees and a range of site and landscape improvements. Consider the adoption of a Mitigated Negative Declaration for the project, which includes the following discretionary approvals: Application Numbers TM-2021-003, ASA-2021-004, DP-2021-002, U-2021-001, TR-2022-006, EA-2022-005. Applicant(s): Carlson Chan (Prospect Venture LLC); Location: 1655 S. De

EA-2022-005. Applicant(s): Carlson Chan (Prospect Venture LLC); Location: 1655 S. De Anza Blvd., APNs 366-10-061, -126.

<u>Recommended Action</u>: Staff recommends that the City Council adopt the Resolutions (Attachments A-F) to:

- a. Adopt Resolution No. 23-075 adopting the Mitigated Negative Declaration (EA-2022 -005);
- b. Adopt Resolution No. 23-076 approving the Development Permit (DP-2021-002);
- c. Adopt Resolution No. 23-077 approving the Architectural and Site Approval Permit (ASA-2021-004);
- d. Adopt Resolution No. 23-078 approving the Use Permit (U-2021-001);
- e. Adopt Resolution No. 23-079 approving the Tentative Map (TM-2021-003); and
- f. Adopt Resolution No. 23-080 approving the Tree Removal Permit (TR-2022-006) Presenter: Gian Martire, Senior Planner

Written communications for this item included a staff presentation, a supplemental report with staff responses to councilmember questions, and emails to Council.

Senior Planner Gian Martire gave a presentation.

Mayor Wei opened the public hearing and the following people spoke.

Jennifer Griffin supported an Environmental Review Committee (ERC), working with San Jose on developments, and asked about including new park land and parking overflow.

Rhoda Fry supported assembling an ERC and preserving the trees on the edge of the property.

Mayor Wei closed the public hearing.

Councilmembers asked questions and made comments.

The applicant responded to questions.

Moore moved Fruen seconded the staff recommendation as amended by staff to:

- 1. Adopt Resolution No. 23-075 adopting the Mitigated Negative Declaration (EA-2022 -005);
- 2. Adopt Resolution No. 23-076 approving the Development Permit (DP-2021-002) as amended by staff to remove Condition 13 of the Development Agreement;
- 3. Adopt Resolution No. 23-077 approving the Architectural and Site Approval Permit (ASA-2021-004);
- 4. Adopt Resolution No. 23-078 approving the Use Permit (U-2021-001);
- 5. Adopt Resolution No. 23-079 approving the Tentative Map (TM-2021-003); and
- 6. Adopt Resolution No. 23-080 approving the Tree Removal Permit (TR-2022-006) The motion as amended carried unanimously.

Council recessed from 8:11 p.m. to 8:19 p.m.

ITEMS REMOVED FROM THE CONSENT CALENDAR

The following items were pulled from the Consent Calendar and placed after Public Hearings for discussion.

7. <u>Subject</u>: Consider To Be Determined list ("TBD List") of agenda items requested by City Councilmembers

Recommended Action: Review the TBD List and modify the list as recommended below

Written communications for this item included emails to Council.

This item was pulled from the Consent Calendar for discussion.

City Manager Pamela Wu reviewed the staff report.

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

Jennifer Griffin was concerned about loss of the Legislative Review Committee (LRC) and local control and opposed Senate Bills 423 and 35 and removal of coastal commissions.

Rhoda Fry supported assembling an LRC and reviewing the Sign Ordinance and was concerned about the City taking a position on proposed legislative bills.

San R supported the City agendizing and adopting a resolution in opposition of Senate Bill 403 regarding discrimination on the basis of caste.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Fruen moved and Wei seconded to modify the TBD List as recommended with an amendment to bring back Item 7 Expanding noticing requirement from 300-ft to 500-ft in December. Fruen's main motion was not voted on.

Chao moved and Moore seconded a substitute motion to modify the TBD List as recommended with amendments to bring back Item 7 Expanding noticing requirement from 300-ft to 500-ft in December; and to bring back Item 2 Senate Bill ("SB") 423: Streamlined Housing Approvals: Multifamily Housing Developments: SB 35 Expansion and Item 3 Senate Bill ("SB") 403: Discrimination on the basis of caste sometime in July. Chao's substitute motion carried with Fruen and Wei voting no.

8. <u>Subject</u>: Consider approval of the May 16 City Council minutes (Continued from June 6, 2023)

Recommended Action: Approve the May 16 City Council minutes

Written communications for this item included an email to Council.

This item was pulled from the Consent Calendar for discussion.

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

Rhoda Fry requested a modification to the May 16 meeting minutes.

San R requested a modification and staff follow up on the last City Council meeting minutes.

Jennifer Griffin was concerned about public comment process for consent calendar items.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Fruen moved and Mohan seconded to approve the May 16 City Council minutes, as written.

Moore moved and Chao seconded a substitute motion to approve the May 16 City Council minutes with the amendment that Ms. Griffin's comments are reflected from her email, as presented by Chao. Moore's substitute motion failed with Chao and Moore voting yes.

Final Motion:

Fruen moved and Mohan seconded to approve the May 16 City Council minutes, as written. Fruen's main motion carried with Chao and Moore voting no.

9. <u>Subject</u>: Receive the FY 2021-22 Annual Comprehensive Financial Report (ACFR) and related supplemental reports (Continued from June 6, 2023)

<u>Recommended Action</u>: Receive the FY 2021-22 Annual Comprehensive Financial Report (ACFR) and related supplemental reports

Written communications for this item included an email to Council.

This item was pulled from the Consent Calendar for discussion.

Administrative Services Kristina Alfaro and Finance Director Jonathan Orozco.

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

Rhoda Fry was concerned about out of date and accurate reporting.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Council received the FY 2021-22 Annual Comprehensive Financial Report (ACFR) and related supplemental reports.

COUNCIL REPORTS AND COMMENTS

11. <u>Subject</u>: Councilmember Reports

Councilmembers reported on their various committees and activities as provided in the published agenda.

CITY MANAGER REPORT

City Manager Pamela Wu polled Council for a potential future workshop and shared a video showing photos of recent City events: Wilson Park Ribbon Cutting, Teen Summer Kickoff, and Parent's Night Out.

ORAL COMMUNICATIONS - CONTINUED - None

City Council Minutes June 21, 2023

INFORMATIONAL ITEMS

12. <u>Subject</u>: Receive the Monthly Treasurer's Report for May 2023

<u>Recommended Action</u>: Receive the Monthly Treasurer's Report for May 2023

Written communications for this item included an email to Council.

The monthly Treasurer's Report for May 2023 was provided as part of the published agenda.

13. <u>Subject</u>: Receive the Monthly Treasurer's Investment Report for May 2023

<u>Recommended Action</u>: Receive the Monthly Treasurer's Investment Report for May 2023

Written communications for this item included an email to Council.

The Monthly Treasurer's Investment Report for May 2023 was provided as part of the published agenda.

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

Kirsten Squarcia, City Clerk

ADJOURNMENT

At 9:47 p.m., Mayor Wei adjourned the Special City Council Meeting.
Minutes prepared by:



CITY OF CUPERTINO

Agenda Item

23-12061 Agenda Date: 7/6/2023

Agenda #: 8.

Subject: Consider the adoption of City Council Grant Policy

Adopt Resolution No. 23-081 approving the City Council Grant Policy



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL 10300 TORRE AVENUE • CUPERTINO, CA 95014-3255 TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109 CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

Subject

Consider the adoption of City Council Grant Policy.

Recommended Action

Adopt Resolution No. 23-XXX approving the City Council Grant Policy

Reasons for Recommendation

A grant is an external funding source that is awarded for a specific purpose, is valid within a defined timeframe, and contains contractual obligations for the City. The method of grant disbursement is determined by the granting agency and the use of the funds is generally subject to audit by the granting agency.

Currently, the City does not have a policy on grants management. City Council has inquired in the past about the process for applying for grants. As part of the pilot program to centralize grants in Administrative Services, staff thought it prudent to develop a policy and procedure for the approval, application, and tracking of grants in the City. Therefore, in an effort to establish an effective and coordinated approach, staff researched and developed a proposed Grant Policy (Attachment A) for Council consideration. To assist with developing this policy, staff researched related policies by reaching out to various neighboring agencies, posting a discussion item on the California State Municipal Finance Officers (CSMFO) discussion board, and conducting further online searches for sample policies. The policy outlines City Council and City Manager approval authority, as well as grant reporting requirements by City Staff (Attachment B).

The proposed policy directs staff to affirmatively seek grant opportunities to assist in the funding of City projects and programs. Grants often require City commitments, such as matching funds, future maintenance, and replacement costs or the continuation of the service or program established by the grant. In addition, grant applications may increase City staff workload due to application, monitoring, and reporting requirements. Grant opportunities must be reviewed carefully for impact on the City's resources and consistency with City policy and procedures.

The City Manager or their designee must approve the submission of a grant application. Additionally, Council approval must be sought if a granting agency requires governing body approval before applying for a grant.

If a grant is awarded, Council approval is required for the acceptance of any grant if any of the following criteria apply:

- Funding for the project is not already approved in the amended operating or capital budgets.
- Funds will be used to purchase or lease real property.
- The City acts as fiscal agent for another agency.
- Appropriation of additional funds to serve as matching funds is required.

Additionally, Council approval is required before accepting a grant if a granting agency requires governing body approval to accept a grant. The City Manager may approve the acceptance of grants that do not meet the above criteria.

Of the four surveyed agencies, Milpitas and Sunnyvale require City Council approval to accept any grant in an amount in excess of \$100,000. The two other agencies (Palo Alto and Lyons) have City Manager authority limits focused on non-monetary criteria similar to those in the proposed policy.

Reporting to Council will occur as part of the quarterly financial reports.

To ensure that the draft Policy encapsules industry's best practices, Moss Adams, the City's internal auditor, has also reviewed the policy. The auditor's recommendations have been incorporated into the policy. Those recommendations included mostly format changes and clarifying language on how the policy applies to City Council. The auditor confirmed that the proposed policy meets these standards.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Successful pursuit of grant opportunities reduces the need for funds from other funding sources.

California Environmental Quality Act

Not applicable.

<u>Prepared by:</u> Toni Oasay-Anderson, Senior Management Analyst

Reviewed by: Kristina Alfaro, Director of Administrative Services

Approved for Submission by: Pamela Wu, City Manager

Attachments:

- A City Council Grant Policy
- B Grant Authority and Reporting Matrix
- C Draft Resolution

CITY COUNCIL GRANT POLICY	Citywide Policy Manual Policy # TBD Attachments: N/A	
Effective Date:	Responsible Department:	
July 6, 2023 per Resolution 23-XX	Administrative Services	
Related Policies & Notes : Administrative Grant Management Policy and Procedure	City Council or Administrative Policy: City Council	

Purpose

To establish Council authority for the application, acceptance, and reporting of grants.

A grant is an external funding source that is awarded for a specific purpose, is valid within a defined timeframe, and typically imposes contractual obligations on the City. The method of grant disbursement is determined by the granting agency and the use of the funds is generally subject to audit by the granting agency.

Policy

This policy, including any amendments, shall be approved by City Council resolution and applies to all grants for which the City may apply.

It is the objective of the City to affirmatively seek grant funding opportunities that add to the City's financial resources to help maintain and provide quality services and capital improvements for Cupertino residents and businesses.

City Manager Authorization

All grant application submittals must be approved by the City Manager or designee.

Based on the following circumstances, City Council delegates to the City Manager the ability to approve submittal of a grant if:

- the Council has a policy, goal, or plan in place supporting the program the funds would be used for.
- the grant or application does not require any staff time which will not be funded by the grant or program applied for.
- the grant or application does not require any additional City funds not already budgeted for this purpose.

City Council approval must be obtained to apply for a grant that does not meet the conditions set forth above or if the granting agency requires governing body approval before applying for a grant. When considering the submittal of a grant application, the City Manager will consider the Grant Application Parameters referenced at the end of this policy.

In addition, City Manager is authorized to accept or reject all grant awards that do not fall under City Council authorization described in the following section.

City Council Authorization

Council approval for acceptance of grant awards is required when any of the following apply:

- Funding for the project is not already approved in the amended operating or capital budgets.
- Funds will be used to purchase or lease real property.
- The City acts as a fiscal agent for another agency.
- Appropriation of additional funds to serve as matching funds is required.
- The granting agency requires governing body approval.

City Council Reporting Guidelines

The Director of Administrative Services or designee will report to Council as follows:

- As part of the Quarterly Financial Reports, staff will include the following for all active grants and grants closed-out during the fiscal year:
 - o Purpose of the grant
 - Granting agency
 - o Grant amount awarded
 - Grant amount spent
 - o Grant amount remaining

Grant Application Parameters

- 1. The minimum dollar amount for the solicitation of grant funds from both Federal/State government agencies and private agencies should generally be the following:
 - Federal \$500,000
 - State \$100,000
 - Private and Other Local Agencies \$5,000
- 2. Amounts under this minimum should be considered only if there are minimal administrative tasks (i.e., financial/project reporting, maintaining receipts, vouchers etc.) imposed on the City by the grantor.
- 3. Programs and projects proposed for grant funding should be those that are consistent with the City's Mission Statement and Strategic Goals as identified as part of the City Work Program, Capital Improvement Program, General Plan, or adopted Master Plans or similar planning documents.
- 4. Grant programs must comply with rules established by the granting agency. If the requirements by the granting agency conflict with City policies, the granting agency requirements prevail. No grant may be accepted if grant program requirements conflict with state or federal law or with any City ordinance.

5. The submission of a grant application does not commit the City to appropriating match funds or funds for ongoing costs not covered by the grant.

Agency	Source	City Manager Authorization	City Council Authorization	Council Reporting Requirements
Cupertino	Proposed Grant Management Policy	not fall under City Council authorization described in the City Council Authorization section in the following column to your right.	Council approval for acceptance of grant awards is required if any of the following criteria apply: •Funding for the project is not already approved in the amended operating or capital budgets. •Funds will be used to purchase or lease real property. •The City acts as a fiscal agent for another agency. •Appropriation of additional funds to serve as matching funds is required. •The granting agency requires governing body approval	The Director of Administrative Services or designee will report to Council as follows: • As part of the Quarterly Financial Reports, staff will include the following for all active grants and grants closed-out during the fiscal year: • OPurpose of the grant • OF Granting agency • Grant amount awarded • Grant amount remaining
Lyons (CO)	Web Search	on a case-by-case basis whether other grant applications require Board of Trustees approval.	Board of Trustees will approve grant awards when: -the grant may conflict with the Town's comprehensive plan or strategic plan -the funds will be used to purchase property -when the agency acts as fiscal agent for another agency -the grant requires a local cost share/match Other awards may be approved by the Board as determined by the Town Administrator.	Grant management guidelines only reference grant reporting procedures as requested by granting agency.
Milpitas	Response to City Request for Policy	revenues and appropriations accordingly and execute related agreements as long as no matching funds are required, and/or departments do not require additional funding for ongoing maintenance costs or future replacement costs Carry forward unspent appropriations that are authorized and		Council approved Budget Guidelines require the Finance Director to report as part of the: -Quarterly Financial Report the acceptance of any grants under the City Manager's budget authority -4th Quarter Financial Status Report on all active grants and grants closed out during the fiscal year including the purpose of the grant, the granting agency, the grant amount awarded, remaining grant funds, and grant activities completed or underway.
Palo Alto	Response to City Request for Policy		If a Council resolution is required to support the grant application, the sponsoring department will work with the City Manager's Office to agendize the application.	Budget amendments will be done with the Mid- Year Financial Report and Year-End Financial Report to reflect all awarded grants.
Sunnyvale	Response to City Request for Policy			Not referenced in Policy.

RESOLUTION NO. 23-____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL ADOPTING CUPERTINO CITY COUNCIL GRANT POLICY

WHEREAS, the Cupertino City Council has identified a need to adopt a policy governing the application of, acceptance of, and reporting of grants; and

WHEREAS, on July 6, 2023, the City Council considered proposed policy at a duly noticed regular meeting of the City Council.

NOW, THEREFORE, BE IT RESOLVED that:

Members of the City Council

The City Council hereby adopts the Cupertino City Council Grant Policy attached hereto as Exhibit A. The Grant Policy shall be effective on July 6, 2023.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 6th day of July, 2023, by the following vote:

AYES: NOES: ABSENT:	
ABSTAIN:	
SIGNED:	
Hung Wei, Mayor City of Cupertino	Date
ATTEST:	
Kirsten Squarcia, City Clerk	Date



CITY OF CUPERTINO

Agenda Item

23-12221 Agenda Date: 7/6/2023

Agenda #: 9.

<u>Subject</u>: Consider awarding a contract to Grassroots Ecology for the maintenance of McClellan Ranch Preserve and Stevens Creek Corridor.

- 1. Award a contract to Grassroots Ecology for work related to maintenance of McClellan Ranch Preserve and Stevens Creek Corridor in the amount not to exceed \$104,240 per year for three years, totaling \$312,720; and
- 2. Authorize the City Manager to execute the contract with Grassroots Ecology when all contractual obligations have been met; and
- 3. Authorize the City Manager to extend the contract for up to two additional years, totaling \$208,480, for a five-year total of \$521,200, provided pricing and services remain acceptable.



PARKS AND RECREATION DEPARTMENT

QUINLAN COMMUNITY CENTER

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

CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

Subject

Consider awarding a contract to Grassroots Ecology for the maintenance of McClellan Ranch Preserve and Stevens Creek Corridor.

Recommended Action

- 1. Award a contract to Grassroots Ecology for work related to maintenance of McClellan Ranch Preserve and Stevens Creek Corridor in the amount not to exceed \$104,240 per year for three years, totaling \$312,720; and
- 2. Authorize the City Manager to execute the contract with Grassroots Ecology when all contractual obligations have been met; and
- 3. Authorize the City Manager to extend the contract for up to two additional years, totaling \$208,480, for a five-year total of \$521,200, provided pricing and services remain acceptable.

Reasons for Recommendation

McClellan Ranch Preserve, located within the Stevens Creek Corridor, is part of a 60-acre open space and recreational area comprised of oak woodland and riparian habitats. Along with McClellan Ranch Preserve, the Stevens Creek Corridor is home to Blackberry Farm Park and Blackberry Farm Golf Course. These facilities are designated as a natural and rural preserve and is considered of great importance for native wildlife, flora, and fauna. It is preserved and managed for conservation and provides special opportunities for education, study, research, and the enjoyment of nature. To enhance the health of Stevens Creek, mitigate fire danger, and provide critical wildlife habitat, maintenance is needed throughout McClellan Ranch Preserve and along the Stevens Creek Trail. The maintenance of McClellan Ranch Preserve and the Stevens Creek Corridor has been contracted since September 2012.

On April 14, 2023, the City issued a Request for Proposal (RFP) seeking for a qualified vendor to provide specified maintenance of existing facilities, fire mitigation, and community engagement services at McClellan Ranch Preserve and throughout the Stevens

Creek Corridor. The RFP sought proposals for a three-year contract, with the option to extend the term of the contract for two additional one-year periods, for a potential five-year contract.

The RFP was sent to local plan rooms and builders exchanges and posted on the City's website. The project was also advertised in the Cupertino Courier with local circulation. An optional pre-proposal meeting was held on April 25, 2023.

Two vendors responded to the RFP and the following is a summary of the proposals for three years of maintenance services at McClellan Ranch Preserve and Stevens Creek Corridor.

Bidder	3 Year Bid Amount	Annual	Five Year Bid
		Estimate	Amount
New Image Landscape Company	\$1,131,060.00	\$377,020.00	\$1,885,100.00
Grassroots Ecology	\$312,720.00	\$104,240.00	\$521,200.00

Grassroot Ecology's proposal was determined to be the lowest responsive and responsible submittal. Grassroots Ecology has the experience and knowledge to provide the needed specified maintenance activities, fire mitigation, and community engagement services in a manner that will be safe and successful. Grassroots Ecology has maintained the McClellan Ranch Preserve and Stevens Creek Corridor for over 10 years and are knowledgeable about the requirements at the site. Grassroots Ecology has proven their responsiveness to the City's requests and compliance with City requirements in the past.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The Fiscal Year 2023-2024 Parks and Recreation Administration budget (GL 100-63-612 700-702) includes adequate funding for the specified maintenance services at McClellan Ranch Preserve and Stevens Creek Corridor.

California Environmental Quality Act

The award of the contract is exempt from CEQA pursuant CEQA Guidelines section 15301 (maintenance of existing facilities).

Prepared by: Jacinta Liang, Management Analyst

Reviewed by: Rachelle Sander, Director of Parks and Recreation

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A - Draft Agreement



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and Grassroots Ecology ("Contractor"), a Non-Profit for McClellan Ranch Preserve and Stevens Creek Corridor Habitat Restoration, and is effective on the last date signed below ("Effective Date").

2. <u>SERVICES</u>

Contractor agrees to provide the services and perform the tasks ("Services") set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

3. <u>TIME OF PERFORMANCE</u>

- 3.1 This Agreement begins on the Effective Date and ends on June 30, 2026 ("Contract Time"), unless terminated earlier as provided herein. Contractor's Services shall begin on the effective date and shall be completed by June 30, 2026. The City's appropriate department head or the City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City's purchasing policy.
- **3.2 Schedule of Performance.** Contractor must deliver the Services in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.
- **3.3** Time is of the essence for the performance of all the Services. Contractor must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. <u>COMPENSATION</u>

- **4.1 Maximum Compensation.** City will pay Contractor for satisfactory performance of the Services an amount that will based on actual costs but that will be capped so as not to exceed \$312,720.00 ("Contract Price"), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor's actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City.
- **4.2** Invoices and Payments. Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of

Services, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

5. <u>INDEPENDENT CONTRACTOR</u>

- **Status.** Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.
- **Contractor's Qualifications.** Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.
- **Permits and Licenses.** Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.
- **54 Subcontractors.** Only Contractor'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.
- **Tools, Materials, and Equipment.** Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.
- **5.6** Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence

all City information provided by City to Contractor and use it only to perform this Agreement.

Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

- 7.1 **Property Rights.** Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.
- **Copyright.** To the extent permitted by Title 17 of the U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.
- **Patents and Licenses**. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.
- **7.4 Re-Use of Work Product**. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:
 - (a) The original Services for which Contractor was hired;
 - (b) Completion of the original Services by others;
 - (c) Subsequent additions to the original Services; and/or
 - (d) Other City projects.
- 7.5 **Deliverables and Format**. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. <u>RECORDS</u>

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

Contractor acknowledges that certain documents generated or received by Contractor in connection with the performance of this Agreement, including but not limited to correspondence

between Contractor and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Contractor shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

9. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.

10. PUBLICITY/SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

11. <u>INDEMNIFICATION</u>

- 11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor 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:
 - (a) Breach of contract, obligations, representations, or warranties;
 - (b) Negligent or willful acts or omissions committed during performance of the Services;
 - (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
 - (d) Unauthorized use or disclosure of City's confidential and proprietary Information;
 - (e) 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.
- 11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.
- 11.3 Contractor'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 Contractor against City or any Indemnitee.

- **11.4.** Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order, or other transaction.
- 11.5. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.
- **11.6.** This Section 11 shall survive termination of the Agreement.

12. <u>INSURANCE</u>

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit D**, 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 Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

- 13.1 General Laws. Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.
- **13.2 Labor Laws.** Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.
- 13.3 Discrimination Laws. Contractor 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. Contractor 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, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

- 13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.
- **13.5 Remedies.** Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. **PROJECT COORDINATION**

City Project Manager. The City assigns Molly James as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns Alex Von Feldt as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. <u>TERMINATION</u>

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to

this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. 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.

18. <u>ATTORNEY FEES</u>

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 Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. <u>INSERTED PROVISIONS</u>

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

24. <u>SEVERABILITY/PARTIAL INVALIDITY</u>

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal, or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law, and Attorney Fees, shall survive the Agreement and remain in full force and effect.

26. NOTICES

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

To City of Cupertino	To Contractor: Grassroots Ecology
Office of the City Manager	
10300 Torre Ave., Cupertino CA 95014	3921 E Bayshore Rd
-	Palo Alto CA 94303
Attention: Molly James	Attention: Alex Von Feldt
Email: mollyj@cupertino.org	Email: alex@grassrootsecology.org

27. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CITY OF CUPERTINO A Municipal Corporation	CONTRACTOR	
By	By	
Name	Name	
Title	Title	
McClellan Ranch Preserve and Stevens Creek Corridor	Habitat Restoration	

Date	Date	
APPROVED AS TO FORM:		
CHRISTOPHER D. JENSEN		
Cupertino City Attorney		
ATTEST:		
ATTEST:		
KIRSTEN SQUARCIA		
City Clerk		
Date		
Daic		

Exhibit A - Scope of Services Exhibit B - Schedule of Performance

Work Plan and Approach for McClellan Ranch Preserve and Stevens Creek Corridor

This section outlines Grassroots Ecology's approach to stewardship, restoration, and public outreach activities in partnership with the City of Cupertino Parks and Recreation. It outlines the main projects and activities that Grassroots Ecology will manage, and provides an overview of restoration techniques and community engagement strategies. Section VIII, "Summary of Activities and Deliverables," outlines the schedule of annual deliverables.







I. Goals

Grassroots Ecology's overall goals for our program at McClellan Ranch Preserve include the following:

- Effectively manage invasive plants throughout McClellan Ranch and the Stevens Creek Corridor
 - Remove weeds to reduce seed banks each year
 - Contain the spread of high-priority populations
- Revegetate target areas to restore and increase native biodiversity
 - Install and maintain locally native plants
 - Monitor and maintain existing native plant communities
- Protect and enhance the Stevens Creek watershed
 - Manage weeds along the riparian corridor
 - Stabilize eroded stream banks through willow staking
- Reduce wildfire risk through sustainable fire management measures
 - Work with City staff to identify needs
 - Reduce ladder fuel and fire-prone material in the landscape including invasive plants and brush
 - Preserve habitat by protecting native plants, avoiding work during bird nesting season, and leaving logs/other downed material where possible for habitat
- Engage the community to restore and enjoy the parks
 - o Provide outdoor education and stewardship opportunities for local youth
 - Leverage volunteers to accomplish goals
 - Enhance public appreciation of McClellan Ranch Preserve and the Stevens Creek Corridor

II. Project Areas

1) McClellan Ranch Meadow

Since 2014, Grassroots Ecology has been restoring native plants to the meadow adjacent to the Stevens Creek Trail at McClellan Ranch Preserve. This has historically been our primary restoration area. Using the "island" restoration technique, Grassroots Ecology has focused efforts on establishing and maintaining dense patches of native plant biodiversity to support local insects, birds, and wildlife.

Grassroots Ecology will continue to maintain existing native plant zones (orange) and will also expand the planting areas to create additional habitat islands in the meadow. Site selection for expansion will take into consideration habitat value and education value to park users. These areas will also be managed for invasive weeds to prevent them from getting a foothold.







2) Stevens Creek Trail

Since 2017, Grassroots Ecology has installed and maintained native plants along the Stevens Creek Trail adjacent to Stocklmeir Orchard. Native grasses, milkweed, blue eyed grass and redberry are doing well in this location. We will continue to maintain this area and add some infill plants to build on this success.

3) Stevens Creek Corridor

In order to enhance the health of Stevens Creek and to prevent the spread of invasive plants into other areas of the preserve, Grassroots Ecology has worked to remove invasive weeds along the Stevens Creek Trail spanning throughout McClellan Ranch Preserve and Stevens Creek Corridor. We will continue to work along the creek corridor to remove high priority invasive species at locations that are safe and accessible for volunteers. In addition, Grassroots Ecology will work with the City to identify locations that might benefit from willow staking in order to improve habitat and reduce erosion potential, and complete this work as needed.

4) Fire Mitigation Areas

Fire mitigation work areas within McClellan Ranch Preserve will be identified on an annual basis by conducting a site visit with City of Cupertino staff.

III. Invasive Plant Management

Grassroots Ecology will work to remove priority invasive plant species within the aforementioned project areas through a combination of staff/Americorps and volunteer workdays. Weeding will take place year-round, but most concentrated in the spring with the rapid growth and blooming of many invasive annuals. Each species has its own timeline and ideal time period for removal (see table below), which will be monitored by project staff. Weeds will be removed primarily by hand with volunteers and staff/Americorps workdays, but additional techniques such as sheet mulching and weed whipping will be used where appropriate. Grassroots Ecology will also coordinate with the City to schedule seasonal tractor mowing sessions to optimize timing to reduce the seedbank of annual thistles and mustard. Grassroots Ecology does not use chemical treatments for weed management.

Invasive species targeted for removal:

*High priority

ilivasive species tal	Thigh phonty	
	Meadow	Creek Corridor
Widespread	 Milk thistle (Silybum marianum)* Italian thistle (Carduus pycnocephalus)* Shortpod mustard (Hirschfeldia incana)* Wild radish (Raphanus raphanistrum) Annual grasses (Oats, foxtail, brome, etc.) 	- Cape ivy (<i>Delairea odorata</i>)* - Periwinkle (<i>Vinca major</i>)* - Smilo grass (<i>Stipa miliacea</i>)*
Less abundant	- Gopher spurge (Euphorbia lathyris) - Stinkwort (Dittrichia graveolens)* - Yellow starthistle (Centaurea solstitialis)*	- Lords and ladies (<i>Arum italicum</i>) - Algerian and English ivy (<i>Hedera sp.</i>) - Tree of heaven (<i>Ailanthus altissima</i>) - Himalayan blackberry (<i>Rubus armeniacus</i>)

Invasive species removal timeline:

October – December	January – March	April – June	July – September
- Algerian ivy - English ivy - Shortpod mustard - Stinkwort - Periwinkle - Himalayan blackberry	 Milk thistle Italian thistle Cape ivy Gopher spurge Periwinkle Algerian ivy English ivy Annual grasses 	 Milk thistle Shortpod mustard Italian thistle Wild radish Periwinkle Smilo grass Lords and ladies Annual grasses Yellow starthistle 	 Shortpod mustard Yellow starthistle Stinkwort Smilo grass Cape Ivy Periwinkle Himalayan blackberry







Left to right: mustard, smilo grass, and cape ivy

IV. Native Revegetation

Grassroots Ecology staff and volunteers will install approximately 450 native plants each year, with a majority in the McClellan meadow project area. Planting begins in November/December with the arrival of rain. Staff will place each plant to ensure proper sun exposure, drainage needs, and habitat type. Plants will be monitored to assess species success and improve planning for future years. Newly installed plants (<1 season) will be hand watered regularly during the dry season by Grassroots Ecology, while older planting areas will be watered periodically by Purple Pipe, an outside recycled water delivery contractor. The proposed costs include the fees to Purple Pipe, which is close to 10% of the overall project's costs due to rising rates. All other plant maintenance will be done by Grassroots Ecology.

Plants will be supplied by the Grassroots Ecology Nursery, and are grown from locally collected propagules. Plants are grown according to best phytosanitary management practices to prevent the spread of *Phytophthora*, a water mold that can infect and kill many native plants. To minimize risk of introducing *Phytophthora* when installing plants, staff will clean and disinfect gloves and tools. Planting completed by volunteers will be carefully supervised by staff to ensure proper handling and technique.

The tentative plant list below is based on past success of various species and consultation with nursery staff.

Potential species list for 23-24 planting season:

McClellan Meadow (~450 plants)

Perennials (300)

- Beeplant (Scrophularia californica)
- California goldenrod (Solidago velutina ssp californica)
- Pacific aster (Symphyotrichum chilense)
- Sticky monkeyflower (Diplacus aurantiacus)
- Yarrow (Achillea millefolium)
- Golden yarrow (Eriophyllum confertiflorum)
- Coyote mint (Monardella villosa)
- Narrowleaf milkweed (Asclepias fascicularis)
- Naked buckwheat (Eriogonum nudum)
- Verbena (Verbena lasiostachys)

Shrubs (50)

- California sagebrush (Artemisia californica)
- Buckbrush (Ceanothus oliganthus)
- Coffeeberry (*Frangula californica*)
- Toyon (*Heteromeles arbutifolia*)
- Gooseberry (Ribes californicum)
- Pitcher sage (Lepechinia calycina)

Grasses (100)

- California fescue (Festuca californica)
- Meadow barley (Hordeum brachyantherum)
- Blue wild rye (*Leymus glaucus*)







Left to right: monkeyflower, milkweed, coyote mint

Additional revegetation efforts

Grassroots Ecology has been awarded a \$38,500 grant from Valley Water to install a native pollution prevention garden adjacent to the 4H barn and community garden to help manage invasive species that are poisonous to livestock and humans. Additionally, the garden will slow, sink and spread runoff from the barn before it reaches the creek.



Approximate location of pollution prevention garden

In the winter of 2023, Grassroots Ecology partnered with the City and the family of Brooke Schryver to install a native pollinator garden adjacent to the education center. Grassroots Ecology plans to maintain Brooke's memorial garden by regular weeding, mulching and plant inspections.





Family members planting the Brooke Schryver Garden

Final garden and Canopy-provided Valley Oak

V. Fire Mitigation

Grassroots Ecology's invasive plant management in the meadow (see Section II), including working with the City on timed mowing, will contribute to the reduction of fire fuel load in the park as these target invasive plant species leave a high amount of dry biomass in the summer.

In addition, Grassroots Ecology has secured a grant from the California Coastal Conservancy to enhance the ecological health and fire resilience at multiple parks, including McClellan Nature Preserve. This grant provides funding to hire the San Jose Conservation Corps (SJCC) to remove large woody debris and volunteers to remove weeds that generate fuel load (such as mustard, which leaves a large amount of dry biomass in the summer) under the direction of Grassroots Ecology staff. Grassroots Ecology will conduct walkthroughs of the Preserve with City staff and an Audubon representative to determine what should be kept for habitat and what should be removed taking into account neighbor concerns. The grant funding will support up to five SJCC workdays through June 2025.

We did not budget for any significant fire mitigation work beyond the Coastal Conservancy-funded workdays with SJCC. However, if there is a need for additional fire clearance, Grassroots Ecology could assist by providing biological monitoring, redirecting some volunteer workdays in this contract for volunteer-appropriate fire mitigation activities, or replacing some volunteer workdays with SJCC workdays (if the City can cover the additional cost of hiring SJCC). Grassroots Ecology will also continue to seek other grant opportunities to work with SJCC, which could potentially be used to do additional work at McClellan Ranch.

VI. Community Engagement

Grassroots Ecology will engage volunteers to implement many of the described habitat restoration activities, including managing invasive and high fire risk plants, installing native plants, and maintaining native plant restoration areas. To engage volunteers and inspire committed land stewards, Grassroots Ecology includes education in all public events. Grassroots Ecology will offer community workdays, group volunteer events, Youth Stewards and other educational events.

Community and Group Volunteer Workdays

Grassroots Ecology will host community workdays that will be publicized and available for anyone to participate. Grassroots Ecology will also arrange for special volunteer events for groups (community service, corporate, philanthropic, etc.) upon request. Grassroots Ecology will host 2-3 events per month for a total of 24 throughout the year.

Grassroots Ecology will manage the outreach and registration of all volunteers, determine work day activities, and oversee volunteer safety and quality of work. The workdays will be divided among all project areas as needed to accomplish deliverables.

Youth Stewards

The High School Youth Stewards program will engage approximately 10-15 local high school students in a weekly program for students to participate in restoration projects and hands-on environmental education. Two sessions

will each take place each year – typically an 8-12 week session in the winter, and an 8 week session in the summer. Grassroots Ecology has run this program at McClellan Ranch Preserve for many years and there is high interest from local high school students, filling up all of our available spots each year. To support this program, Grassroots Ecology has secured funding from local foundations as well as an endowment from Brooke Schryver's family.

College field trips

Grassroots Ecology has relationships with local college professors and receives requests from DeAnza and San Jose State University to provide student field trips on the topics of restoration ecology and water quality. Grassroots Ecology intends to continue providing these field trips when possible.

Watershed Stewards Program

As in previous years, Grassroots Ecology applied for and received two Americorps Watershed Stewards Program (WSP) members that will work on the site from October 2023 - August 2024. These members will assist with all of the Grassroots Ecology volunteer events, education, and habitat restoration work. Grassroots Ecology will continue to apply for the program in future years as well, providing both a professional development opportunity for the Americorps members and additional help for the McClellan Ranch habitat restoration program.

Staff Presence

We currently have one full-time staff member and two WSP members assigned to the McClellan Ranch program, and will strive to maintain this staffing level, which is partially funded by our external grants and contributions. Grassroots Ecology staff are typically present on site 3-4 days per week for programs and for fieldwork. This presence makes us very visible in the community and we are able to respond to ad hoc questions as well as be aware of any issues that may arise at the site.

Community Engagement Event Summary (per year)

- 2 Youth Steward sessions (winter and summer) for a total of 16-20 workdays
- 24 community and group volunteer workdays

Following are photos of past volunteer workdays coordinated by Grassroots Ecology at McClellan Ranch.



NCL mothers and daughters plant native grasses



Monta Vista students weeding





Youth Stewards plant native plants in the McClellan meadow



Families investigate creek invertebrates



Community workday in the McClellan Meadow

VII. Wildlife Considerations

Grassroots Ecology will regularly communicate with City staff and other appropriate representatives to ensure that stewardship and maintenance activities do not adversely affect wildlife, including federally and state protected species, that live in the Preserve. Precautions taken will include:

- Avoid conducting any tree or large debris removal during nesting season and monitor work areas for ground nesting birds.
- Coordinate with City staff on the mowing of the McClellan meadow and support the City in biological monitoring prior to mowing.
- Avoid disruptive activities within the required distance of raptor, kites and songbird nests.
- Notify City staff of any sightings of active raptor nests, turtles, woodrats, frogs, salamanders or any other wildlife that could be considered protected.

Additionally:

- Grassroots Ecology does not use any herbicides, pesticides or fertilizers.
- Grassroots Ecology primarily uses person power hand tools to carry out restoration work. Besides the occasional use of battery-powered weed whips by staff, no other mechanized equipment is used.
- Grassroots Ecology hires a recycled water company to provide supplemental irrigation to plants in the meadow. Grassroots Ecology will oversee watering activities to ensure there is no runoff onto paths or into the creek.

VIII. Summary of Activities and Deliverables

Below is an approximate schedule of the activities and interim deliverable milestones.

Quarter	Primary Activities	Deliverables
July – Sept	 Targeted watering of new plants Watering/maintenance of restoration zones Planting preparation Planning and assessment for the fiscal year Volunteer program outreach/organizing Outreach and selection of 2 WSP members 	 4 community workdays Summer Youth Stewards (8 workdays total between June-August) Staff + WSP maintenance and irrigation of new plantings Purple Pipe irrigation Quarterly report of activities
Oct – Dec	 Onboarding of new WSP members Planting preparation Native plant installation (with rain) Begin willow staking (with rain) Volunteer program management Coordinate SJCC days for fire mitigation 	 - 200 native plants installed - 6 community workdays - Spring Youth Stewards (8-12 workdays total between January-April) - Staff + WSP maintenance - 1-2 SJCC workdays for fire mitigation - Quarterly report of activities

Jan – March	Weeding of invasivesNative plant installationVolunteer program management	- 250 native plants installed - 8 community workdays - Spring Youth Stewards (8-12 workdays total between January-April) - Staff + WSP maintenance - Quarterly report of activities
April – June	 Weeding of invasives Targeted watering of new plants Watering/maintenance of restoration zones Volunteer program management 	- 6 community workdays - End of Spring Youth Stewards (see above) - Summer Youth Stewards (8 workdays total between June-August) - Staff + WSP maintenance and irrigation of new plantings - Purple Pipe irrigation - Quarterly report of activities
ANNUAL TOTAL		- 24 community workdays - Spring Youth Stewards (8-12 workdays) - Summer Youth Stewards (8 workdays) - 1-2 San Jose Conservation Corps workdays (up to 5 total over 3 years) - 2 full-time Americorps WSP members assigned to McClellan from November - August - 450 plants installed - 4 quarterly reports



Grassroots Ecology Cost proposal for McClellan Ranch Preserve

Pricing Table

Item	Description	Unit	Estimated Quantity	Unit Price (\$)	Total (\$)
1	Invasive Plant Management	Year	3	\$28,000	\$84,000
2	Native Restoration and Revegetation	Year	3	\$39,240 ¹	\$117,720
3	Fire Mitigation	Year	3	\$4,360	\$13,080
4	Community Engagement	Year	3	\$25,580	\$76,740
5	Wildlife Protection	Year	3	\$7,060	\$21,180
TOTAL				\$104,240²	\$312,720

Notes

¹\$8,000-\$10,000 per year is to pay for Purple Pipe for recycled water irrigation services. While it does add to the overall cost, we started this practice during the drought so that we could use recycled water instead of the City's potable water for plant establishment. The Purple Pipe cost includes delivery and application of the recycled water to the planting areas.

² In addition to the City's investment in the McClellan Ranch Preserve restoration and community engagement work, Grassroots Ecology expects to bring \$65-\$75,000 per year that has already been secured from other funding sources, including the Youth Stewards program funded by foundation grants and private donations, fire mitigation work with the San Jose Conservation Corps funded by a Coastal Conservancy grant, and riparian corridor invasives removal and a "Pollution Prevention" garden funded by Valley Water.

EXHIBIT D

Insurance Requirements Design Professionals & Consultants Contracts

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

INSURANCE POLICIES AND MINIMUMS REQUIRED

- 1. **Commercial General Liability** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than \$2,000,000 per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
- 2. Automobile Liability: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- 3. *Workers' Compensation*: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than \$1,000,000 per occurrence for bodily injury or disease.

 ☐ Not required. Consultant has provided written verification of no employees.
- 4. **Professional Liability** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. If written on a claims made form:
 - a The Retroactive Date must be shown and must be before the Effective Date of the Contract.
 - b. Insurance must be maintained for at least five (5) years after completion of the Services.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

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

Primary Coverage

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

Notice of Cancellation

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

Waiver of Subrogation

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

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

Higher Insurance Limits

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

Adequacy of Coverage

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



CITY OF CUPERTINO

Agenda Item

23-12331 Agenda Date: 7/6/2023

Agenda #: 10.

Subject: Consider rejection of all bids received for the Bridge Preventative Maintenance Program.

Authorize the Director of Public Works to reject all bids received for the Bridge Preventative Maintenance Program.



PUBLIC WORKS DEPARTMENT

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

CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

Subject

Consider rejection of all bids received for the Bridge Preventative Maintenance Program.

Recommended Action

Authorize the Director of Public Works to reject all bids received for the Bridge Preventative Maintenance Program.

Reasons for Recommendation

The City of Cupertino advertised the Bridge Preventative Maintenance Program (Project No. 2015-14) on May 12. The project consists of bridge maintenance activities at the bridges at McClellan Road and Homestead Road over Stevens Creek, and the bridges at Stevens Creek Boulevard, Vallco Parkway, Miller Avenue, and Tantau Avenue over Calabazas Creek. Project work was anticipated to begin in July and be completed by November. On June 6, the City received a sole responsive and responsible bid for the Bridge Preventative Maintenance Program project as follows:

Bidder	Bid Amount
Engineers Estimate	\$975,000.00
American Civil Constructors West Coast LLC	\$1,884,000.00

The sole bid significantly exceeded the engineer's estimate, as well as the authorized project expenditure. This is likely due to a combination of reasons such as contractor availability and increases in labor and material costs.

The Department of Public Works (Public Works) believes that additional outreach and alternative timing of the bid advertisement may increase project interest by contractors resulting in more competitive bids being submitted. Public Works intends to readvertise the project in the near future. Therefore, Public Works recommends that, pursuant to Cupertino Municipal Code section 3.23.110(A), the City Council authorize the Director of Public Works to reject all bids.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Rejection will have no fiscal impact. Available funds will be carried over to next fiscal year.

The Fiscal Year 2022-2023 Capital Improvement Programs Budget includes the Bridge Preventative Maintenance Program (budget unit 270-90-960 "City Bridge Maintenance Repairs", \$1,844,472 total funding, including \$1,144,472 from the FHWA Highway Bridge Program). No additional project funding is requested at this time.

Current Fiscal Summary (active project since 2016):

Current Funding Status	Amount
Budgeted Funds (Capital Reserve)	\$700,000.00
Federal Grant Funds	\$1,144,472.00
Subtotal	\$1,844,472.00

Proposed Funding Impact	Amount
Expenses to Date	(\$208,256.18)
Construction Management (projected/estimate)	(\$200,000.00)
Bid Amount/Projected Constuction Agreement	
(this agreement)	(\$1,884,000.00)
Culatotal	(\$2.202.2E6.19)

Subtotal (\$2,292,256.18)

Deficiency Total

(\$447,784.18)

California Environmental Quality Act (CEQA)

The proposed action is exempt from the CEQA under CEQA Guidelines section 15378 (b) (5) as it is an administrative activity that will not result in a direct or indirect physical change to the environment.

Prepared by: Suyesh Shrestha, Project Manager

Reviewed by: Susan Michael, Capital Improvement Programs Manager

Reviewed by: Chad Mosley, Interim Director of Public Works

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager



CITY OF CUPERTINO

Agenda Item

23-12273 Agenda Date: 7/6/2023

Agenda #: 11.

<u>Subject</u>: Award a construction contract for the Regnart Road Improvements Phase 1 Project to Brannon Corporation for road reconstruction to mitigate roadway embankment failure.

- 1. Award a construction contract for the Regnart Road Improvements Phase 1 Project (Project No. 2019-08) in the amount of \$1,290,120 to Brannon Corporation;
- 2. Authorize the City Manager to execute the contract;
- 3. Authorize the Director of Public Works to execute any necessary construction change orders up to a construction contingency amount of \$129,012 (10%) for a total authorized contract amount of \$1,419,132; and
- 4. Adopt Resolution No. 23-082 approving budget modification #2324-285, increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-068) and the Capital Reserve (429 -90-001) by \$876,765.99, and transferring said funds from the Capital Reserve to Capital Improvement Program Capital Projects Fund (420-99-068).



PUBLIC WORKS DEPARTMENT

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

CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

Subject

Award a construction contract for the Regnart Road Improvements Phase 1 Project to Brannon Corporation for road reconstruction to mitigate roadway embankment failure.

Recommended Action

- Award a construction contract for the Regnart Road Improvements Phase 1
 Project (Project No. 2019-08) in the amount of \$1,290,120 to Brannon
 Corporation;
- 2. Authorize the City Manager to execute the contract;
- 3. Authorize the Director of Public Works to execute any necessary construction change orders up to a construction contingency amount of \$129,012 (10%) for a total authorized contract amount of \$1,419,132; and
- 4. Adopt Resolution No. 23-XXX approving budget modification #2324-285, increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-068) and Capital Reserve (429-90-001) by \$876,765.99, and transferring said funds from the Capital Reserve to Capital Improvement Program Capital Projects Fund (420-99-068).

Reasons for Recommendation

Regnart Road Improvements Phase 1 Project (Project) has an adopted budget of \$1,405,235 for the investigation and repair of various stability concerns along Regnart Road.

Regnart Road has experienced numerous failures in the past 40 years due to slope stability issues. The most recent failures occurred in 2017 due to extreme rain events that Santa Clara County experienced in January of that year. The City of Cupertino initiated two projects in response to these failures. The first, the 2017 Outfall Repair and Slope Stabilization project, was conducted under an emergency response, and the City was able to receive Federal Emergency Management Act (FEMA) and California Office of Emergency Services (Cal OES) funding for approximately 88% of the project total. The second was the 2018 Regnart Road Retaining Wall project that replaced approximately 130 linear feet of retaining wall that had failed.

As a result of these failures, the City initiated a geotechnical reconnaissance investigation in 2018. The investigation identified numerous deficiencies along Regnart Road including many areas where existing drainage patterns were causing excessive erosion, as well as numerous trees that were unstable and which could result in extensive road failures. The investigation also identified six locations where repairs are necessary to address existing stability concerns. The City, in response to this investigation, removed the unstable trees identified in the report and installed asphalt berms along portions of Regnart Road to direct drainage to established stormwater inlets. These efforts have helped to mitigate or lessen some of the stability concerns. The investigation, tree removals, and asphalt berm installation efforts cost approximately \$107,320 of the authorized budget.

The Project will repair and stabilize the two highest-priority sites identified in the geotechnical reconnaissance report consisting of approximately 140 linear feet of Regnart Road. This work will address an undermined embankment by constructing a retaining wall, asphalt pavement, and drainage facilities. The proposed improvements will prevent costly road and slope failures, lengthy road closures, and the potential for extreme hardship to the residents beyond this portion of Regnart Road.

Environmental permitting for the Project has taken longer than was originally anticipated, and the cost for this clearance and permitting has also been higher than expected. The delay has also resulted in higher construction costs than were originally estimated since the project budget was adopted.

Due to the condition of the existing road, the results of the bid proposals, and effort and expenditures to date to attain the necessary environmental clearances and permits, staff recommends that the budget adjustment be made, and that the construction contract be approved so that the project can be completed.

Discussion

The City advertised the Regnart Road Improvements Phase 1 Project for bid on June 15. Two responsive bids were received for the Project as detailed in the table below. The low bid was submitted by Brannon Corporation, which is approximately 15.7 % above the Engineer's Estimate.

Bidder	Total Bid Amount
Brannon Corporation	\$1,290,120.00
Granite Construction Company	\$1,779,029.90
Engineer's Estimate	\$1,115,080

The Department of Public Works reviewed the Brannon Corporation bid documents for completeness and confirmed the contractor's experience and qualifications and determined the bid to be the lowest responsive and responsible bid per the Instruction to Bidders and Cupertino Municipal Code. Construction is expected to begin in August.

Therefore, staff recommends awarding a construction contract to Brannon Corporation for the contract amount of \$1,290,120.00 and a 10% construction contingency in the amount of \$129,012.00 for a total contract amount not-to-exceed \$1,419,132.00. Construction contingency allows for unforeseen conditions and are a typical contracting best practice. It is recommended that the Council authorize the award of the construction contract to the low bidder, Brannon Construction. A Draft Construction Contract is included as Attachment B, and the other bid documents are included as Attachments C, D, E, and F.

Sustainability Impact

This project enhances public health, safety, and resiliency while being environmentally responsible, consistent with the Climate Action Plan.

Fiscal Impact

The Fiscal Year 2022-2023 Capital Improvement Programs budget for the Regnart Road Improvements Phase 1 Project (budget unit 420-99-068) contains \$891,095.69. This budget is inadequate to implement the project due to the overall increase in costs of materials and services since project initiation, as well as the expenditures to date for other road improvements and for environmental permits. Due to these factors, there is an additional fund's appropriation request for \$876,765.99. The Capital Reserve Fund will supply the additional appropriations through a transfer from (budget unit 429-90-001) to (budget unit 420-99-068). If approved, the total project budget will be \$2,282,000.99.

Current Fiscal Summary:

Current Funding Status	Amount
Budgeted Funds for Regnart Road	\$1,405,235.00
Improvements (Capital Reserve)	
Expenses/Encumbered to Date (Investigations,	(\$514,139.31)
Remediation Work, Geotechnical and	
Construction design, Environmental Clearance)	

Subtotal \$891,095.69

Proposed Funding Impact	Amount
Projected Construction Management Costs	(\$157,157.00)
Projected Misc. Costs (Special, Geotechnical, and Environmental Inspections)	(\$191,572.68)
Projected Construction Total, including Contingency (this agreement)	(\$1,419,132.00)

Subtotal (\$1,767,861.68)

Deficiency Total (\$876,765.99)

California Environmental Quality Act (CEQA)

The project is categorically exempt under CEQA Guideline, sections 15301 (b) (existing facilities), 15302 (c) (replacement or reconstruction of existing structures), and 15304 (d) (minor alterations to land).

Prepared by: Evelyn Moran, Project Manager

Reviewed by: Susan Michael, Capital Improvement Programs Manager

Reviewed by: Chad Mosley, Interim Director of Public Works

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Resolution

B – Draft Contract

C - Project Manual

D - Project Drawings

E – Project Addendum 1

F – Project Addendum 2

RESOLU	UTION NO.	

A RESOLUTION OF THE CUPERTINO CITY COUNCIL AMENDING THE CAPITAL IMPROVEMENT BUDGET FOR FISCAL YEAR 2023-2024 BY APPROPRIATING MONIES FOR THE REGNART ROAD IMPROVEMENTS PHASE 1 PROJECT

WHEREAS, the orderly administration of municipal government depends on a sound fiscal policy of maintaining a proper ratio of expenditures within anticipated revenues and available monies; and

WHEREAS, accomplishing City Council directives, projects, and programs and performing staff duties and responsibilities likewise depends on the monies available for that purpose; and

WHEREAS, the City Manager has determined that the balances from the funds specified in this resolution are adequate to cover the proposed amended appropriations, and therefore recommends the fund reallocations described herein.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the recommended fund allocations and ratifies the attached amended appropriations as set forth in Exhibit A.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 6th day of July 2023, by the following vote:

Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED:	
Hung Wei, Mayor City of Cupertino	Date
ATTEST:	
Kirsten Squarcia, City Clerk	Date

Exhibit A

Amendment	Revenue	Appropriation
Capital Budget Funds 420-99-068 (Revenue	\$961,756.88	\$0
Amendment)		
Capital Budget Funds 420-99-068	\$0	\$961,756.88
(Appropriation Amendment)		
TOTAL	\$961,756.88	\$961,756.88

Contract

This public works contract ("Contract") is entered into by and between City of Cupertino ("City") and <u>Brannon Corporation</u> ("Contractor"), for work on the Regnart Road Improvements Phase 1 Project ("Project").

The parties agree as follows:

- 1. Award of Contract. In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On _____July 6____, 20_23, City authorized award of this Contract to Contractor for the amount set forth in Section 4. below.
- 2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - **2.2** Instructions to Bidders;
 - **2.3** Addenda, if any;
 - **2.4** Bid Proposal and attachments thereto;
 - 2.5 Contract:
 - **2.6** Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - **2.9** Project Plans and Specifications;
 - **2.10** Change Orders, if any;
 - **2.11** Notice of Potential Award;
 - 2.12 Notice to Proceed; and
 - **2.13** The following: 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, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents. Contractor agrees to carry out its work in compliance with any applicable local, State or Federal order regarding COVID-19.
- **4. Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$\(\frac{1,290,120.00}{} \) ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
- **5. Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 60 working days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
- **6. Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$2,900.00 per day for each day of

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

7. Labor Code Compliance.

- **7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- **7.2 Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.
- **7.3 DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- 8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
- 11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Department of Public Works 10300 Torre Avenue Cupertino, CA 95014 Attn: Evelyn Moran, Project Manager evelynm@cupertino.org Copy to: <Name/Title> <Email address>

Contractor:

Name:	Brannon Corporation
Address:	10492 Dougherty Avenue
	:Morgan Hill, CA,95037
	408-297-2910
Attn:	TRD
Email:	
Copy to:	

12. General Provisions.

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

The parties agree to this Contract as witnes	ssed by the signatures below:
CITY:	Approved as to form:
5/	s/
Name, Title	Name, Title
Date:	Date:
Attest:	
5/	
Name, Title	
Date:	
CONTRACTOR:Business Name	
5/	Seal:
Name, Title	
Date:	
Second Signature (See Section 12.8):	
6/	
Name, Title	
Date:	
Contractor's California License Number(s) and l	Expiration Date(s)

END OF CONTRACT



PUBLIC WORKS DEPARTMENT 10300 TORRE AVENUE CUPERTINO, CALIFORNIA 95014

PROJECT MANUAL

FOR THE

Regnart Road Improvements Phase 1

Bid Date:

June 15, 2:00 p.m.

Project Number: 2019-08

PROJECT MANUAL FOR Regnart Road Improvements Phase 1 PROJECT NO. 2019-08

APPROVED BY:

Chad Mosley

Interim Director of Public Works

PROJECT DIRECTORY

Project Name: Regnart Road Improvements Phase 1

Project Number: 2019-08

Location: Regnart Road, Cupertino, CA. Coordinates are 37.29622° N latitude and

122.06050° W longitude (NAD 83 or WGS 84).

City Representative: City of Cupertino

Evelyn Moran

Public Works Department 10300 Torre Avenue Cupertino, CA 95014 PH: (408) 777-1313

e-mail: evelynm@cupertino.org

Address for Stop Notices: City of Cupertino

Evelyn Moran

Public Works Department 10300 Torre Avenue Cupertino, CA 95014 PH: (408) 777-1313

e-mail: evelynm@cupertino.org

Engineer of Record: MME, Inc.

Rodney Cahill

224 Walnut Avenue, Suite B Santa Cruz, CA 95060 PH: (831) 291-3254 Project Name: Regnart Road Improvements Phase 1 Project

Project Number: 2019-08

SEALS PAGE

The Technical Specifications and Plans have been prepared by or under the direction of the following person(s).

No. S 3549 Exp. 03/31/2

CIVIL ENGINEERING

RODNEY ĆAHILL

REGISTERED CIVIL ENGINEER

5.10.2023

STRUCTURES

DALE HENDSBEE

REGISTERED STRUCTURAL ENGINE

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Attachment A-Geotechnical Report, Appendix A & B - For Reference Only

Attachment B-California Department of Fish and Wildlife Permit Conditions- For Reference Only

Notice Inviting Bids

1. **Bid Submission.** City of Cupertino ("City") will accept electronically submitted bids for its Regnart Road Improvements Phase 1 ("Project"), by or before June 15, at 2:00 p.m., via electronic submission to the City's "Business Opportunities" online portal in the manner set forth in Section 1 of the Instructions to Bidders, at which time the bids will be opened by the City.

2. Project Information.

2.1 Location and Description. The Project is located across from 22045 Regnart Road, Cupertino, CA. The coordinates are 37.29622° N latitude and 122.06050° W longitude (NAD 83 or WGS 84) and is described as follows:

Road reconstruction includes excavation, widening, retaining walls, drainage inlet work, asphalt pavement work, to mitigate roadway embankment distress, and cut slope failures.

- **2.2 Time for Final Completion.** The Project must be fully completed within 60 working days from the start date set forth in the Notice to Proceed. City anticipates that the Work will begin on or about July 2023, but the anticipated start date is provided solely for convenience and is neither certain nor binding.
- **2.3 Estimated Cost.** The estimated construction cost is \$1,115,080
- 3. License and Registration Requirements.
 - **3.1 License.** This Project requires a valid California contractor's license for the following classification(s): Classification A, General Engineering
 - 3.2 DIR Registration. City may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- **4. Contract Documents.** The plans, specifications, bid forms and contract documents for the Project, and any addenda thereto ("Contract Documents") may be downloaded from City's website located at: https://apps.cupertino.org/bidmanagement/index.aspx. A printed copy of the Contract Documents is not available.
- 5. Bid Security. Each bidder must submit bid security equal to ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents, in the manner set forth in Section 4 of the Instructions to Bidders. The bid security must guarantee that within ten days after City issues the Notice of Potential Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, and any other submittals required by the Contract Documents and as specified in the Notice of Potential Award.
- 6. Prevailing Wage Requirements.
 - **General.** Pursuant to California Labor Code § 1720 et seq., 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.
- **Rates.** These prevailing rates are on file with the City and are available online at http://www.dir.ca.gov/DLSR. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.
- **Compliance.** The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.
- 7. **Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds, each for 100% of the Contract Price, as further specified in the Contract Documents.
- **8. Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300.
- 9. Subcontractor List. Each Subcontractor must be registered with the DIR to perform work on public projects. Each bidder must submit a completed Subcontractor List form with its Bid Proposal, including the name, location of the place of business, California contractor license number, DIR registration number, and percentage of the Work to be performed (based on the base bid price) for each Subcontractor that will perform Work or service or fabricate or install Work for the prime contractor in excess of one-half of 1% of the bid price, using the Subcontractor List form included with the Contract Documents.
- 10. Instructions to Bidders. All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, as defined therein, including this Notice Inviting Bids.

Ву:		Date:	
	, City Clerk		
		Publication Date: <	>

END OF NOTICE INVITING BIDS

Instructions to Bidders

Each Bid Proposal submitted to the City of Cupertino ("City") for its Regnart Road Improvements Phase 1 ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

- 1.1 General. Each Bid Proposal must be signed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in Section 1 of the Notice Inviting Bids, or as amended by subsequent addendum, via electronic submission only as specified below in Section 1.2. Faxed, hand-delivered, mailed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will not be considered. City reserves the right to postpone the date or time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.
- 1.2 Electronic Submission. The Bid Proposal and all required forms and attachments must be submitted in PDF format on the Citv's "Business" Opportunities" portal at https://apps.cupertino.org/bidmanagement/index.aspx. To submit a bid, (1) select the folder icon in the "Actions" column for the Project; (2) select the "Electronic Submission" tab; (3) when the log-in screen appears, enter the log-in credentials used to access the Contract Documents and/or create an account, as appropriate; (4) after logging in, carefully follow all instructions for electronic submission of the Bid Proposal and all required forms and attachments. Each bidder should familiarize itself with the City's "Business Opportunities" portal before the bid deadline. Electronic submission may take more time than anticipated. Each bidder should plan accordingly and afford itself ample time to upload its bid. Bids that are in the process of uploading but are not completely uploaded by the bid deadline will be automatically rejected by the portal. The portal will not allow submission after the bid deadline. On the next Working Day following the bid opening, the City will post the bid results to https://apps.cupertino.org/bidmanagement/index.aspx.
- 1.3 DIR Registration. Subject to limited legal exceptions for joint venture bids and federally-funded projects, City may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform public work under Labor Code § 1725.5. If City is unable to confirm that the bidder is currently registered with the DIR, City may disqualify the bidder without opening its bid. (Labor Code §§ 1725.5 and 1771.1(a).)
- 2. Bid Proposal Form and Enclosures. Each Bid Proposal must be completed legibly using the Bid Proposal form included with the Contract Documents. The Bid Proposal form must be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by a completed Subcontractor List and Non-Collusion Declaration using the forms included with the Contract Documents, a PDF copy of the bid security, and any additional forms required by the Notice Inviting Bids or Instructions to Bidders. In addition to

- submitting a PDF copy of the bid security, each bidder must also send the original form of bid security to the City, as set forth in Section 4, below.
- 3. Authorization and Execution. Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code § 313.
- **4. Bid Security.** Each bid must be guaranteed by bid security of ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to the City, or bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California.
 - 4.1 Form of Security and Submission. In addition to submitting a PDF copy of the bid security, the wet-inked original bid bond, cashier's or certified check, must be sent to the City via U.S. Mail or a reliable overnight delivery service in a sealed envelope addressed to City of Cupertino, Office of the City Clerk, 10300 Torre Avenue, Cupertino, CA 95014 and clearly labeled with the bidder's legal name and address, the Project title, and date and time of the bid deadline. The envelope containing the original form of bid security must be postmarked or otherwise dated to show that it was submitted to the United States Postal Service or overnight delivery service by or before the date of the bid deadline.
 - 4.2 Bid Guarantee. The bid security must guarantee that, within ten days after issuance of the Notice of Potential Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the maximum Contract Price; and submit the insurance certificates and endorsements and any other submittals, if any, required by the Contract Documents or the Notice of Potential Award. A Bid Proposal may not be withdrawn for a period of 60 days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code § 5100 et seq.
- 5. Requests for Information. Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted in writing to Evelyn Moran, Project Manager, at evelynm@cupertino.org. Oral responses are not authorized and are not binding on the City. Bidders should submit any such written inquiries at least five Working Days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by City in response to a written inquiry will be issued in an addendum.
- 6. Pre-Bid Investigation.
 - 6.1 General. Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to the public at large, bidders may not enter property owned or leased by the City or the Project site without prior written authorization from City.
 - **Document Review.** Each bidder is responsible for review of the Contract Documents and any informational documents provided "For Reference Only," e.g.,

as-builts, technical reports, test data, and the like. A bidder is responsible for notifying City of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the City no later than five Working Days before the scheduled bid opening. (See Section 5, above.) City expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by City.

- 6.3 **Project Site.** Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to the City in writing, as specified in Section 5, above. Any subsurface exploration at the Project site must be done at the bidder's expense, but only with prior written authorization from City. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation indicated by a soil test report existed on the date the test hole was drilled. The bidder is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during Project construction will not be considered changed Project site conditions. Actual locations and depths must be determined by bidder's field investigation. The bidder may request access to underlying or background information on the Project site in City's possession that is necessary for the bidder to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.
- 6.4 Utility Company Standards. The Project must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). The successful bidder may be required by the third party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Bidders are directed to contact the affected third party utility owners about their requirements before submitting a Bid Proposal.
- 7. Bidders Interested in More Than One Bid. No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
- **8.** Addenda. Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code § 4104.5, City reserves the right to issue addenda prior to bid time. Each bidder is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its bid. Bidders should check City's website periodically for any addenda or updates on the Project at: https://apps.cupertino.org/bidmanagement/index.aspx.
- 9. Brand Designations and "Or Equal" Substitutions. Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 35 days after Notice of Potential Award unless otherwise provided in the Contract Documents. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code § 3400(c).

- **10. Bid Protest.** Any bid protest against another bidder must be submitted in writing and received by City at 10300 Torre Avenue, Cupertino, CA 95014 or sent via email at evelynm@cupertino.org before 5:00 p.m. no later than two Working Days following the date upon which the City posts the bid results ("Bid Protest Deadline") and must comply with the following requirements:
 - 10.1 General. Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 10, a "Working Day" means a day that City is open for normal business, and excludes weekends and holidays observed by City. Pursuant to Public Contract Code § 4104, inadvertent omission of a Subcontractor's DIR registration number on the Subcontractor List form is not grounds for a bid protest, provided it is corrected within 24 hours of the bid opening or as otherwise provided under Labor Code § 1771.1(b).
 - 10.2 Protest Contents. The bid protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest on behalf of or as an authorized representative of the protesting bidder.
 - 10.3 Copy to Protested Bidder. Upon submission of its bid protest to City, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.
 - 10.4 Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested bidder if different from the protested bidder.
 - 10.5 Copy to Protesting Bidder. Upon submission of its response to the bid protest to the City, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
 - **10.6 Exclusive Remedy.** The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. A bidder's failure to comply with these procedures will constitute a waiver

- of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.
- 10.7 Right to Award. City reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.
- 11. Reservation of Rights. City reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities; to accept or reject any or all bids; to cancel or reschedule the bid; to postpone or abandon the Project entirely; or to perform all or part of the Work with its own forces. The Contract will be awarded, if at all, within 60 days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid. Any planned start date for the Project represents the City's expectations at the time the Notice Inviting Bids was first issued. City is not bound to issue a Notice to Proceed by or before such planned start date, and it reserves the right to issue the Notice to Proceed when the City determines, in its sole discretion, the appropriate time for commencing the Work. The City expressly disclaims responsibility for any assumptions a bidder might draw from the presence or absence of information provided by the City in any form. Each bidder is solely responsible for its costs to prepare and submit a bid, including site investigation costs.
- **12. Bonds.** Within ten calendar days following City's issuance of the Notice of Potential Award to the apparent low bidder, the bidder must submit payment and performance bonds to City as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.
- 13. License(s). The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful bidder must also obtain a City business license within 5 days following City's issuance of the Notice of Potential Award. Subcontractors must also obtain a City business license before performing any Work.
- **14. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.
- 15. Safety Orders. If the Project includes construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, each bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code § 6707.
- **16. Subcontractor Work Limits.** The prime contractor must perform at least 51% of the Work on the Project, calculated as a percentage of the base bid price, with its own forces, except for any Work identified as "Specialty Work" in the Contract Documents. The total bid amount for any such Specialty Work, as shown on the Bid Schedule, may be deducted from the base bid price before computing the 51% self-performance requirement. The remaining Work may be performed by qualified Subcontractor(s).
- 17. Additive and Deductive Alternates. As required by Public Contract Code § 20103.8, if

this bid solicitation includes additive or deductive items, the method below will be used to determine the lowest bid. City retains the right to add to or deduct from the Contract any of the additive or deductive alternates included in the Bid Proposal.

The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

- **18. Bid Schedule.** Each bidder must complete the Bid Schedule form with unit prices as indicated, and submit the completed Bid Schedule with its Bid Proposal.
 - Incorrect Totals. In the event a computational error for any bid item (base bid or alternate) results in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount as the product of the estimated quantity and the unit cost. In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code § 5100 et seq.
 - 18.2 Estimated Quantities. The quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased, and no increase in the unit price, and without regard to the percentage increase or decrease of the estimated quantity and the actual quantity.
- 19. Bidder's Questionnaire. A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within 48 hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.
- **20.** For Reference Only. The following documents are provided "For Reference Only," as defined in Section 3.4 of the General Conditions:

Attachment A- Geotechnical Recommendations Report, Appendix A & B Attachment B-California Department of Fish and Wildlife Permit Conditions

END OF INSTRUCTIONS TO BIDDERS

("Bidder") hereby submits this Bid

Bid Proposal

Regnart Road Improvements Phase 1 Project

			tino ("City") for the above dance with the Contract		Project") in response to the Notice d in the Notice.		
1.	the (Contract Docur erials, supplies	nents, within the time rec	quired for full completion ther direct or indirect	ork for the Project as specified in on of the Work, including all labor, costs including, but not limited to, id"):		
2.	issu rece	ed for this Bid.	Bidder waives any claims review any addenda for	s it might have agains	ss to, and reviewed, all addenda It the City based on its failure to pecifically acknowledges receipt of		
	Ac #0 #0 #0	11 12 13	Date Received:	Addendum: #05 #06 #07 #08	Date Received:		
3.	Bidder's Certifications and Warranties. By signing and submitting this Bid Proposal, Bidder certifies and warrants the following:						
	3.1 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 § 1104.						
	3.2		n of Worksite. Bidder ha		to examine the Worksite and		
	3.3	experience, s	skill, qualifications, workfo	orce, equipment, and	h the necessary ability, capacity, resources to perform or cause the uments and within the Contract		
	3.4	responsible f	or any errors or omission	ns contained in its com	Bid Proposal and is solely appleted Bid. All statements and the true and correct to the best of		

3.6 Iran Contracting Act. If the Contract Price exceeds \$1,000,000, Bidder is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"),

Nondiscrimination. In preparing this Bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital

status.

3.5

Bidder's knowledge.

as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

- **4. 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 Potential Award to Bidder, Bidder will do all of the following:
 - **4.1 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;
 - **4.2 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
 - **4.3 Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

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 ______ , 20 . Name and Title [See Section 3 of Instructions to Bidders] Name and Title Company Name License #, Expiration Date, and Classification DIR Registration # Address City, State, Zip Phone Contact Name Contact Email

END OF BID PROPOSAL

5.

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.

AL = Allowance LF = Linear Foot F = Final Pay Item CF = Cubic Feet LS = Lump Sum CY = Cubic Yard SF = Square Feet EA = Each LB = Pounds

TON = Ton (2000 lbs)

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
1	Mobilization	1	LS	\$	\$
2	Temporary Signal System	1	LS	\$	\$
3	Traffic Control System	1	LS	\$	\$
4	Portable Changeable Message Sign	1	EA	\$	\$
5	Temporary Railing (Type K)	200	LF	\$	\$
6	Prepare Water Pollution Control Plan	1	LS	\$	\$
7	Temporary Compost Sock	200	LF	\$	\$
8	Temporary Drainage Inlet Protection	1	EA	\$	\$
9	Temporary Silt Fence	200	LF	\$	\$
10	Rolled Erosion Control Product (Jute Mesh)	1,630	SF	\$	\$
11	Clearing and Grubbing	1	LS	\$	\$
12	Roadside Clearing (Tree Removal)	3	EA	\$	\$
13	Roadway Excavation	56	CY	\$	\$
14	Precast Concrete Lagging	668	SF	\$	\$
15	Structure Excavation (Barrier Slab) (F)	89	CY	\$	\$
16	Structure Backfill (Soldier Pile Wall) (F)	25	CY	\$	\$
17	Concrete Backfill (Soldier Pile Wall) (F)	26	CY	\$	\$
18	Earth Retaining Structure (Guard Railing)	120	LF	\$	\$
19	Class 2 Aggregate Base	100	CY	\$	\$
20	Hot Mix Asphalt (Type A)	65	TON	\$	\$
21	Place Hot Mix Asphalt Dike (Type C)	70	LF	\$	\$
22	Place Hot Mix Asphalt Dike (Type F)	50	LF	\$	\$
23	Steel Soldier Pile (W12x45)	323	LF	\$	\$

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
24	24" Drilled Hole	221	LF	\$	\$
25	30" CIDH Concrete Piling	625	LF	\$	\$
26	Structural Concrete, Barrier Slab (F)	85	CY	\$	\$
27	Structural Concrete, Drainage Inlet (F)	1	CY	\$	\$
28	Bar Reinforcing Steel (F)	60,000	LB	\$	\$
29	Clean and Paint Steel Soldier Piling	1	LS	\$	\$
30	Remove Inlet	1	EA	\$	\$
31	18" Alternative Pipe Culvert	10	LF	\$	\$
32	3" Perforated Plastic Pipe Underdrain	125	LF	\$	\$
33	Geo-composite Drain	668	SF	\$	\$
34	Culvert Slurry-Cement Backfill	10	CY	\$	\$
35	Transition Railing (Type WB-31)	2	EA	\$	\$
36	Alternative In-Line Terminal System	2	EA	\$	\$
37	Concrete Barrier (Type 842) (F)	150	LF	\$	\$
38	Thermoplastic Traffic Stripe	400	LF	\$	\$

TOTAL BASE BID:	Items 1 through	_ inclusive: \$	
	_		
BIDDER NAME:			

END OF BID SCHEDULE

Subcontractor List

For each Subcontractor that will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, its DIR registration number, and the portion of the Work that the Subcontractor is performing based on a percentage of the Base Bid price.

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NO.	LOCATION OF BUSINESS	DIR REG. NO.	PERCENT OF WORK

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

Non-Collusion Declaration

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:	
I am the	[title] ofthe foregoing bid.
[business name], the party making	the foregoing bid.
company, association, organization. The bidder has not directly or indire sham bid. The bidder has not direct any bidder or anyone else to put in any manner, directly or indirectly, so anyone to fix the bid price of the bid element of the bid price, or of that of true. The bidder has not, directly or thereof, or the contents thereof, or corporation, partnership, company,	of, or on behalf of, any undisclosed person, partnership, or corporation. The bid is genuine and not collusive or sham. In the city induced or solicited any other bidder to put in a false or the city or indirectly colluded, conspired, connived, or agreed with a sham bid, or to refrain from bidding. The bidder has not in ought by agreement, communication, or conference with deer or any other bidder, or to fix any overhead, profit, or cost of any other bidder. All statements contained in the bid are indirectly, submitted his or her bid price or any breakdown divulged information or data relative thereto, to any association, organization, bid depository, or to any member or ive or sham bid, and has not paid and will not pay, any person
This declaration is intended to compu.S.C § 112.	ply with California Public Contract Code § 7106 and Title 23
	nder the laws of the State of California that the foregoing is ration is executed on [date], at [city], [state].
s/	
Name [print]	

END OF NON-COLLUSION DECLARATION

Bid Bond

		("Bidder") has submitted a
bid bo ("Sure of the	on the ond ("E ety"), a Bid (t	, 20("Bid"), to City of Cupertino ("City") for Regnart Road Improvements Phase 1 Project ("Project"). Under this duly executed Bid Bond"), Bidder as Principal and, its surety are bound to City as obligee in the penal sum of ten percent of the maximum amount he "Bond Sum"). Bidder and Surety bind themselves and their respective heirs, administrators, successors and assigns, jointly and severally, as follows:
1.		ral. If Bidder is awarded the Contract for the Project, Bidder will enter into the act with City in accordance with the terms of the Bid.
2.	Subn Bidde	nittals. Within ten days following issuance of the Notice of Potential Award to Bidder, or must submit to City the following:
	2.1	Contract. The executed Contract, using the form provided by City in the Project contract documents ("Contract Documents");
	2.2	Payment Bond. A payment bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
	2.3	Performance Bond. A performance bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
	2.4	Insurance. The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required by the Instructions to Bidders or Notice of Potential Award.
3.	insura Bidde	rcement. If Bidder fails to execute the Contract and to submit the bonds and ance certificates as required by the Contract Documents, Surety guarantees that er forfeits the Bond Sum to City. Any notice to Surety may be given in the manner fied in the Contract and delivered or transmitted to Surety as follows:
	City Pho Fax	n:
4.		tion and Waiver. If Bidder fulfills its obligations under Section 2, above, then this ation will be null and void; otherwise it will remain in full force and effect for 60 days

[Signatures are on the following page.]

Surety waives the provisions of Civil Code §§ 2819 and 2845.

following the bid opening or until this Bid Bond is returned to Bidder, whichever occurs first.

This Bid Bond is entered into and effective on	, 20	
SURETY:		
Durings Many		
Business Name		
s/	Date	
Name, Title		
(Attach Acknowledgment with Notary Seal and Pov	ver of Attorney)	
BIDDER:		
Business Name		
s/		
	Date	
Name, Title		

END OF BID BOND

Bidder's Questionnaire

Regnart Road Improvements Phase 1

Within 48 hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and all required attachments, including clearly labeled additional sheets as needed. City may request the Questionnaire from one or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire as part of its investigation to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part A: General Information					
Bidder Business Name:	("Bidder")				
Check One: Corporation (State of incorporation:) Partnership Sole Proprietorship Joint Venture of:Other:					
Main Office Address and Phone:					
Local Office Address and Phone:					
Website address:					
Owner of Business:					
Contact Name and Title:					
Contact Phone and Email:					
Bidder's California Contractor's License Number(s):					
Bidder's DIR Registration Number:					
Part B: Bidder Experience					
1. How many years has Bidder been in business under its present business name	e? years				
2. Has Bidder completed projects similar in type and size to this Project as a gene Yes No	eral contractor?				
 Has Bidder ever been disqualified from a bid on grounds that it is not responsitely disqualified or disbarred from bidding under state or federal law? Yes No 	ole, or otherwise				

disbarme size of th	f yes, provide additional information on a separate sheet regarding the disqualification or disbarment, including the name and address of the agency or owner of the project, the type and size of the project, the reasons that Bidder was disqualified or disbarred, and the month and year n which the disqualification or disbarment occurred.								
construc	4. Has Bidder ever been terminated for cause, alleged default, or legal violation from a construction project, either as a general contractor or as a subcontractor? Yes No								
name an whether	nd addre Bidder v	dditional information on a separate sheet regarding the termination, including the ses of the agency or owner of the subject project, the type and size of the project, was under contract as a general contractor or a subcontractor, the reasons that inated, and the month and year in which the termination occurred.							
5. Provi	de infori	mation about Bidder's past projects performed as general contractor as follows:							
;	5.1	Three most recently completed public works projects within the last three years;							
;	5.2	Three largest completed projects within the last three years; and							
;		Any project which is similar to this Project including scope and character of the work.							
		sheets to provide all of the following information for <u>each</u> project identified in above three categories:							
	6.2 6.3 6.4 6.5 6.6 6.7 6.8 6.9 6.10 6.11 6.12	Project name, location, and description; Owner (name, address, email, and phone number); Prime contractor, if applicable (name, address, email, and phone number); Architect or engineer (name, email, and phone number); Project and/or construction manager (name, email, and phone number); Scope of work performed (as general or as subcontractor); Initial contract price and final contract price (including change orders); Original scheduled completion date and actual date of completion; Time extensions granted (number of days); Number and amount of stop notices or mechanic's liens filed; Amount of any liquidated damages assessed against Bidder; and Nature and resolution of any project-related claim, lawsuit, mediation, or arbitration involving Bidder.							
Part C: \$	Safety								
1. Provi	de Bidd	er's Experience Modification Rate (EMR) for the last three years:							
		Year EMR							
	0A, Ann	following, based on information provided in Bidder's CalOSHA Form 300 or hual Summary of Work-Related Illnesses and Injuries, from the most recent past							
2	2.2	Number of lost workday cases: Number of medical treatment cases: Number of deaths:							

	IOSHA, or EPA, for violation of and safety?	l by any local, state, or federal age any law, regulation, or requiremer	•
prosecution, including size of the project, the	ng the name and address of the ne reasons for and nature of the	sheet regarding each such citation agency or owner of the project, the citation, fine, or prosecution, and tion, fine, or prosecution occurred.	ne type and the month
4. Name, title, and	email for person responsible for	Bidder's safety program:	
Name	Title	Email	
Part D: Verification	ı		
this Bidder's Questic set forth in this Bidd knowledge, true, ac	onnaire on behalf of the named er's Questionnaire and accomp curate and complete as of the d	e that I am duly authorized to sign Bidder, and that all responses and anying attachments are, to the be ate of submission. I declare unde that the foregoing is true and co	d information st of my er penalty of
Signature:		Date:	
By: Name and Title			

END OF BIDDER'S QUESTIONNAIRE

Contract

This and	public works contract ("Contract") is entered into by and between City of Cupertino ("City") ("Contractor"), for work on the Regnart
Roa	d Improvements Phase 1 Project ("Project").
The	parties agree as follows:
1.	Award of Contract. In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On, 20, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2.	Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
	 2.1 Notice Inviting Bids; 2.2 Instructions to Bidders; 2.3 Addenda, if any; 2.4 Bid Proposal and attachments thereto; 2.5 Contract; 2.6 Payment and Performance Bonds; 2.7 General Conditions; 2.8 Special Conditions; 2.9 Project Plans and Specifications; 2.10 Change Orders, if any; 2.11 Notice of Potential Award; 2.12 Notice to Proceed; and 2.13 The following: 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, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the

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 \$______ ("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.

Contract Documents. Contractor agrees to carry out its work in compliance with any

applicable local, State or Federal order regarding COVID-19.

- **5. Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 60 working days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
- **6. Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$2,900.00 per day for each day of

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

7. Labor Code Compliance.

- **7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.
- **7.3 DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- 8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
- 11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Department of Public Works 10300 Torre Avenue Cupertino, CA 95014 Attn: Evelyn Moran, Project Manager evelynm@cupertino.org Copy to: <Name/Title> <Email address>

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12. General Provisions.

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

The parties agree to this Contract as witnessed by the signatures below:			
CITY:	Approved as to form:		
s/	s/		
Name, Title	Name, Title		
Date:	Date:		
Attest:			
s/			
Name, Title	-		
Date:			
CONTRACTOR: Business Name			
s/	Seal:		
Name, Title	-		
Date:			
Second Signature (See Section 12.8):			
s/			
Name, Title	-		
Date:			
Contractor's California License Number(s) and	d Expiration Date(s)		

END OF CONTRACT

Payment Bond

contra	f Cupertino ("City") and ("Contractor") have entered into a act for work on the Regnart Road Improvements Phase 1 Project ("Project"). The Contract orporated by reference into this Payment Bond ("Bond").
1.	General. Under this Bond, Contractor as principal and, its surety ("Surety"), are bound to City as obligee in an amount not less than \$, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2.	Surety's Obligation. If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
3.	Beneficiaries. This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4.	Duration. If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5.	Waivers. Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:
	Attn:Address:
6.	Law and Venue. This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place.

[Signatures are on the following page.]

Surety will be responsible for City's attorneys' fees and costs in any action to enforce the

provisions of this Bond.

7.	Effective Date; Execution. This Bon 20	d is entered into and is effective on	
SUR	ETY:		
Busin	ess Name		
s/		Date	
	e, Title		
(Atta	ch Acknowledgment with Notary Seal a	nd Power of Attorney)	
CON	TRACTOR:		
Busin	ess Name		
s/		Date	
Name	e, Title		

END OF PAYMENT BOND

Performance Bond

conti	ract for wo	no ("City") and ("Contractor") have entered into a rk on the Regnart Road Improvements Phase 1 Project ("Project"). The Contract by reference into this Performance Bond ("Bond").				
1.	General. Under this Bond, Contractor as Principal and					
2.	under the	Obligations. Surety's obligations are co-extensive with Contractor's obligations e Contract. If Contractor fully performs its obligations under the Contract, including nty obligations under the Contract, Surety's obligations under this Bond will null and void. Otherwise, Surety's obligations will remain in full force and effect.				
3.	alteration Docume	Surety waives any requirement to be notified of and further consents to any ns to the Contract made under the applicable provisions of the Contract nts, including changes to the scope of Work or extensions of time for performance under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.				
4.	Application of Contract Balance. Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or back charges to which City is entitled under the terms of the Contract.					
5.	default u Surety m	Contractor Default. Upon written notification from City of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:				
	5.1	Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;				
	5.2	Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or				
	5.3	Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.				
6.	Surety Default. If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.					
7.		Any notice to Surety may be given in the manner specified in the Contract and surety as follows:				
	Attn:	SS:				
	,					

	City/State/Zip:				
	Fax:				
	Email:				
8.	pursuant to this Bond will be in the Sa	governed by California law, and venue anta Clara County Superior Court, and ttorneys' fees and costs in any action t	no other place.		
9.	Effective Date; Execution. This Bond is entered into and effective on, 20				
SUR	ETY:				
Busin	ess Name	_			
s/					
o,		Date			
Name	e, Title	_			
(Attach Acknowledgment with Notary Seal and Power of Attorney)					
CON	TRACTOR:				
Busin	ess Name	_			
s/		 Date			
Name	e, Title	_			

END OF PERFORMANCE BOND

General Conditions

Article 1 - Definitions

Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): "day," "furnish," "including," "install," "work day" or "working day."

Allowance means a specific amount that must be included in the Bid Proposal for a specified purpose.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the municipality which has entered into the Contract with Contractor for performance of the Work, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

City Engineer means the City Engineer for City and his or her authorized delegee(s).

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the Notice of Potential Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents which are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided "For Reference Only," or documents that are intended solely to provide information regarding existing conditions.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies or equipment following submission of the Bid Proposal.

Contract Time means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture that has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural, engineering, or electrical engineering design services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the City Engineer for the City of Cupertino and his or her authorized delegees.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to the City's satisfaction, including all punch list items and any required commissioning or training, and has provided the City with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the City-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to City in the manner and format specified by City.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or **Working Day**, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by the City.

Holidays observed by the City and furlough days are:

- a. New Year's Day, January 1;
- b. Martin Luther King Jr.'s Birthday, third Monday in January;
- c. Lincoln's Birthday, February 12;
- d. Presidents' Day, third Monday in February;
- e. Memorial Day, last Monday in May;
- f. Juneteenth, June 19;
- g. Independence Day, July 4;
- h. Labor Day, first Monday in September;
- i. Veterans' Day, November 11;
- j. Thanksgiving Day, as designated by the President;

- k. The Day following Thanksgiving Day;
- I. Christmas Day, December 25;
- m. City Closure, December 24, 26, 27,28,29,30 and 31: and
- n. Each day appointed by the Governor of California and formally recognized by the Santa Clara County Board of Supervisors as a day of mourning, thanksgiving, or special observance.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 City.

- (A) *City Council.* The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.
- (B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.
- (C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative for daily administration of the Project on behalf of City. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.
- (D) **Design Professional.** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

- (A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.
- (B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques,

sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft.

- (C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.
- (D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.
- (E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents and Laws and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.
- (F) **Meetings.** Contractor, its project manager, superintendent and any primary Subcontractors requested by City, must attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.
- (G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and

restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

- (H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.
- Correction of Defects. Contractor must promptly correct, at Contractor's sole (I) expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials, parts or equipment that do not conform to the requirements under the Plans, Specifications and every other Contract Document, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.
- (J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.
 - (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
 - (2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project

or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) *Copies of Project Documents.* Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, Addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

2.3 Subcontractors.

- (A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a City business license before performing any Work.
- (B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.
- (C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.
- Substitution of Subcontractor. If Contractor requests substitution of a listed Subcontractor under Public Contract Code § 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code § 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code § 4107, as applicable.

2.4 Coordination of Work.

- (A) **Concurrent Work.** City reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.
- (B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.
- 2.5 Submittals. Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.
 - (A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.
 - (B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.
 - (C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).
 - (D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

- (E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.
- (F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.
- (G) **Excessive RFIs.** A RFI will be considered excessive or unnecessary if City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.
- Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.
- 2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.
- 2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel, may not be reemployed or permitted on the Project in any capacity without City's prior written consent.

Article 3 - Contract Documents

- 3.1 Interpretation of Contract Documents.
 - (A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other,

Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

- (B) Duty to Notify and Seek Direction. If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Article 5 and 6.)
- (C) Figures and Dimensions. Figures control over scaled dimensions.
- (D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.
- (E) **Measurements.** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.
- (F) **Compliance with Laws.** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.
- **3.2 Order of Precedence.** Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:
 - (A) Change Orders;
 - (B) Addenda;
 - (C) Contract;
 - (D) Notice to Proceed;

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- (E) Attachment B Federal Contract Requirements (only if used);
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Plans;
- (K) Notice of Potential Award;
- (L) Notice Inviting Bids;
- (M) Attachment A Federal Bidding Requirements (only if used);
- (N) Instructions to Bidders;
- (O) Contractor's Bid Proposal and attachments;
- (P) the City's standard specifications, as applicable; and
- (Q) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Special Provisions.
- 3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Caltrans Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:
 - (A) **Limitations.** The "General Provisions" of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.
 - (B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.
 - (C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:
 - (1) Any reference to the "Engineer" is deemed to mean the City Engineer.
 - (2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.
 - (3) Any reference to the "Department" or "State" is deemed to mean City.
- 3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by City or appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not

- modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.
- **3.5 Current Versions.** Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.
- **3.6 Conformed Copies.** If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.
- 3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

- **4.1** Payment and Performance Bonds. Within ten days following issuance of the Notice of Potential Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.
 - (A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.
 - (B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.
- 4.2 **Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by

Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

- 4.3 **Insurance.** No later than ten days following issuance of the Notice of Potential Award. Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, through the date of City's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.
 - (A) **Policies and Limits.** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:
 - (1) Commercial General Liability ("CGL") Insurance: The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractor's protected coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$2,000,000 per occurrence and at least \$4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.
 - (2) Automobile Liability Insurance: The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.
 - (3) Workers' Compensation Insurance and Employer's Liability: The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.
 - (4) Pollution Liability Insurance: The pollution liability insurance policy must be issued on an occurrence basis, providing coverage of at least \$2,000,000 for all loss arising out of claims for bodily injury, death, property damage, or environmental damage caused by pollution conditions resulting from the Work.
 - (5) *Builder's Risk Insurance:* The builder's risk insurance policy must be issued on an occurrence basis, for all-risk or "all perils" coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of City.

- (B) **Notice.** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City.
- (C) **Waiver of Subrogation.** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City.
- (D) **Required Endorsements.** The CGL policy, automobile liability policy, pollution liability policy, and builder's risk policy must include the following specific endorsements:
 - (1) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or an equivalent form approved by the City.
 - (2) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.
 - (3) The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.
 - (4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- (E) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.
- (F) **Deductibles and Self-Insured Retentions**. Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of \$100,000 are subject to approval by the City's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the City's Risk Manager determines that the deductibles are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.
- (G) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in

writing in advance by the City's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

Article 5 - Contract Time

- **5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.
 - (A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.
 - (B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.
 - (C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.
- 5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.
 - (A) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

- (1) Specialized Materials Ordering. Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase orders date(s).
- (B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.
- (C) **Progress Schedules.** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week lookahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.
 - (1) *Float*. The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.
 - (2) Failure to Submit Schedule. Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to ten percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.
- (D) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.
- (E) **Effect of Acceptance.** Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

- (F) **Posting.** Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office.
- (G) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.
- (H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays, during City's normal business hours, except as provided in the Special Conditions or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

- (A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.
- (B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.
- (C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).
 - (1) Based on historic records for the Project location from the Western Regional Climate Center, Contractor's schedule should assume the following number of normal Weather Delay Days and precipitation for each month:

Month # Normal Weather Precipitation

	Delay Days	
January	6	2.86
February	6	2.66
March	6	2.29
April	3	1.20
May	1	0.44
June	0	0.10
July	0	0.02
August	0	0.07
September	1	0.19
October	2	0.76
November	4	1.51
December	5	2.43
Total	34	14.53

- (2) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
- (3) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.
- (4) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.
- (D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
 - (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
 - (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
 - (3) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
 - (4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;
 - (5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
 - (6) performance or non-performance by Contractor's Subcontractors or suppliers;
 - (7) the time required to respond to excessive RFIs (see Section 2.5(G));

- (8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
- (9) time required for repair of, re-testing, or re-inspection of defective Work;
- (10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or
- (11) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.
- (E) Compensable Delay. Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either City or Contractor, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, is not Compensable Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.
- (F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.
- (G) Request for Extension of Contract Time or Recoverable Costs. A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within ten calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.
 - (1) Required Contents. The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

- (2) Delay Days and Costs. The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.
- (3) Supporting Documentation. The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.
- (4) Burden of Proof. Contractor has the burden of proving that: the delay was an Excusable or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.
- (5) Legal Compliance. Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.
- (6) *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.
- (7) Dispute Resolution. In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.
- 5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if Contractor fails to achieve Final Completion within the Contract Time, City will charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegee.
 - (A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable or Compensable Delay, as set forth above.

- (B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.
- (C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.
- (D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.
- (E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

- 6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.
 - (A) City-Directed Changes. City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code § 7101, except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.
 - (B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute,

City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

- (C) Extra Work. City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.
- (D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.
- (E) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.
- **Contractor Change Order Requests.** Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.
 - (A) *Time for Submission.* Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

- (B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.
- (C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.
- (D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.
- (E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

- 6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.
 - (A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.
 - (B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.
 - (C) *Time and Materials.* On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:
 - (1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;

- (2) All direct material costs provided by the Contractor, including sales tax, plus 15% markup:
- (3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
- (4) All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and
- (5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.
- 6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.
- **Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

- 7.1 Permits, Fees, Business License, and Taxes.
 - (A) **Permits, Fees, and City Business License.** Contractor must obtain and pay for all permits, fees, or licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.
 - (B) **Taxes.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.
- 7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.
 - (A) **Utilities.** Contractor must install and maintain the power, water, sewer and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

- (B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.
- 7.3 Noninterference and Site Management. Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.
 - (A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use and dispose of, at its sole expense, any additional Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.
 - (B) Offsite Staging Area and Field Office. If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.
 - (C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure the public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.
- **7.4 Signs.** No signs may be displayed on or about City's property, except signage which is required by Laws or by the Contract Documents, without City's prior written approval as to size, design, and location.
- 7.5 Project Site and Nearby Property Protections.
 - (A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.
 - (1) Subject to City's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

- (2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.
- (3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.
- (4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.
- (5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.
- (B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.
- (C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.
- (D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.
- (E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

7.6 Materials and Equipment.

- General. Unless otherwise specified, all materials and equipment required for (A) the Work must be new, free from defects, and of the best grade for the intended purpose. and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.
- (B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.
- (C) *Intellectual Property Rights.* Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

- (A) "Or Equal." Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item that is used solely for the purpose of describing the type of item desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.
- (B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

- (C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.
- (D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.
- (E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.
- (F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

- (A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.
- (B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.
- (C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent testing consultants retained by City, subject to the following exceptions:
 - (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
 - (2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

- (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
- (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
- (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.
- (D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the required inspection(s) will also be subject to rejection by City.
- (E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.
- (F) *Final Inspection.* The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.
- **7.9 Project Site Conditions and Maintenance.** Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.
 - (A) *Air Emissions Control.* Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws.
 - (B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved waterspraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.
 - (C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

- (1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.
- (2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.
- (D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.
- (E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.
- (F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due to Contractor.
- 7.10 Instructions and Manuals. Contractor must provide to City three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.
 - (A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to City at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.
 - (B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.
- **7.11 As-built Drawings.** Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used

solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

- (A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible aboveground improvements.
- (B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment.

7.12 Existing Utilities.

- (A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.
- (B) *Unidentified Utilities.* Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.
- 7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code §§ 4216 through 4216.5, which are incorporated by reference herein. Government Code § 4216.2 requires that, except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert, at least two working days, but not more than 14 calendar days, before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations. Contractor may not begin excavation until it has obtained and submitted to Engineer an inquiry identification number from Underground Services Alert.

- 7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.
 - (A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:
 - (1) Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws:
 - (2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or
 - (3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.
 - (B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.
 - (C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.
- 7.15 Trenching of Five Feet or More. As required by Labor Code § 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.
- **7.16 New Utility Connections.** Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.
- **7.17 Lines and Grades.** Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide,

preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

- (A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").
- (B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.
- 7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.
 - (A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").
 - (B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with it without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.
- **7.20 Noise Control.** Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.
- **7.21 Mined Materials.** Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List,

which is available online at:

ftp://ftp.consrv.ca.gov/pub/omr/AB3098%20List/AB3908List.pdf.

Article 8 - Payment

- 8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
 - (A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.
 - (B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.
- **8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
 - (A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.
 - (B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may withhold additional amounts as set forth in Section 8.3, below.
- **8.3** Adjustment of Payment Application. City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.
 - (A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, City may

withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

- (B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.
- (C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.
- (D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.
- (E) For any unreleased stop notice, City may withhold 125% of the amount claimed.
- (F) For Contractor's failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.
- (G) For Contractor's failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts.
- (H) For Work performed without Shop Drawings that have been accepted by City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated costs to correct unsatisfactory Work or diminution in value.
- (I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.
- (J) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.
- **8.4 Early Occupancy.** Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.
- **8.5 Retention.** City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment to Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's acceptance of the Project.
 - (A) **Substitution of Securities.** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (f) of Public

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Contract Code § 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

- (B) Release of Undisputed Retention. All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c).
- **8.6 Payment to Subcontractors and Suppliers.** Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.
 - (A) **Withholding for Stop Notice.** Pursuant to Civil Code § 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.
 - (B) **Joint Checks.** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.
- 8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to

- Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.
- **Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release.
- **8.9 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

- 9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.
 - (A) **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.
 - (B) **Penalty.** Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
 - (C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
 - (D) **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.
- 9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at http://www.dir.ca.gov/dlsr. Contractor must post a copy of the applicable prevailing rates at the Project site.
 - (A) **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

- (B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.
- **9.4 Payroll Records.** Contractor must comply with the provisions of Labor Code §§ 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.
 - (A) **Contractor and Subcontractor Obligations**. Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (1) The information contained in the payroll record is true and correct; and
 - (2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.
 - (B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.
 - (C) **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.
- **9.5 Labor Compliance.** Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

Article 10 - Safety Provisions

- 10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.
 - (A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must

include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

- (B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.
- (C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- (D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.
- 10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.
- 10.3 Material Safety. Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.
 - (A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.
 - (B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.
- **10.4 Hazardous Condition.** Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition

exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

- (A) *Final Inspection and Punch List.* When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.
- (B) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.
- (C) **Acceptance.** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.
- (D) *Final Payment and Release of Retention.* Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

- (A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.
- (B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.
- (C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.
- (D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be coguarantor of such Work.
- (E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.
- (F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H), below.
- (G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.
- (H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action,

Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs City incurs to correct the defective Work.

- 11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.
 - (A) **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filling an action for construction defect.
 - (B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.
- **11.4 Substantial Completion.** For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to City acceptance of the Project, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

- **12.1 Claims.** This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.
 - (A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, when the demand has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.
 - (B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.
 - (C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code § 9204 and § 20104 et seq., which are incorporated by reference herein.

- (D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.
- (E) *Informal Resolution.* Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.
- **12.2 Claims Submission.** The following requirements apply to any Claim subject to this Article:
 - (A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a "Claim" submitted pursuant to this Article 12 and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.
 - (B) Claim Format and Content. A Claim must be submitted in the following format:
 - (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
 - (2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.
 - (3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for <u>each</u> separate issue or Claim:
 - a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
 - c. A chronology of relevant events; and
 - d. Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

- (4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.
- (5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) Submission Deadlines.

- (1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 15 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 15 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.
- (2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.
- (3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.7, Final Payment.
- (4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.
- 12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code § 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.
 - (A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

- (B) **Non-Waiver.** Any failure by City to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.
- 12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response or within 15 days of City's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response in writing within the specified time, Contractor's Claim will be deemed waived.
 - (A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.
 - (B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.
 - (C) Written Statement After Meet and Confer. Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.
 - (D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) Government Code Claims.

- (1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.
- (2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a

Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

- **12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- **12.7 Arbitration.** It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.
- 12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.
- **12.10 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

- **Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.
 - (A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for

any damages or loss resulting from its failure to adequately secure and protect the Project.

- (B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.
- (C) **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or inprogress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.
- **13.3 Termination for Default.** City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.
 - (A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.
 - (B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure

the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

- (C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor and its performance bond surety of City's termination of the Contract for default.
- (D) *Waiver.* Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contactor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.
- (E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.
- (F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.
- **Termination for Convenience.** City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.
 - (A) **Compensation to Contractor.** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:
 - (1) Completed Work. The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values

- and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work:
- (2) Demobilization. Demobilization costs specified in the schedule of values, or if demobilizations cost were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and
- (3) Termination Markup. Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.
- (B) **Disputes.** If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.
- **13.5** Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.
 - (A) **General.** Upon termination City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.
 - (B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.
 - (C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:
 - (1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).
 - (2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.
 - (3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.
 - (4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.
 - (5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

- (D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance to the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.
- (E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- **14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.
- 14.3 Waiver. City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.
- **14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- **Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.
- **Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6, of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7,

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Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

Special Conditions

1. Authorized Work Days and Hours.

1.1 Authorized Work Days and Hours.

Weekdays, excluding holidays observed by the City: 7:00 a.m.-5:00 p.m.

Non-weekday work, including holidays, requires date specific authorization a minimum of 2 working days prior to work. If authorized, the work hours are: Saturday: 9:00 a.m.-5:00 p.m. Sunday: 9:00 a.m.-4:00 p.m.

1.2 Worker Arrival and Parking.

Workers may arrive at the Project site no earlier than 7:00 a.m.

- **a. Equipment and Material Delivery and Off-Haul Hours.** No equipment or material may be delivered or off-hauled except between the hours of 7:00 a.m. and 5:00 p.m. No equipment that has a safety backup beeper may be operated before 7:00a.m. on any day.
- 2. Truck Restrictions. There are truck route restrictions per City of Cupertino Truck Traffic Routes, Section 11.32 of the Cupertino Municipal Code
- 3. Pre-Construction Conference. City will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between City and Contractor will be discussed, and Contractor must present City with the following information or documents at the meeting for City's review and acceptance before the Work commences:
 - **3.1** Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
 - 3.2 List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
 - 3.3 Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
 - 3.4 If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;
 - 3.5 Draft baseline schedule for the Work as required under Section 5.2, to be finalized within ten days after City issues the Notice to Proceed;
 - 3.6 Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;
 - 3.7 Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
 - **3.8** Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
 - 3.9 Videotape and photographs recording the conditions throughout the preconstruction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights,

- structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits:
- 3.10 If requested by City, Contractor's cash flow projections; and
- **3.11** Any other documents specified in the Special Conditions or Notice of Potential Award.
- 4. Insurance Requirements. The insurance requirements under Section 4.3 of the General Conditions are modified for this Contract, as set forth below. Except as expressly stated below, all other provisions in Section 4.3 are unchanged and remain in full force and effect.
 - **4.1 Builders Risk Insurance Waived.** The builder's risk insurance policy requirement set forth in subsection 4.3(A)(5) of the General Conditions is hereby waived and does not apply to this Contract.
- 5. Construction Manager Role and Authority. TBD is the Construction Manager for this Project. The Construction Manager will assist City in the management of the construction of the Project. The Construction Manager may perform services in the areas of supervision and coordination of the work of Contractor and/or other contractors, scheduling the Work, monitoring the progress of the Work, providing City with evaluations and recommendations concerning the quality of the Work, recommending the approval of progress payments to Contractor, or other services for the Project in accordance with the Construction Manager's contract with City.
 - **5.1 Communications.** Contractor must submit all notices and communications relating to the Work directly to the Construction Manager in writing, as follows:

TDB

With a copy to the Engineer:

Evelyn Moran
City of Cupertino Project Manager
evelynm@cupertino.org
(408) 777-1313

- 5.2 On-Site Management and Communication Procedures. The Construction Manager will provide and maintain a management team on the Project site to provide contract administration as an agent of City, and will establish and implement coordination and communication procedures among City, the Design Professional, Contractor, and others.
- 5.3 Contract Administration Procedures. The Construction Manager will establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents, Shop Drawings, samples, other submittals, schedule adjustments, Change Order proposals, written proposals for substitutions, payment applications, and maintenance of logs.
- **Pre-Construction Conference.** Contractor will attend the pre-construction conference, during which the Construction Manager will review the Contract administration procedures and Project requirements.

- **Pre-Construction Conference.** Contractor will attend the pre-construction conference, during which the Construction Manager will review the Contract administration procedures and Project requirements.
- **Contractor's Construction Schedule.** The Construction Manager will review Contractor's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

6. Lines and Grades Verification

All Work must be done to the lines, grades, and elevations indicated on the Plans and Specifications, and in accordance with all applicable codes and laws. Contractor is required to verify forms and other work comply with lines, grades and elevations. Prior to pouring or placing any concrete or asphalt Contractor must have a California licensed land surveyor or civil engineer field verify lines, grades and elevations prior to proceeding with the placement of concrete or asphalt. The land surveyor or civil engineer must have at least five years of relevant experience, and must be acceptable to the City. Contractor must provide City verification of the licensing and experience for each proposed land surveyor or civil engineer. Contractor must provide City with inspection results for form and grade work. Contractor must remedy any non-compliant Work at no additional cost to City.

7. Notification of Residents, Schools and Businesses - The Contractor shall notify, in writing, residents, businesses and schools within a 300 foot radius of project limits at a minimum of two times prior to start of construction. The first notice shall be given to all residents, businesses and schools within the project area five working days prior to any construction operation. The second notice shall be given to residents, businesses and schools two working days prior to any construction operation. Both notices shall be in writing and submitted to the Engineer for review and approval. Sample notice is below. Notices shall include the project name, describe the nature and duration of the Contractor's operations, and provide a toll-free telephone number or (408) area code number at which a Contractor's representative may be contacted 24 hour per day for problems or emergencies encountered by residents and/or businesses. Answering machines and voice mail shall not be permitted. Then notice will also contain the City's Construction Management contact information. A separate notice shall be given at least two working days prior to any anticipated service/utility disruption or temporary closure of access to any driveway. The notice shall indicate the duration of the disruption. The Contractor shall submit a written request to the Engineer regarding the temporary closure of access to any driveway. No driveway access shall be closed by the Contractor at any time without prior written authorization from the Engineer. If construction operations are delayed for any reason beyond the duration stipulated in the notices, the Contractor shall re-issue written notices that explain the delay and provide a revised schedule. All written notices to residents, schools, businesses, agencies, etc. shall be submitted to the City for review and approval. Provide the City with a schedule of the notification deliveries so that the City can confirm that the notification was completed. Payment for compliance with this section shall be deemed included in the various other items of work, and no additional compensation will be allowed therefore.

SAMPLE NOTICE:

NOTICE TO RESIDENTS / BUSINESS OWNERS

Date: [MONTH] [DAY], [YEAR]

Subject: [NAME OF PROJECT] - [One Week OR Two Day] Notice

This notice is to inform you that the City of Cupertino, Department of Public Works, has contracted with [CONTRACTOR NAME] to [SCOPE OF WORK] along [STREET NAME] from [ADJACENT CROSS STREET] to [ADJACENT CROSS STREET].

from [START DATE] until [END DATE]. Please be aware that there may be construction activities that cause traffic delays.

[CONTRACTOR NAME] will make every effort to maintain normal traffic access and minimize disruption in your neighborhood. No Parking / Tow-Away signs will be posted in affected areas two working days in advance of enforcement. Access to driveways will be maintained at ALL times during the construction.

Prior to activities in your immediate area, you will be sent a notification **TWO WORKING DAYS** before work begins. **[CONTRACTOR NAME]** and the City of Cupertino, Department of Public Works, apologize for any inconvenience due to these activities. If you have any questions or need assistance as these activities progress, please call the number(s) listed below:

[CONTRACTOR NAME]

[NAME OF PROJECT MANAGER, CONTRACTOR)

Project Manager

(XXX) XXX-XXXX (24-hour number)

City of Cupertino

(NAME OF CONSTRUCTION MANAGEMENT FIRM IF ONE)

(PERSON'S NAME FROM CONSTRUCTION MANAGEMENT FIRM)

(XXX) XXX-XXXX (24-hour number)

City Office: (408)777-3354 Department of Public Works

Thank you for your patience and cooperation,

[NAME OF PROJECT MANAGER, CONTRACTOR], Project Manager [NAME OF CONSTRUCTION FIRM]

8. Construction and Demolition Debris Management Plan

A completed construction and demolition (C&D) Debris Management Plan must be submitted using the City's Green Halo on-line application. All debris disposal and recycling from the construction project must be tracked throughout the duration of the project. The contractor must use Green Halo cupertino.wastetracking.com to create their Plan and to submit all construction waste generation tonnage information. No additional compensation will be paid for implementation of the Debris Management Plan and failure to meet all plan requirements may result in work stoppage, fines, and/or back charges. For additional information, visit www.cupertino.org/greendev

9. Final Pay Item

Bid item whose quantity shown on the Bid Schedule is the quantity paid. For final pay items, accept payment based on the Bid Schedule quantity regardless of the actual quantity used.

END OF SPECIAL CONDITIONS

Techincal Specifications and Special Provisions

FOR USE IN CONNECTION WITH STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS
DATED 2018, REVISED STANDARD SPECIFICATIONS DATED 04-1720 AND STANDARD PLANS DATED 2018

ORGANIZATION

Special provisions are under headings that correspond with the main section headings of the Caltrans Standard Specifications.

Each special provision begins with a revision clause that describes or introduces a revision to the Standard Specifications as revised by any revised standard specification.

Any paragraph added or deleted by a revision clause does not change the paragraph numbering of the Standard Specifications for any other reference.

DIVISION II GENERAL CONSTRUCTION

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12 TEMPORARY TRAFFIC CONTROL

Add to section 12-3.22:

Temporary railing (Type K) and temporary alternative crash cushions Type TL2 may be approved for use provided a detailed submittal is provided, a certificate of compliance is submitted, and materials, installation and maintenance is in accordance with Caltrans standards and manufacturer's recommendations.

Replace the 2nd paragraph of section 12-4.01A:

Submit the proposed traffic control plan to the City no less than seven (7) days before construction begins.

If any traffic control changes are proposed, notify the City in writing before 5:00 P.M. of the Thursday before the following week's work is scheduled.

A minimum of one lane shall be kept open for public traffic at all times. The lane shall be a minimum of eleven (11) feet in width.

Maintain access to driveways at all times. Limit driveway use. No driveway parking permitted for contractor employee vehicles. Contractor shall designate a parking area for City review and written approval.

Personal vehicles of the Contractor's employees shall not be parked on the traveled way at any time, including any section closed to public traffic.

A minimum of one lane must be kept open for public traffic at all times.

Full Road closure is permitted on Regnart Road at the project site for periods not to exceed 10 minutes, between 9:00 am and 12:00 pm and from 1:00 pm to 4:00 pm weekdays, to be approved by the City, only for the following operations:

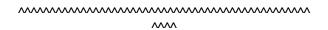
- 1. Placement and removal of temporary railing (Type K) and temporary crash cushions
- 2. Drilling holes for the piers/piles
- 3. Placement of reinforcement, steel, and concrete in the drilled holes
- 4. Tree Removal

5. Placement of pavement

If road closure is necessary, get written approval from City. Contractor shall allow sufficient time for review.

Replace Section 12-4.02B with:

The temporary traffic control signals used at the project site shall include interconnected, single pole signals with an overhead street light at each end of the project limits, generators to provide power with enough fuel to maintain at least 14 hours of signal/light operation, and all other items needed for a fully functional temporary signal system that will control two way traffic on the remaining single lane portion of the roadway during construction.



DIVISION II GENERAL CONSTRUCTION

13 WATER POLUTION CONTROL

Add between the 1st and 2nd paragraph of section 13-2.03:

By October 15 temporary erosion control features as are necessary to prevent damage during the forthcoming winter season shall be constructed and functioning. If earthwork in any area has not progressed to a point where all or part of the erosion control for that area can be constructed, the Contractor shall construct such supplementary temporary erosion control facilities as are necessary to protect adjacent private and public property.

- 1. The Contractor shall conduct their operations in such a manner that storm runoff will be contained within the project or channeled into the storm drain system which serves the runoff area with no increased turbidity to the watershed.
- 2. Mud and silt shall be settled out of the storm runoff before the runoff enters the storm drain system.
- 3. Contour graded areas shall be protected against erosion and the resulting siltation of downstream facilities. Temporary measures shall prevent increased turbidity and may include, but shall not be limited to, filter fabric fences to filter silt and sediment from runoff.
- 4. The Contractor shall place and maintain erosion control features in accordance with the project plans, California Fish and Wildlife Permit and required BMPs.

14 ENVIRONMENTAL STEWARDSHIP

Add to section 14-1.08 Environmental permits

Contractor shall follow all stipulations included in all environmental permits obtained by the City of Cupertino and the City's consultants. Contractor shall acknowledge and adhere to all permit conditions.

Regnart Rd Improvements Phase 1 Proj. No. 2019-08

Contractor shall adhere to the work period within the stream banks and riparian corridor that shall be restricted to the period of April 15 to October 15. Riparian restoration plantings and seeding work using hand tools is not confined to this time period but shall be completed within the wet season the same year following completion of the Project per CDFW permit requirements

Add to section 14-8.02:

Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel. Noise shall comply with provisions of Cupertino Municipal Code Section 10.48.053(A). Non construction noise is not allowed, this includes amplified music, radio or other noise not due to construction activities.

As required by the Cupertino Municipal Code, construction activities shall only take place during daytime hours of 7:00 AM and 5:00 PM on weekdays. Grading activities and underground utility work that occur within 750 feet of a residential area shall not occur on Saturdays, Sundays, holidays, or during the nighttime period, consistent with the provisions of Municipal Code Section 10.48.053(B)

Replace item 1 in the list in the 1st paragraph of section 14-11.02 with:

1. You reasonably believe the substance is asbestos as defined in Labor Code § 6501.7 or a hazardous substance as defined in Health & Safety Code § 25117, § 25316 and § 25317.

Add after the 2nd paragraph of section 14-11.12A:

This project may include removal of yellow painted traffic stripe that would produce hazardous waste residue.

Add after the 1st paragraph of 14-11.12E:

After the City accepts the analytical test results, dispose of yellow thermoplastic and yellow paint hazardous waste residue at a Class 1 disposal facility located in California 30 days after accumulating 220 lb of residue.

If less than 220 lb of hazardous waste residue and dust is generated in total, dispose of it within 30 days after the start of accumulation of the residue.

Add section 14-12.04: 14-12.04 NESTING BIRD AVOIDANCE AND MINIMIZATION MEASURES

Nesting bird avoidance and minimization measures shall be in accordance with all environmental permitting requirements.

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Replace section 17-2.02:

Vegetation debris may be chopped or chipped and broadcasted in the immediate area or stockpiled for distribution, otherwise it must be taken to an appropriately licensed/permitted landfill or waste facility. All other debris including but not limited to: construction and demolition debris; household items, exposed sandbags, sand, mud, silt, gravel, rocks, boulders, vehicle wreckage, and hazardous materials including electrical transformers must be taken to an appropriately licensed /permitted landfill, permitted by the City of Cupertino Greenhalo software, waste facility or spoil site. Temporary stockpiles are to be placed on predisturbed areas or on hard surfaces. New temporary staging areas and final non-licensed/permitted sites must obtain the approval licenses or permits prior to use.

Replace 3rd and 4th paragraph in section 17-2.03A with:

Vegetation shall be cleared and grubbed only within the excavation lines and areas disturbed by the Contractors construction activities as shown on the contract plans and as described in the following paragraph.

Only designated trees indicated on the plans shall be removed. If additional trees are required to be removed to enable construction work, the Contractor shall first obtain prior written approval from the City.

All existing vegetation outside the areas to be cleared and grubbed shall be protected from injury or damage resulting from the Contractor's operations.

Add to section 17-2.03B:

The cleared areas shall be free debris and the ground surface re-graded to a smooth surface and treated with erosion control measures.

Objectionable material shall include trees, vegetation, concrete, masonry, debris, minor demolitions, removals, and abandonments as delineated on the plans or as directed by the Field Engineer.

Add to section 17-2.04:

All removed objectionable materials, vegetation, trees, stumps and slash shall become the property of the Contractor and shall be removed and disposed of at the Contractor's expense unless otherwise authorized in writing by the City.

19 EARTHWORK

Add to section 19-1.01A:

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Earthwork shall be performed in conformance with the Standard Specifications and the Geotechnical Investigation report prepared by Cotton, Shires and Associates, Inc. The report is available at the City of Cupertino Department of Public Works. Notify the Geotechnical Engineer at least 5 working days before site clearing and earthwork.

Add between the 8th and 9th paragraphs of section 19-2.03G:

Roughen excavation slopes and flat surfaces to receive erosion control materials by scarifying to a depth of 6 inches.

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Delete the 1st paragraph of section 19-3.03B(2).

21 EROSION CONTROL

Add to section 21-2.02F:

Seed mix design must comply with the requirements shown in the following table or alternative as approved by the City;

<u> </u>						
Native Grass and Forb Mix to be used in Revegetation of Disturbed Soils1						
Seed Application Rate (lbs PLS/acre)2	Scientific Name ¹	Common Name				
4 lbs	Elymus glaucus	Blue Wild rye				
1 lb	Eschscholzia californica	California Poppy				
6 lbs	Festuca microstachys	Small Fescue				
10 lbs	Hordeum vulgare (sterile)	Meadow Barley				
1 lb	Lupinus bicolor	Annual lupine				
22 lbs PLS/acre	T	OTAL				

¹Names derived from the Jepson Manual (Baldwin et al. 2012)

Add to section 21-2.02P:

Straw for fiber roll must be certified weed free under the Department of Food and Agriculture.

Replace the 1st paragraph in section 21-2.03B:

Upon completion of the earthwork, all exposed soil areas disturbed during construction, spread mulch to a uniform 2" thickness over seeding. Apply mulch to the edge of the shoulder backing. When shoulder backing is absent, do not apply within 3 feet of the edge of pavement.

Add to section 21-2.03D:

Seeding shall occur following all site work and when the seedbed has been prepared. Seeding shall occur prior to October 15th.

DIVISION IV SUBBASES AND BASES

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26 AGGREGATE BASES

Replace 1st sentence in section 26-1.02B:

The aggregate gradations must be within the percentage passing limits for 3/4" maximum and Class II as shown in the following table:

²PLS (pure live seed) = the proportion of total seed that is pure and viable. To find the total weight of raw seed needed

to achieve the application rate in the table, find %PLS as follows: [(% purity of seed lot) (% germination rate of

species)/100]. Then divide the application rate in the table (pounds) by the %PLS (expressed as a decimal) to find total

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DIVISION V SURFACINGS AND PAVEMENTS

39 ASPHALT CONCRETE

Add to section 39-2.01C(1):

Care shall be taken to avoid tracking asphalt materials onto existing finished surfaces. The Contractor shall clean up any asphalt tracked surfaces using the methods to be approved in writing by the City.

Replace the 2nd and 3rd paragraphs in section 39-2.01D with:

Payment for tack coat is included in the payment for hot mix asphalt.

Replace 1St paragraph in section 39-2.02B(3) with:

The grade of asphalt binder for Type A HMA must be PG 64-10. The amount of binder to be mixed with the aggregate shall be between 4 percent and 7 percent by weight of the dry aggregate, as determined by the Design Engineer.

Asphalt Concrete shall conform to City of Cupertino standard practice.

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DIVISION VI STRUCTURES

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48 TEMPORARY STRUCTURES

Add to the end of section 48-2.01A:

Temporary shoring shall be the sole responsibility of the Contractor. The contract drawings and specifications represent the finished structure and do not indicate methods, procedures or sequence of construction.

Replace the 2nd paragraph of section 48-2.01C(2) with:

Submit a shoring plan prior to implementation of temporary shoring systems. The shoring plan shall include design drawings and calculations signed and sealed by a civil or structural engineer currently licensed in the state of California. The temporary shoring system shall not be furnished until the final design has been reviewed and approved in writing by the Design Engineer.

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49 PILING

Add to section 49-1.03:

The drilled holes shall be accurately located and shall be straight and true to within 1% of vertical.

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Drilling mud, synthetic or mineral slurry, or chemical stabilizers shall not be used. Surface water shall not be permitted to enter the hole and all water in the hole shall be removed before placing concrete therein.

If casing is used for drilling operations, it shall be removed from the hole as concrete backfill is placed therein. Unless otherwise authorized by the Design Engineer, the bottom of the casing shall be maintained not more than 60 inches nor less than 12 inches below the top of the concrete during casing withdrawal and concrete placing operations.

Piles shall be constructed in accordance with the Plans, 2018 Caltrans Standard Specifications and the 2020 Geotechnical report prepared by Cotton, Shires and Associates, Inc. The report is available at the City of Cupertino Department of Public Works.

Shaft construction must be observed and approved by the Geotechnical Engineer. Allow at least 10 days between giving notice and starting drilling.

Expect difficult pile installation at Regnart Road Sites 1&2 due to the presence of the following conditions:

- 1. Hard rock
- 2. Ground water
- 3. Limited staging area
- 4. Overhead high voltage lines

Replace 1St paragraph of Section 49-2.03B with:

Steel soldier piles shall be ASTM A572/A572M Grade 50, ASTM A709/A709M, or ASTM A992/A992M.

Replace section 49-4.03A with:

Concrete must have a minimum 28 day compressive strength of 4,000 psi.

Clean and apply undercoats per section 59-2 of the Standard Specifications before delivering steel soldier piles to the project site.

Replace the 1St paragraph of section 49-4.03C with:

When the steel soldier piles are plumbed and aligned, they shall be at least 3 inches clear of the sides of the hole for the full length of the hole to be filled with concrete backfill. Holes which do not provide the clearance around steel soldier piles shall be reamed or enlarged at the Contractor's expense. The bottom tip of the steel soldier piles shall have a minimum of 3 inches and a maximum of 6" of concrete footing between the tip and bottom of drilled pile hole.

51 CONCRETE STRUCTURES

Remove the 2nd paragraph of section 51-4.03F.

Add to the end of section 51-4.03F:

½"x4 ½"x18" High Density Polyethylene (HDPE) shims shall be installed between ends of lagging members and secured with 3/16"x1 ¼" hot dipped galvanized concrete screws.

59 STRUCTURAL STEEL COATINGS

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Replace the 2nd paragraph in section 59-1.01D with:

Measure coating adhesion strength with a self-aligning adhesion tester under ASTM D4541, Test Method D, E, or F and Protocol 2 and Contractor shall submit certificate to the City.

Replace the 2nd paragraph of section 59-1.02C with:

Coatings selected for use must comply with the volatile organic compound concentration limits specified for the air quality district where the coating is applied. The undercoats and finish or final coats selected for use must be compatible with each other.

Add to section 59-2.01A(1):

Clean and paint the new steel soldier piles shown in the following table with the coating system specified:

op 000a.		
Soldier Pile Wall	Work description	Coating system
Regnart Road Sites 1&2	Clean, blast clean, and paint portions of new steel soldier piles.	Zinc (undercoat) Color No. 10080 of FED STD-595 (Finish Coats) - brown

Add to section 59-2.01A(3)(a):

Submit documentation from the coating manufacturer verifying the compatibility of the undercoats and finish or final coats selected for use.

Replace Reserved in section 59-2.01A(3)(b) with:

Submit proof of each required SSPC-QP certification as specified in section 8-1.04C. Required certifications are:

1. SSPC-QP 1

Instead of submitting proof of SSPC-QP 1 certification, you may submit documentation with your painting quality work plan showing compliance with the requirements in section 3 of SSPC-QP 1. Regardless of the option you select, submit proof of CAS certifications as specified in section 59-2.01A(3)(c).

Add before the 1St paragraph of section 59-2.01A(3)(c):

No cleaning or painting shall be performed on structural steel until the City's Inspector has reviewed the Painting Quality Work Plan (PQWP). This applies to work in the shop and in the field. The City's Inspector inspects all structural steel coatings. Allow at least 10 days between giving notice and starting cleaning or painting of structural steel.

Replace 5th paragraph of section 59-2.01C(4)(b)(iv) with:

The 1st finish coat color must match color no. 10080 of FED-STD-595. The 2nd finish coat color must match color no. 10080 of FED-STD-595.

DIVISION VII DRAINAGE FACILITIES

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68 SUBSURFACE DRAINS

Add between the 1St and 2nd paragraph of section 68-2.01A:

Subsurface drains shall be constructed in conformance with the 2020 Geotechnical report prepared by Cotton, Shires and Associates, Inc. The report is available at the City of Cupertino Department of Public Works.

DIVISION IX TRAFFIC CONTROL DEVICES

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83 RAILINGS AND BARRIERS

Replace Item 1 in the list of Section 83-2.02C(1)(a) with:

1. Steel line posts.

Replace Section 83-2.042B(2) Materials:

Alternative in-line terminal systems must be the following or Design Engineer -approved equal:

- 1. Type SKT-SP-MGS (Steel Post) (TL-2) 31" Guard Rail Terminal, 25' long, by Road Systems Inc, Big Springs Texas.
- 2. ET-31 Plus System (Steel Post) (TL-2) by Trinity Highway Products

DIVISION XI MATERIALS

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96 GEOSYNTHETICS

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Add to section 96-1.02B:

Filter fabric for behind the lagging must be Class A.

Replace section 96-1.02C with:

96-1.02C Geocomposite Wall Drain

Geocomposite wall drain must be Mirafi G200N Drainage Composite or approved equal. Geocomposite wall drain must consist of a polymeric core with filter fabric integrally bonded to one or both sides of the core creating a stable drainage void.

Filter fabric must comply with section 96-1.02B.

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Geocomposite wall drain must be from 0.4 to 2 inches thick.

Geocomposite wall drain must comply with the requirements shown in the following table:

Geocomposite Wall Drain

Quality characteristic	Test method	Requirement					
Thickness	ASTM D1777	Min 0.4" max 2.0"					
Compressive strength	ASTM D1621	18,000 psf					
Maximum Flow rate							
gradient = 1.0,	ASTM D4716	21 gal/min/ft					
Normal stress = 3,000 psf							
Permittivity	D4491	1.7 sec ⁻¹ min roll value					
Flow Rate	D4491	135 gal/min/ft² min roll value					
Nonwoven Filter Fabric:							
Grab tensile strength	ASTM D4632	Min ave roll value 120 lbs					
CBR Puncture strength	ASTM D6241	Min ave roll value 310 lbs					
Apparent Opening Size (AOS)	D4751	Min ave roll value U.S. Sieve 70					

END OF TECHNICAL SPECIFICATIONS AND SPECIAL PROVISIONS

Attachment A - Geotechnical Report, Appendix A & B For Reference Only

APPENDIX A – FIELD INVESTIGATION Logs of Small-Diameter Boreholes

COTTON, SHIRES AND ASSOCIATES, INC. LOG OF EXPLORATORY DRILLING

Project _ Regnart Road	Boring CSA / B-1
Location STN 29 + 65	Project No. G5048
	Date of Drilling <u>12/20/2018</u>
	Hole Diameter8" HSA
Surface Asphalt road	Weather Sunny, Clear

Surrac		P	1000		vv	eatne	er <u>st</u>		, 010	
Depth (feet)	Graphic Log	USCS Class.	Geotechnical Description	Sample Desig.	Dry Unit Weight(pcf)	Moisture Content (%)	SPT Blows/ft	Sample Type	Recov. (%)	Remarks
_			0.0'-4.0': ARTIFICIAL FILL							Driller: Paul Britton
_		Af	5" AC	<u> </u>						Helpers: Sergio + Dave Start Time = 09:10
1-		SM	Af - Gravelly Silty Sand - Gray-brown,	T-1			11			- 1
1_	· : '		medium dense, dry	T-2			17	мс		-
-							۱,,			_
2		SM	3.0'-4.0' Silty Sand - Dark brown, medium				15			_2
-	٠		dense,				(22)			-
_	٠.									-
3 —										_3
_				T-3			7			- _
_				T-4	105	11.5	5	мс		-
4 —			4.01.C.E1. COLL IIV/IIIM O.	1			_			-4
_		SM	4.0'-6.5': COLLUVIUM Qc				5			_
			4.0'-6.5' Silty Sand - Dark brown, loose				(7)			- <u>-</u>
5 —							5			<u></u> 5 -
-							_	MC		-
6-				T-5			7	MC		-
-	: :			T-6			4			-
-	//	S	6.5'-20.0': WEATHERED SANTA				(8)			-
7 —	.//	Sandstone	CLARA QTsc							-7
_	/,:1	Mon	6.5'-11.0' Silty Sandstone - Dark brown,							-
	/./	(V	medium dense, rootlets, oxidized							
8-							7			<u></u> 8 -
_	//									-
9_	[//]			T-7			12	MC		- —9
	/ · /			T-8			15			-
-	(./ <u>/</u>						(18)			- -
10 —							-			-1 0
	//						5			- -
-				T-9	88	18.0	4	МС		
11 -	X/	_	11.0'-15.0' Claystone - Dark brown, soft,	T-10			3			├ -11 -
_	X	Clas	moist, high plasticity, oxidized, soil-like				_			-
12 —	\searrow	Claystone					(5)			
	$\times \times$	6								- '
	\times									_
13 —	\nearrow									—13
	\mathbb{X}									_
-	$\times \times$									-
14 —	$\times \wedge$									
	\mathbb{Z}									-
_	$\mathbb{Z}\mathbb{X}$					L		L	L	
										Sheet 1 of 2

Project Regnart Road / G5048 12/20/2018 **CSA / B-1** _ Date **Boring** Dry Unit Weight(pcf) Moisture Content (%) Sample Desig. SPT Blows/ft Sample Type Recov. (%) Graphic Depth (feet) USCS Class. **Geotechnical Description** Remarks 2 15.0'-20.0' Weathered Claystone -Blue-gray, wet, weak, oxidized T-11 MC 4 Silty with fine sand 16 85 T-12 37.1 6 TX/CU Ø'=38.7° (7)**17** 18 18 19 19 20 20 T-13 8 20.0'-BOH: SANTA CLARA QTsc MC T-14 17 20.0'-BOH Claystone - Gray, weak, friable, 21 21 interbedded brown silt, slight oxidation 18 (24) 22 22 23 23 24 24 25 25 T-15 16 Dusky brown, black MC T-16 43 26 26 50/4 63/10 27 27 28 28 29 29 30 T-17 15 MC T-18 50/6 31 Total Depth = 31.0' No GW Encountered Finished sampling @ 10:15 34/6

COTTON, SHIRES AND ASSOCIATES, INC. LOG OF EXPLORATORY DRILLING

Project _ Regnart Road	Boring CSA / B-2
Location STN 29 + 15	Project No. G5048
	Date of Drilling 12/20/2018
	Hole Diameter 8" HSA
Surface Asphalt road	Weather Sunny, Clear

Graphic Log USCS Class. Class. Content (%) Blows/ft Sample Type Recov. (%) Copple (feet) Content (%) Sample Type Recov. (%) Copple (feet) Content (%) Sample Type (%) Copple (feet) Content (%) SpT Blows/ft Sample Type (%) Copple (feet) Content (%) SpT Blows/ft Sample (%) Copple (feet) Copple (f	3
- Af 5" AC Driller: Paul Britto Helpers: Sergio + Start Time = 10:3	· Dave
1 — SM Af - Gravelly Silty Sand - Tan-brown, medium dense, dry	
T-2 111 10.3 22 MC2	
18 27	
4 SM 4.0'-7.5': COLLUVIUM 11 11 11 11 12 12 13 14 15 15 15 15 15 15 15	
5 — T-3 4.0'-7.5' Silty Sand - Brown, medium dense, dry T-3 18 MC	
T-4 110 10.9 19	
7 - 7	
8 — 1	
$9 - \frac{1}{2} \begin{bmatrix} 1 & 1 & 1 \\ 1 & 1 & 1 \end{bmatrix}$ $\begin{bmatrix} 9 & 6 \\ 1 & 1 \end{bmatrix}$ moist, oxidized $\begin{bmatrix} 16 \\ 1 & 1 \end{bmatrix}$ $\begin{bmatrix} 16 \\ 1 & 1 \end{bmatrix}$	
11 — T-7 T-8 T-8 T-9	
14—————————————————————————————————————	
	1 of 2

Project Regnart Road / G5048 12/20/2018 **CSA / B-2** _ Date . Boring . Dry Unit Weight(pcf) Moisture Content (%) Graphic Sample Desig. SPT Blows/ft Sample Type Recov. (%) Depth (feet) USCS Class. **Geotechnical Description** Remarks 15.0'-BOH: SANTA CLARA QTsc 25 MC15.0'-20.0' Silty Sandstone - Olive-gray, T-9 123 12.4 50/6 very dense, moist, unoxidized 16 16 34/6' **17** 17 18 18 19 19 20 20 20.0'-BOH Weathered Claystone - Dark T-10 15 gray, weak, friable MC T-11 91 32.4 28 TX/CU Ø'=32.3° 21 50/3 53/9' 22 23 23 24 24 25 T-12 50/5 MC Finished sampling @ 11:35 Total Depth = 25.5' 34/5' GW @19' BGS 26 26 27 27 28 28 29 29 30 30 31 31

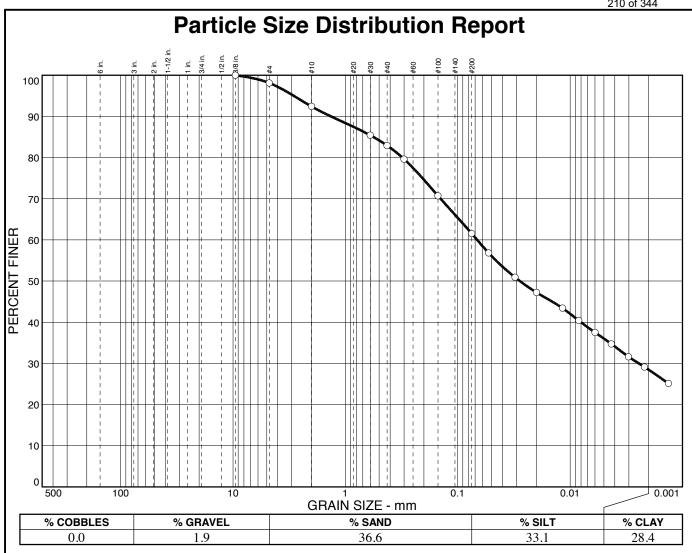
COTTON, SHIRES AND ASSOCIATES, INC. LOG OF EXPLORATORY DRILLING

Project Regnart Road	Boring CSA / B-3
Location STN 28 + 78	Project No G5048
	Date of Drilling 12/20/2018
Ground Surface Elev. <u>495.1'</u> Logged By <u>TRH</u>	Hole Diameter 8" HSA
Surface Asphalt road	Wooth or Sunny, Clear

Weather Summy, Creat										
Depth (feet)	Log	USCS Class.	Geotechnical Description	Sample Desig.	Dry Unit Weight(pcf)	Moisture Content (%)	SPT Blows/ft	Sample Type	Recov. (%)	Remarks
-		Af	0.0'-4.0': ARTIFICIAL FILL 5" AC							Driller: Paul Britton Helpers: Sergio + Dave Start Time = 11:57
1-		SM	Af - Silty Gravelly Sand - Tan-brown, loose, dry				4			—1 -
	\mathbb{Z}	CL	Clay layer	T-1			9	МС		-
2	·:-	SM	Silty Sand - Brown, medium dense, dry, trace gravels, rootlets	T-2	110	8.7	9			—2 -
3							(12)			- - 3
].	: .									- -
4		CL	4.0'-10.5': COLLUVIUM				4			<u> </u>
5			$\underline{4.0'\text{-}7.0'} \underline{\text{Silty Sandy Clay}} \text{-} \text{Dark-brown, stiff,} \\ \text{dry to moist}$	T-3			5	МС		 LL=40, PI=20 5 Sieve: 1.9% Gravel,
				T-4	105	17.7	9			- 36.6% Sand, 33.1% Silt, - 28.4% Clay
6							(10)			- 6
										-
7 - 1/		sc	7.0'-10.5' Clayey Sand - Brown, very loose, wet, high plasticity				2			- 7 -
8-			,g., p.u.o.u.y	T-5			3	МС		− LL=45, PI=25 —-8 Sieve: 10.8% Gravel,
- - - - - - - - - -			Blue-gray, rootlets	T-6	101	24.6	3			41.2% Sand, 23.0% Silt, 24.8% Clay
9-]	: `.						(4)			- 9
-	: -									-
10-							3			—10 -
11-	$\langle \cdot \rangle$	Ś	10.5'-15.0': WEATHERED SANTA CLARA QTsc	T-7			5	МС		- 11
	$\langle \cdot \rangle$	Chalch	10.5'-15.0' Highly Weathered Claystone - Blue-gray, medium stiff	T-8			7			-
12		, and the second	Diue-gray, medium sun				(8)			- 12
	$\langle $									-
13-										—13 - -
14	$\langle \rangle$									_ 14
	X									<u>-</u>
$\square \gamma$	$\langle k \rangle$									Shoot 1 of 2

Project Regnart Road / G5048 12/20/2018 **CSA / B-3** _ Date . Boring . Dry Unit Weight(pcf) Moisture Content (%) Graphic Sample Desig. SPT Blows/ft Sample Type Recov. (%) Depth (feet) USCS Class. **Geotechnical Description** Remarks 15.0'-BOH: SANTA CLARA QTsc 10 15.0'-20.0' Claystone - Blue-gray, T-9 30 MC unweathered, unoxidized 16 16 117 16.3 T-10 50/6 (54) **17** 17 18 18 19 19 20 20 Gravelly, very dense, saturated T-11 50/5 MC SPT-1 50/5 SPT 21 Total Depth = 21.0' GW @ 19' BGS 50/5' Finished sampling @ 12:49 22 22 23 23 24 24 25 -25 26 26 27 27 28 28 29 29 30 30 31 31

APPENDIX B - LABORATORY TEST RESULTS Grain Size Determination Atterberg Limits Triaxial Compression Tests



SIEVE	PERCENT	SPEC.*	PASS?
SIZE	FINER	PERCENT	(X=NO)
3/8 in. #4 #10 #30 #40 #50 #100 #200 #270 0.0309 mm.	100.0 98.1 92.4 85.4 82.9 79.6 70.7 61.5 56.8 50.9	PERCENT	(X=NO)
0.0199 mm. 0.0117 mm. 0.0084 mm. 0.0060 mm. 0.0043 mm. 0.0030 mm. 0.0022 mm. 0.0013 mm.	47.2 43.4 40.4 37.5 34.7 31.6 29.1 25.1		

	Soil Description	
Olive Brown San	idy Lean CLAY	
	Atterberg Limits	
PL= 20	LL= 40	PI= 20
D 0.565	Coefficients	D 0.0000
D ₈₅ = 0.565 D ₃₀ = 0.0025	$D_{60} = 0.0673$	D ₅₀ = 0.0280 D ₁₀ =
$C_{11} = 0.0025$	D ₁₅ = C _c =	D ₁₀ -
u	· ·	
LICOO CI	Classification	
USCS= CL	AASHT	0=
	Remarks	

(no specification provided)

Sample No.: T-3 Location: Source of Sample: B-3

Date: 2/20/19 **Elev./Depth:** 4.5-5'

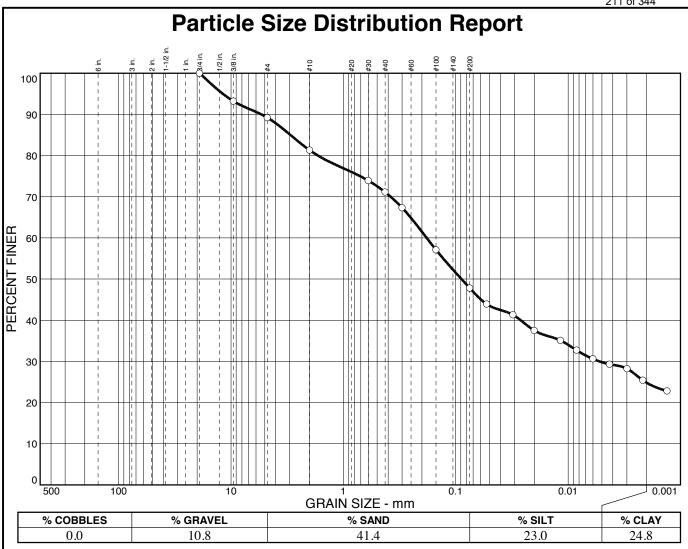
COOPER TESTING LABORATORY

Client: Cotton, Shires & Associates

Project: Regnart Rd - G5048

Project No: 026-688

Figure



SIEVE	PERCENT	SPEC.*	PASS?
SIZE	FINER	PERCENT	(X=NO)
3/4 in. 3/8 in. #4 #10 #30 #40 #50 #100 #200 #270 0.0310 mm. 0.0200 mm. 0.0117 mm. 0.0084 mm. 0.0043 mm. 0.0043 mm. 0.0043 mm. 0.00022 mm. 0.0013 mm.	100.0 93.2 89.2 81.3 73.9 71.1 67.3 57.1 47.8 43.9 41.3 37.5 35.1 32.7 30.6 29.3 28.2 25.4 22.8	PERCENT	(X=NO)

Soil Description				
Olive Brown Lean Clayey SAND				
	Attaubaug Limita			
PL= 20	Atterberg Limits LL= 45	PI= 25		
	Coefficients			
D ₈₅ = 2.96	$D_{60} = 0.182$	D ₅₀ = 0.0890		
D ₈₅ = 2.96 D ₃₀ = 0.0053 C _u =	D ₁₅ = C _c =	D ₁₀ =		
o _u –	· ·			
USCS= SC	Classification AASHT	-O=		
<u>Remarks</u>				

(no specification provided)

Sample No.: T-5 Location: **Source of Sample:** B-3

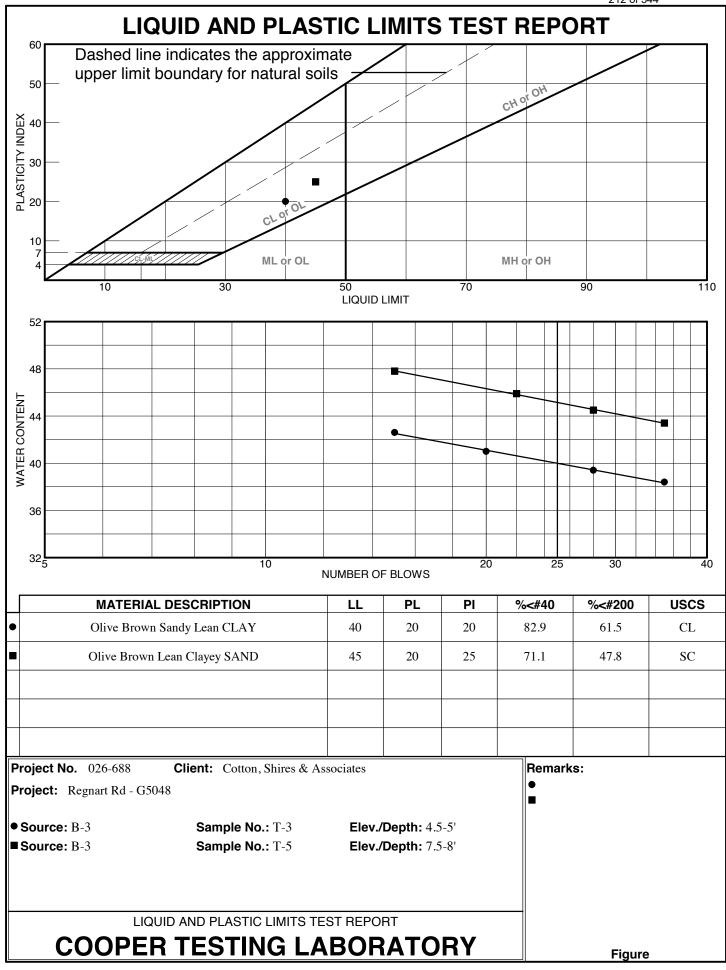
Date: 2/20/18 **Elev./Depth:** 7.5-8'

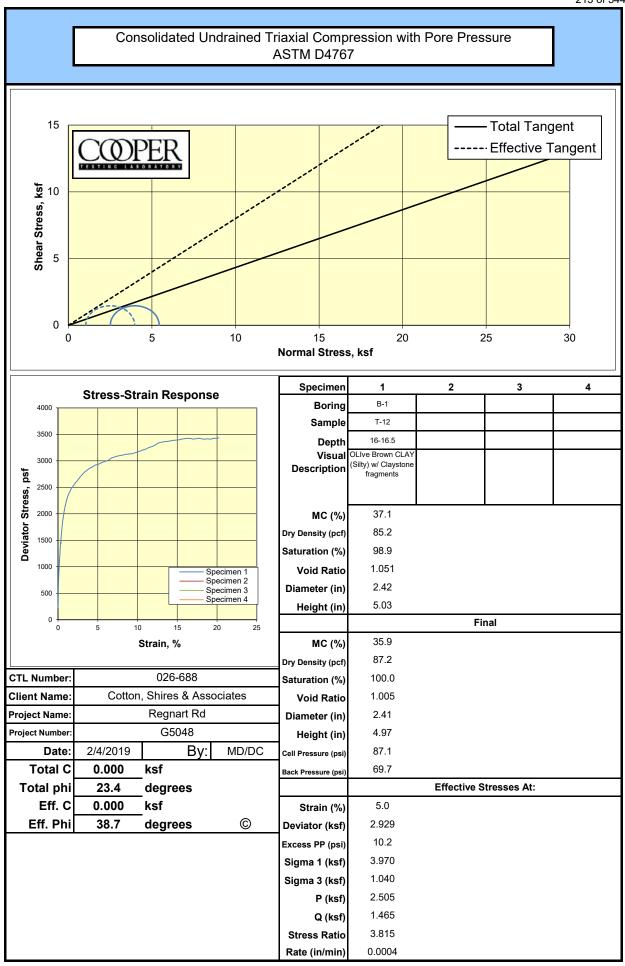
COOPER TESTING LABORATORY

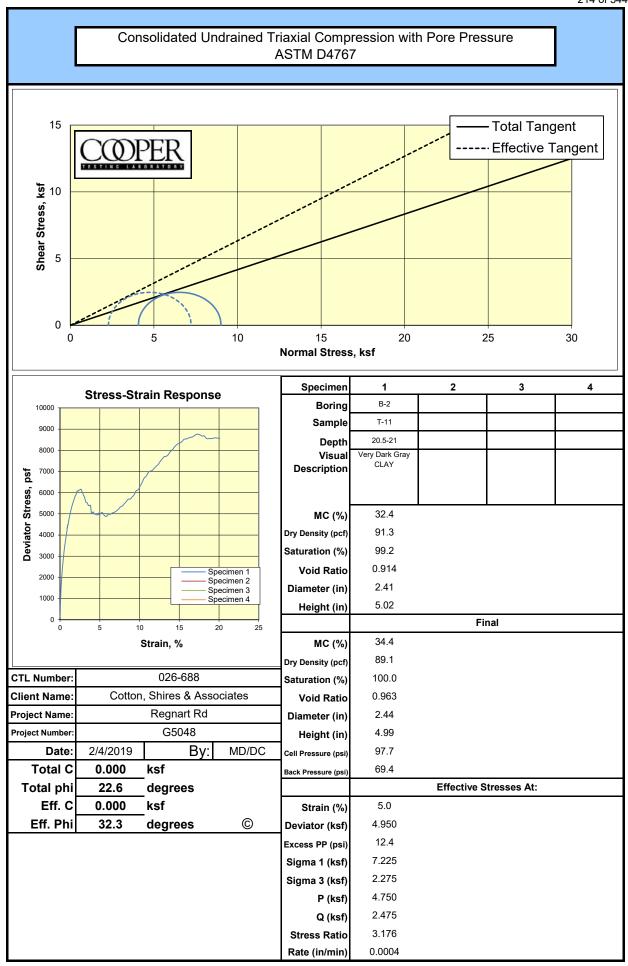
Client: Cotton, Shires & Associates **Project:** Regnart Rd - G5048

Project No: 026-688

Figure







Attachment B – California Department of Fish and Wildlife Permit Conditions For Reference Only

Regnart Road CDFW LSAA Permit Conditions



Measure Number	Measure Name	Requirement	Responsibility
1.1.1 and 1.1.2	Documentation at Project Site	LSAA Agreement, extensions and amendments to the Agreement, and all related notification materials and CEQA documents must be readily available at the Project site at all times and copies of the Agreement must be distributed to all persons working on the Project at the Project site.	Contractor
1.1.5	Notification of Commencement and Completion of Work	Permittee shall notify CDFW within 5 working days of beginning work and within 5 working days of completion of work for each construction season covered in the Agreement.	WRA
2.2.1	Work Period	Work within the stream banks and riparian corridor is restricted to April 15 - October 15 . Riparian restoration plantings and seeding work using hand tools do not fall in this restriction, but must be completed within the wet season the same year following completion of the Project. (Plantings may be postponed until February 28 of the year immediately following impacts if there is insufficient rain prior to December 31)	Contractor
2.2.10	Spoils	No spoils except where described in the Agreement	Contractor
2.2.11	Imported Materials	Do not import, move, or remove any rock, gravel, and/or other materials within the streambed or banks except as described in the Agreement	Contractor
2.2.12	Debris - Exclusion from Channel	Keep debris from entering channel or banks. Remove any debris that has entered channel or banks.	Contractor
2.2.13	Contaminants	Keep any contaminant hazardous to aquatic life from entering the soil and/or Waters of the State. Immediate removal of contaminants if they are placed or fall within jurisdictional areas.	Contractor
2.2.14	Spill Containment	All activities within 50ft of watercourse must have absorbent materials on-site for accidental spills. Spills must be reported to California Emergency Management Agency immediately at 1-800-852-7550. CDFW must be notified of spill/cleanup status the same day.	Contractor
2.2.15	Hazardous Spill Plan	A hazardous spill plan must be developed prior to construction. Implementation and notifications to appropriate agencies will be performed by the contractor.	Contractor
2.2.16	Concrete - Exclusion from Wetted Channel	Poured concrete needs 30 days curing time before coming into contact with wetted stream. If curing not possible, pH range of 6.5–8.3 can be allowed exposure to wetted stream. Sealants or curing accelerant can be applied to concrete surface (no wetted stream contact until sealant is cured)	Contractor
2.2.17	Concrete - Designated Monitor	A monitor designated by the Permittee shall monitor all concrete pouring along the western bank of Regnart Creek	WRA

	lo		lo
	Concrete Wash Area	Permittee or contractor shall not allow concrete washwater and debris to enter the active	Contractor
2.2.18		stream. Concrete wash area facilities need to be inspected daily and following heavy rain to	
		check for leaks and identigy any damage to plastic linings and/or sidewalls.	
	Revegetation	Areas of bare ground resulting from construction activities shall be revegetated with native	WRA
		grasses listed below. Permittee requires written approval from CDFW of any changes made to	
		the revegetation methods.	
		Meadow barley (Hordeum brachyantherum ssp. californicum)	
2.2.19		Blue wildrye (Elymus glacus)	
2.2.19		California brome (Bromus carinatus)	
		Creeping wildrye (Elymus triticoides)	
		California oatgrass (Danthonia californica)	
		Califonia melic (Melica californica)	
		Locally native wildflower seeds can be included in the seed mix.	
	Erosion Control Methods	Erosion protection is required in areas where vegetation cannot be expected to re-establish.	Contractor
		Erosion protection can't include plastic monofilament netting or similar material.	
		Erosion protection can include coconut coir matting, straw/coconut fiber erosion blankets,	
2.2.20		straw wattles, or tackified hydroseeding compounds. Erosion control must blend with the	
		natural contours of the stream bank. Erosion control measures must be monitored during and	
		after each storm event, and modifications, repairs, and improvements shall be made whenever	
		they are needed.	
	Erosion Control Installation	All erosion control plantings, seeding, and materials must be installed as soon as possible after	WRA
0.004	Time Period	Project activities in those areas cease. Seeding placed after October 15 must be covered with	
2.2.21		broadcast straw, jute netting, coconut fiber blanket, or similar erosion control blanket.	
	Bank Stabilization	Permittee must conduct a feasibility study to determine appropriate methods to remediate the	WRA
		bank erosion. This may include partial or full removal of the sacked concrete wall. Feasibility	
2.2.22		study report is due to CDFW for review and comment within 6 months of execution of this	
		Agreement and a final report is due within 1 year of execution of this Agreement.	
	Invasive Plant Removal and	Remove invasive vegetation from the City of Cupertino property along the western bank of	WRA
2.2.23	Revegetation	Regnart Creek between the culvert crossings immediately north and south of the Project site.	
		Revegetate all areas of bare soil with native plants (see Measure 2.2.19)	
	CDFW-Approved Qualified	Permittee must submit the names and resumes of all biologists and biological monitors	WRA
2.2.24	Biologist(s) and Biological	involved in conducting survey and/or monitoring work at least 30 days prior to initiating fish	
	Monitor(s)	and wildlife surveys.	
	Training Session for Personnel	The qualified biologist must conduct an education program for all persons employed on the	WRA
		Project prior to performing work activities. Interpretion services must be provided for non-	
2.2.25		English speaking workers. Copies of the Agreement must be maintained at the work site with	
		the Project supervisor. Employees must sign an affidavit stating they completed the training	
		and understand all protection measures.	

2.2.26	Pre-Construction Fish and Wildlife Surveys	The qualified biologist must conduct pre-construction surveys for the presence of special-status fish and wildlife species within 48 hours prior to each phase of construction work within the Project area. If state or federally listed species are found, the qualified biologist must contact CDFW and USFWS or NMFS and all work must cease until guidance or approval is received. Kristin Garrison or the CDFW Bay Delta Region office must be notified within four hours if any state-listed	
2.2.27	Special-Status Species Monitoring During Work	species are found. Construction personnel shall monitor for special-status species during Project activities. If found, work will stop and the on-call qualified biologist will be contacted. CDFW will be notified for guidance. If there is imminent danger of special-status species from Project activities, the qualified biologist must relocate the individual(s) a minimum of 250 ft away from construction activities if the individual(s) do not move out of the work area on their own. CDFW must be notified prior to relocation.	Contractor + WRA
2.2.28	Special-Status Species Encountered During Work	In addition to Measure 2.2.27 above, CESA and/or ESA listed species may only be relocated by a biologist with the necessary permits issued by CDFW, USFWS, and/or NMFS. CDFW must be notified within 24 hours of relocation activities.	WRA
2.2.29	San Francisco Dusky-Footed Woodrat	Prior to the beginning of construction activities, a biological monitor will conduct surveys for SFDWR. If nests are found, a clearly marked 50-foot buffer will be established. If an identified nest can't be avoided within the buffer, the Permittee is required to develop and implement a SFDWR relocation plan. The plan shall be submitted to CDFW 30 days prior to commencement of activities that will take place within the 50-foot buffer.	
2.2.3 and 2.24	Work Period in Dry Weather Only - Check Forecast	Forecasts must be documented. No construction activities when the National Weather Service 72-hour forecast indicates a 30% or higher chance of precipitation. Construction activities can resume when precipitation ceases and the 72-hour forecast indicates a 30% or less chance of precipitation. No work can be done within 24 hours of a rain event that produces 0.2 inches or greater of rain. If less than 0.2 inches of rain, additional erosion control measures may be necessary before resuming work within 24 hours of the rain event. All necessary erosion control measures need to be implemented 12 hours prior to the onset of precipitation.	Contractor
2.2.30 - 2.2.33	Nesting Bird Surveys and Nest Protection	If work will take place between January 15 to September 15 , a qualified biologist shall conduct two surveys for active nests within 14 days prior to the beginning of construction. A final survey shall be conducted within 48 hours prior to construction. Lapses in Project-related activities of 15 days or longer will require another survey.	
2.2.34	CRLF and Black Salamander - Vegetation Removal	Where heavy equipment will be used and understory vegetation removed, the Permittee must remove vegetation prior to conducting Project work. Understory vegetation must be removed only with non-mechanized hand tools.	Contractor

2.2.35		A qualified biologist must use nets or bare hands to relocate or handle these species if imminent danger to individual(s) is apparent (Measures 2.2.27 and 2.2.28).	WRA
2.2.36	No Hollow Open-ended Posts or Pipes	No exposed hollow open-ended posts or pipes shall be installed, stored, or staged in a vertical position unless capped, screened or filled with material	Contractor
2.2.37	•	Vertical posts with exposed perforations within the top 6 inches of the post must be permanently filled or capped	Contractor
2.2.38		All construction pipes, culverts, hoses, or similar structures stored overnight at the construction site must be securely capped prior to storage and checked for wildlife prior to being moved or used. Sensitive species must be allowed to leave the pipe on their own.	Contractor
2.2.39	Holes	All trenches and pile holes must be covered at the end of each work day. A ramp of 30 degrees or less may be placed within holes or trenches where covering is not possible. Ramps may be constructed of dirt fill, wood planking, or other suitable material.	Contractor
2.2.40	Tree and Shrub Trimming	Hand tools shall be used to trim vegetation to the extent necessary fo gain access to work sites. Larger equipment used for vegetation trimming requires written approval from CDFW prior to use.	Contractor
2.2.41	Habitat Protection	No vegetation outside of construction corridor may be removed or damaged prior to consultation and approval by CDFW	Contractor
2.2.5	Final Construction Plans	Permittee shall submit final Project construction plans, designs, and specifications to CDFW within 30 calendar days prior to the start of Project implementation	WRA
2.2.6	Notification of Changes to Plans	Permittee must notify CDFW if plans are modified in writing 30 calendar days prior to change implementation if the changes are large. Minor changes can be resolved with a phone call or email to CDFW.	WRA
2.2.7	Work Area Delineation	Work area must be flagged within the stream, riparian, and wetland areas. Flagging must be removed within 5 days of completion of construction work. Access paths and staging need to be adequately temporarily fenced or flagged.	WRA
2.2.8		Staging and storage areas for all equipment, materials, fuels, lubricants, and solvents need to be located outside of the stream, riparian, floodplain, and wetland areas. Hi-vis temporary construction fencing, erosion control, and daily equipment inspections must be used or performed to protect sensitive resources. Stationary equipment need to be positioned over drip pans and checked and maintained daily. Vehicles must be a minimum of 300 feet from the stream, riparian, or wetland habitat before refueling and lubrication. Drip pans and absorbent material must be used around equipment.	Contractor
2.2.9	Phytophthora - Sanitation Protocol	Prior to entry in work area, vehicles must stay on established roads whenever possible. Travel on roads must be avoided during the wet season (Oct 15 - April 15) or when the road is wet enough that soil will stick to tires and undercarriages. Exteriors and interiors of all vehicles, construction equipment, and tools must be free of debris, soil, and mud. Work shoes must be kept clean and free of debris, mud, and soil prior to moving to a new work area	Contractor

	As-Builts	Due to CDFW within 90 calendar days of completion of Project construction work.	Contractor + WRA
3.3.1		A report explaining any changes made to the final design plans (including impacts) is also required.	
3.3.2	Construction and Revegetation	Construction and re-vegetation status report due to CDFW on or before December 31 of the year of	WRA
3.3.2	Status Report	construction and planting completion	
	Database	Sensitive-species observed during Project surveys, implementation, or mitigation and monitoring work must be submitted to CNDDB within 5 working days of the sightings. Copies of the CNDDB forms and survey maps must be submitted to CDFW Region 3.	Contractor + WRA



REGNART ROAD IMPROVEMENTS PHASE 1 CUPERTINO, CA **100% PLANS**

BMP & STORM WATER PROGRAM

PERMIT CONDITIONS

CENTERLINE PROFILE

STORM DRAIN PROFILE

INBOARD WALL B PROFILE

INBOARD WALL DETAILS PIN PILE WALL DETAILS

OUTROARD WALL C PROFILE

SITE PLAN

SITE SECTIONS

SITE SECTIONS

CIVIL DETAILS CIVIL DETAILS INDOARD WALL A RECEILE

CALTRANS STANDARD SPECIFICATIONS 2018

GUARDRAIL LOADING - TL-3

CALTRANS AMENDMENTS TO THE AASHTO LRFD BRIDGE DESIGN SPECIFICATION 2019

BASIS OF BRARINGS;
BASIS OF BEARINGS WAS ASSUMED NORTH BASED ON COMPASS READING PER SURVEY PROVIDED BY COTTON, SHIRES AND ASSOCIATES.

BASIS OF ELEVATION: ELEVATION WAS ASSUMED 500 FEET AT POINT N 5,000 E 5,000 Z 500 PER SURVEY PROVIDED BY COTTON, SHIRES AND ASSOCIATES

AASHTO LIRED BRIDGE DESIGN SPECIFICATION 2017 FIGHTH EDITION

SHEET INDEX

C0.3

5 C2.0

6 C2,1

7 C3.0

8 C3.1

9 C4,0

12 S2.1

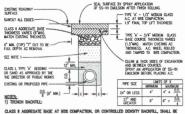
13 \$2.2

14 \$3.0

Blowon You've Block Of Welk Curb & Gutter Cuth Bosin Cath Bosin Cerrogolde Metal Pipe Curb Romp Droin Inlet Edge Of Povement Edge Of Povement Edge Of Traveled Edge Of Traveled Edge Of Traveled Edge Of Traveled Philah Crade Phi



LOCATIONS OF EXISTING UTILITIES SHOWN ON THE PLANS ARE ONLY APPROXIMATE. THE EXISTING UTILITIES SHOWN ON THE PLANS ARE ONLY APPROXIMATE. THE EXISTING UTILITIES SHOWN WERE PLOTTED USING INCOMPLETE AND IMPRICESS PROCEDURE. IT SHOW PROCESS TO THE EXCORDING SHOW PROPERTION OF THE EXCORDING SHOW PROPERTION OF THE SHOWN AND THE



CLASS II AGGREGATE BASE AT 95% COMPACTION, OR CONTROLLED DENSITY BACKFILL, SHALL BE USED FOR TRENCH BACKFILL

NATIVE MATERIALS MAY BE USED AS BADGELL ORLY WITH WRITTEN CONSENT FROM THE DIRECTION OF PUBLIC ROOMS, NATIVE BRADGELL COMPACTION SHALL BE USE TROM THE BOTTOM OF TRIBNIN TO SEE SELDIN SERVICIAN DESCRIPTION OF THE TRIBNIN TO SERVICE AND BOTTOM, CONTINUETRE SHALL HERST SUFFICIENT OF ARINE BADGELL PRORT TO EXCHANGE ON STRUCTURE OF THE SERVICE AND BOTTOM FOR COMPACT AND THE SERVICE AN

2) IF EDGE OF TRENCH IS 3' OR LESS FROM THE LIP OF GUTTER, THE CONTRACTOR SHALL REPAYE TO THE LIP OF GUTTER.

EXISTING STREET TRENCH RESTORATION TO BE USED FOR ALL PUBLIC STORM DRAIN PIPE

LEGEND

SD SD SD W	EXISTING WATER
E(O/10 E(O/11)	
BD BD	
UDUD	
	 EXISTING MAJOR CONTOUR
NAME AND DESCRIPTION OF PERSON ASSESSED.	EXISTING MINOR CONTOUR
100	 PROPOSED MAJOR CONTOUR
	 PROPOSED MINOR CONTOUR
	PROPERTY LINE
	GRADE BREAK
	FLOW LINE
	VEGETATION DRIPLINE
Δ	SURVEY CONTROL POINT
•	BORING HOLE/BENCHMARK
	TREE
A	TREE REMOVAL

0 WATER VALVE 0 STORM DRAIN MANHOLE SANITARY SEWER MANHOLE

CITY ENGINEER'S SIGNATURE

CHAD MOSLEY

Apr 27, 2023

RCE 66077 DATE

CITY OF CUPERTINO GENERAL NOTES

- All work shall be in accordance with the State of California Department of Transportation Standard Specifications (latest edition, as amended), as Standard Plans (latest edition, as amended), and City of Cupertino Standard Details. The Contractor shall perform the work described in t

- in All water lines, valves, hydrants, and appurtenances thereto installed within the public right-of-way shall be the property of the water util

- 19. Manhole frames and covers shall be brought to finish grade prior to final signoff.

- Drop inlets shall be constructed conforming to City Standard Details unless otherwise noted on the plans. Drop Inlets shall be installed of with the construction of the curb and gutter "No Dumping Flows to the Bay." plaque shall be installed on the curb adjacent to all inlets.
- One pound of dispersing black shall be mixed with each cubic yard of concrete at the batch plant
- City Standard Street Lights shall be installed as required by the Director of Public Works, and shall or During construction operations, temporary street lighting shall be provided as necessary to ensure the be installed at the discretion of, and to the satisfaction of, the Director of Public Works.
- New City standard street monuments and other permanent measurement disturbed during construction shall be replaced before acceptance of the unprovements by the City fingueur. Attention is discreted to Section 1771 of the California Duriness and Professiona Code for the requirement concerning survey measurements. Existing query promotional to the concerning across produced and account produced to the contract of the contract of

- Demolition of septic tanks shall conform to Santa Clara County Environmental Health Department regulations. Work shall be done prior construction.
- 3. Contractor is responsible for dust control and ensuring the area adjacent to the work is left in a clean condition

- 37. All new electrical service (power, phone, and/or cable) shall be undergrounded.



Date: APF	RIL 05, 2022						
Scale:							
Designed:	BR						
Drawn:	JP						
Checked:	AH						
Proj. Engr:	RC	Λ	REVISIONS	DESIGN	DESIGN DATE	,ggr	APPR.
File:		\triangle	REVISIONS	BY	DATE	APPR.	DATE

IMPROVEMENT PLANS FOR REGNART ROAD IMPROVEMENTS SITES 1&2

FOR CITY OF CUPERTINO USE PROJECT # PUBLIC WORKS KEVIN REIDEN VOICE MAIL: (408) 777-3104



CITY OF **CUPERTINO** SHEET CO.1

in the Santa Clara Valley, storm drains flow directly to our local creeks, and on to San Francisco Bay, with no treatment.

Storm water pollution is a serious problem for wildlife dependent on our waterways and for the people who live near polluted streams or

This sheet summarizes the "Best Manageme Practices" (BMPs) for storm water pollution

ORDINANCE OF THE CITY OF CUPERTINO FOR STORM WATER POLLUTION PREVENTION & WATERCOURSE PROTECTION: Chapter 9.18

9.18.040 Discharge into the storm drain prohibited

It is unlawful to cause, allow, or permit to be discharged, any discharge not composed entirely of stormwater to the storm drain system or to surface w or to any location where it would contact or eventually be transported to surface waters, including flood plain areas Permit as an exempt or conditionally exempt discharge.

9.18.070 Accidental Discharge

All persons shall notify the Director of Public Works immediately upon accidentally discharging pollutants of concern to enable countermeasures to be taken by the City to minimize damage to storm drains and the receiving waters. Initial notification shall be followed, within five (5) business days of the date of occurrence, by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent future occurrences. Such notification will not relieve persons of liability for violations of this chapter or for any fines impose on the City on account thereof under Section 13350 of the California Water Code, or for violation of Section 5650 of the California Fish and Wildlife Code, or any other applicable provisions of State or Federal laws.

9.18.220 Violation

Any person who violates any provision of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Chapter 1.12 of the City of Cupertino Municipal Code.

Chapter 1.12: General Penalty, Section 1.12.010,

Unless otherwise specified by this code, an infraction is

punishable by:
A fine not to exceed \$100 for a first violation A fine not to exceed \$200 for a second violation A fine not to exceed \$500 for a third violation of the same chapter within one year.

9.18.240 Civil penalty for illicit discharges

Any person who discharges pollutants, in violation of this Chapter, by the use of illicit connections shall be civilly liable to the City in a sum not to exceed twenty-five thousand dollars per day per violation for each day in which such

"Excerpts – For complete CODE language refer to the City of Cupertino Municipal Code.

upertino Building Dept: 498-777-3228 Public Works Dept: 498-777-3354 anta Clara County Recycling Hotline: 890-533-8414

upertino Sanitary Sewer Distr 408-253-7071

ianta Clara Valley Urban Runoff Pollution Prevention Prgm 880-794-2482

9/1/16

State Office of Emergency Services 1-800-852-7550 (24 hrs) Report spills to 911

General Construction and Site Supervision

Storm Drain Pollution from Construction Activities

Construction sites are common sources of storm vater pollution. Melanish and waster that thou or mash into a starm durin, gother, or stored have a direct report on load orests and the Bay. As a confluction, or alto supervisor, owner or operator of a site, you may be responsible for any envision-methal damage caused by your

- General Principles

 Meap an orderly sile and ensure good houseweeping precious are used.

 Meating supplement procestly.

 Gover muterials when they are not in use. American and distance and distance and distance control sile or own distance and distance control sile or coefficients.

 Ensure duct control sile or coefficient sile of distance of distance orderly in the coefficients.

 Advanced Planning To Prevent Profusion
- Advance Planning To Prevent Pollution

 Schedule excavation and go ding activities
 for day wather periods. To medius sol eroson, paral temporary vegetation or place other cross controls before rain begins. Use the Eventual and Sadmart Control Manual available from the Degran Whater Dustity Control Board, as a effection.
- Convoid Search as a difference construction of Search Sear

Good House/lesspiring Practices

Designate one area of the sile for early pairing white reflecting and notifier equipment maintenance. The designated area should be well assay from siles mor or slowm should reflect promot

Heep meterate out of the rain – present nooff contamination at the source. Once exposed piles of solin constability materials with plastic sheeting or temporary roofs. Below it same, except and remove meterate from surfaces that down to storm deten, oredo, or channels.

alone dwins, oxeds, or channels.

Contain all Biter, food wappers, bottles and cans. Floos hidde to sail and recording lines around the sail and recording lines around the sail steps and other spills transcaledly so they do not containmate sail or groundwater or leave residue or pavel uniforms. Use dry clearup methous weenver possible, if you must use water, oxo pust enough to keep the dust down.

dust down:

**Cover and maintain dumpsters. Place dumpsters under roots or open with tarps or plast is heating secured around the outside of the dumpster. Never down out a dumpster by hosing it down on the construction site.

Place portable toilets away from storm drains. Unlessure portable to lists are an good working order. Check frequently for leaks.

Recycle concernments of the concernment of the conc

Landscaping, Gardening, and Pool Maintenance

Landscaping/Garden Maintenance Protect stockpiles and landscaping materials from Wind and rain by storing them under targs or secured plesuc sheeting.

- Schedule grading and excevation projects during dry weather.
- Use tomporary check dams or ditches to divertitunoff away from storm drains.
- Protect storm drains with sandbags, gravel-filled bags, straw wattles, or other sediment controls.
- Re-vegetation is an excellent been of erostor control for any site.
- Store pesticides, forfizers, and other chemicals indoors or in a shed or storage patringt.
- Use positicides sparingly, according to instructions on the laber. Rinse empty containers, and use inservator as product. Dispose of readed, empty containers or the teath. Dispose of timeled positicide a as hexandors waste.
- If in Cuperino, residents with curbside reoperan collect lawn, garden and tree trimming yeardweste boters. Yeardwaste will be collected and composited by the city a contractor's. Residents are encouraged to compact yardwaste on-site them serves. Or take yardwaste to a lead fit where it will be composed.
- Landscape contractors should take olippings and pruring waste to a landfill that composts yard waste (BFIs Newby latend and Zanter RO, landfill are the marcell).

Storm Drain Pollution Storm Union Foliation from Landscaping and Swimming Pool Maintenance Many landscaping activities expose soils and nocessa the kieckhood that each and garden cheek cells will con of into the atoms of area during

Pool/Fountain/Spa Maintenance Draining pools or spas

urtaining pools of SBS
What if is the to to date, a pool, see, or foundam,
pleasa to to date, a pool, see, or foundam,
pleasa to the to the completion Sandars
poisar to allow pour said for further galaxiance on
those dat restrictions, backflive preventors, and
handling sposice cleaning wasted (such as a cid
wish). Tolcharge libras should be kept to the law
level a typically goods the through a garden hose,
higher flow rakes may be prohibited by locat
or desarrae.

- If I possible when emplying a pool or sp.a. let charine dissipate for a few days and then recyclohouse water by draining it gradually onto a landscaped area.

Filter Cleaning

- Never clean a filter in the street or near a storm drain. Ryse certisage and diatomaceus each filters onto a dirt area, and spate filter residue into self Dispose of scent dia branceus, each in the gerbage.
- If there is no suitable dirt area, cell Cupertine Samilary for instructions on

Earth-Moving Activities

Storm Drain Pollution from Earth-Moving Activities

soid occavation and grading operations loosen legion amounts of soil that can flow or love into storm amounts of soil that can flow or love into storm oran dog storm drains, amonther aquatic life, and castory habitats in creeks and the Bay. Effective eroson corrotio practices educe the amount of runnfl crossing a site and slow the flow with check dams or roughness operand authors.

Practices During Construction

- Remove existing vegetation only when absolutely necessary. Plant temporary vegetation for ension control on slopes or where construction is not immediately planned.
- Protect downstope drainage courses, streams, and storm drains with wattes, or temporary drainage swales. Use check dams or disches to divert ranoff around excavations. Rafer to the Regional Water Qualty Control Manual for proper erosion and sediment control measures.
- Gover stockpiles and excavated soil with secured tarps or plastic sheeting.



Dewatering Operations

Storm Drain Pollution From Dewatering Activities

Be sure to call your city's storm water inspector at 404-472-9907 before discharging water to a street, gutter, or storm drain. Fittation or diversion through a basin, tank, and sedment trap may be equived. Reuse water for dust convol, irrigation or another on-site purpose to the greatest extent possible.

Check for Sediment or Toxic Pollutants

- Check for odors, discoloration, or an oily sheen on groundwater.
- Depending on the test results, you may be allowed to decharge gumped groundwater to the storm drain OR you may be required to discharge to the sanitary sewer or collect and hauf the water off-site for treatment and disposal at an appropriate treatment testility.
- When discharging to a storm drain, protect the inlet using a barrier of burlap bags filled with drain rock, or cover inlet with filter fabric anchored under the grate.
- Contact Cupertino Sanitary District at 253-707 1 prior to discharging to the sanitary sewer.

The Project Contractor is responsible

located within the Public Right of Way

for removal of all BMP Facilities

upon project final inspection.

Heavy Equipment Operation

Storm water Pollution from Heavy Equipment on Form Heavy Equipment on Form Heavy Equipment on Steel Pollution Steel Pollution

Site Planning and Preventive Vehicle

- or re mast of Dasignate one area of the construction was well news from them to protein the set of the construction and require and set of the construction of the c
- Senately adventible and heavy equament
- Partiers major secontenance, report jobs and vehicle and earning entire ashing off-site, where clean on it speed.
- De not use diesel off to lubricate equipment parts or clean equipment the only water for

parts or clean equipment! Use only water for any make steaming. Gaver exposed fifth wheel bitches and other only or greasy equipment during tain everts.

Spitt Cleanup

pror Creanup spills in mediately

Clean up spills in mediately

Never has down "dirty" payments of or

int permy 22 is serf page at the re-based in aver spilled

that day of has many mattered (1825:06) at

passible and properly dispose of absertion?

attacks

- Sweep up somed on materials in mediately.
 Never allempt to 'wast them away' with water or bury than
- Use as tittle water as possible for dust central Ensure water used doesn't leave aid or discharge to storm distins.
- Clean up spills an dist areas ty digging up and properly disposing of continuous soi?
 Optigital or significant spills.
- If the applipases a significant hazard to burns health one safety property or the anyonament, you must also report it to the State Office of Emergency Services.

The property owner and the contractor share ultimate responsibility for the activities that occur on a construction site. You may be held responsible for any environmental damage caused by your subcontractors or employees.

Painting and Application of Solvents and Adhesives

Storm Drain Pollution from Paints Solvents, and Adhesives

Handling Paint Products

Keep all liquid paint products and waster away from the gutter, street, and storm

Painting Cleanup

- For water-based paints, paint out brushes to the extent possible, and rase into an inside sink drain that goes to the santary sower.
- extent possible and clean with thinner or solvent. Fitter and reuse trainers and solvents, where possible. Dispose of excess liquids and When thoroughly dry, emply paint cans, used brushes, rags, and drop doths may be disposed of as garbage.

- Paint chips and dust from non-hazardous dry stripping and sand blasting may be swept up or collected in plastic drop cloths and disposed of as trash.
- Chemical paint stripping residue, and chips and dust from marine paints, or paints containing lead, resourcy or tribuly tim must be disposed of an haramons weather. Lead based part removal impares a state-certified contractor.
- ☐ When stripping or chaning building exteriors with high-pressure water, block aborn it aren. Direct wealthwater orto a left area and quade into soil. Or, chank with Curpetino Sanitary. Direct wealthwater orto a left area and orto Chainto Sanitary. Disket to life from all you can map or unduson the wathwater and dispose of it in a namelay sever drain. Sampling of the wealthwater may be required.
- to required

 Washinster from painted buildings constructed before 1978 can consus high arrows of Land, worst § paint chips are not present. Block put to longer stepper great or carder high pressure, but on the pressure to the carder high pressure, but part for lead by taking paint examples to local substantary. (then 'vietow Pague for a state-certified socionatory, 1
- intoneurs, j.

 If there is loose paint on the basting, or if the paint tests positive for lead, block storm drains. Onch wife Cupretino Saratery District to determine whether your any discharge water to the sentary sever, or if you must send it offset for disposal as hazaroous weets.

CONSTRUCTION BEST MANAGEMENT PRACTICES

Paint Disposal, Return or Donation

- For oil-based paints, paint out brushes to the sylent cossible and clean with thicker or Dispose of unwarted aquid paint, thinners, solvents, gives, and dearing favids as hazardous weste (call the Small Business Hazardous Wasse Prgm; 299-7300).
 - Or Retarn to supplier, (Unoperad cans of paint may be able to be returned. Check with the vendor regarding its "buy-back" policy.) ☐ Donate excess paint (call 299-7300 to donate)

Roadwork and Paving

- Check for and repair leaking equipment
- Do not use diesel oil to lubricate equipment parts or clean equipment.

- ☐ Avoid creating excess dust when breaking asphalt
- When making saw cuts, use as little water as possible. Shovel or vacuum saw-cut starry and remove from the site. Cover or protect storm drain intote during saw-cutting Sweep up, and properly dispose of, all residues.

General Business Practices

- Develop and implement erosion/sediment control plans for roadway embankments
- Schedule excavation and grading work during dry weather,
- Perform major equipment repairs at designated areas in your maintenance yard where cleanup is easier. Avoid performing equipment repairs at construction sites.
- When refueling or when vehicle/equipment maintenance must be done on site, designate a ocation away from storm drains and creeks
- Recycle used oil, concrete, broken asphalt, etc. whenever possible, or dispose of properly (www.recycle.stuff.com for list of recycling
- Asphalt/Concrete Removal
- or concrete.

 After breaking up old pavement, be sure to remove all chunks and pieces. Make sure broken pavement does not come in contact with rainfall or runoff.
- Sweep, never hose down streets to clean up tracked dirt. Use a steet sweeper or vacuum truck. Do not dump vacuumed liquor in storm drains.

Storm Drain Pollution from Roadwork

Road paving, surfacing, and pavement removal happen right in the sirect, where there are numer opportunities for a sphalt, saw-out sturry, or excavated material to lifegally enter storm drains. Extra planning is required to store and dispose of materials properly and guard against poliubin of storm drains, crecks, and the Bay.

- During Construction Avoid paving and seal coating in wet weather, or when rain is forecast to prevent fresh materials from contacting stomwater
- Over and seal catch basins and manhole when applying weal coat, sturry seat, fog seat or similar materials.
- Protect drainage ways by using earth dikes and bags, or other controls to divert or bap and filter runo #.
- Never wash excess material from exposed-aggregate concrete or similar treatments into a street or storm drain. Collect and recycle, or dispose to det area.
- ☐ Cover stockpiles (asphalt, sand, etc.) and other construction materials with plastic tarp: Protect from rainfall and prevent runoff with temporary roofs or plastic sheets and berms
- ark paving machines over drip pans or bsorbent material (cloth, rags. etc.) to catch drips when not in use. Crean up all spills and leaks using 'dry'
 methods (with absorbent materials and/or
 rags), or dig up, remove, and properly dispose
 of contaminated soil
- Avoid over-application by water trucks for dust control

Fresh Concrete and Mortar Application

Storm Drain Pollution from Fresh Concrete and Mortar Applications

Fresh concrete and cement-related mortars that wash into lakes, streams, or estuaries are toxic to fish and the aquatic environment. Disposing of these materials to the storm drains or creeks can block storm drains, causes serious problems, and is prohibited by law.

General Business Practices

- Wash out concrete entirers only in designated we shoult areas in your yet, away from shorm draws and whatherapy, where the water will find whatherapy, where the water will find water perceives through soil and dispose of settled, hardened concrete as garbage. Where we rossible, recycle washout by purpring back roth mixes for reuse.
- Wash out chutes onto dist areas that do not flow to streets or drains. Always store both dry and wat materials under cover, protected from rawfall and runot and away from store drains or enterways. Protect dry materials from wind.
- Secure bags of coment after they are open. Be sure to knep wind-blown coment powder away from streets, gotters, storm drains, raidfall, and runoff. Do not use diesel foel as a lubricant or concrete forms, tools, or trafers.

During Construction

- Don't mix up more fresh concrete or cemen than you will use in a two-hour period.
- Set up and operate small mixers on tarps or heavy plustic drop cloths. When cleaning up after divieway or sidewalk construction, wash fines onto dirt areas, no down the driveway or to the street or storm.
- materia this direct.

 Wish down a space of aggregatic concrete
 only when the washwater can (1) flow onto a
 did verse, (2) down onto a benefit size of the
 which it can be jumped and disposed of
 properly, or (3) be vacuumed from a catchingcreated by blocamp a storm diatin (etc.).

 Receasely, blocamp a storm diatin (etc.)

 Receasely, blocamp a storm diatin (etc.)

 Some and the control of the control of the catching of the
 same plant of does not reach guilters or
 same all parts.
- Never dispose of washout into the atreet, slore drains, drainage disches, or streams.

for a quote.

Small Business

Hazardous Waste

Disposal Prgm

Businesses that generate less

than 27 gallons or 220 pounds

of hazardous waste per month

are eligible to use this program

Call 408-299-7300



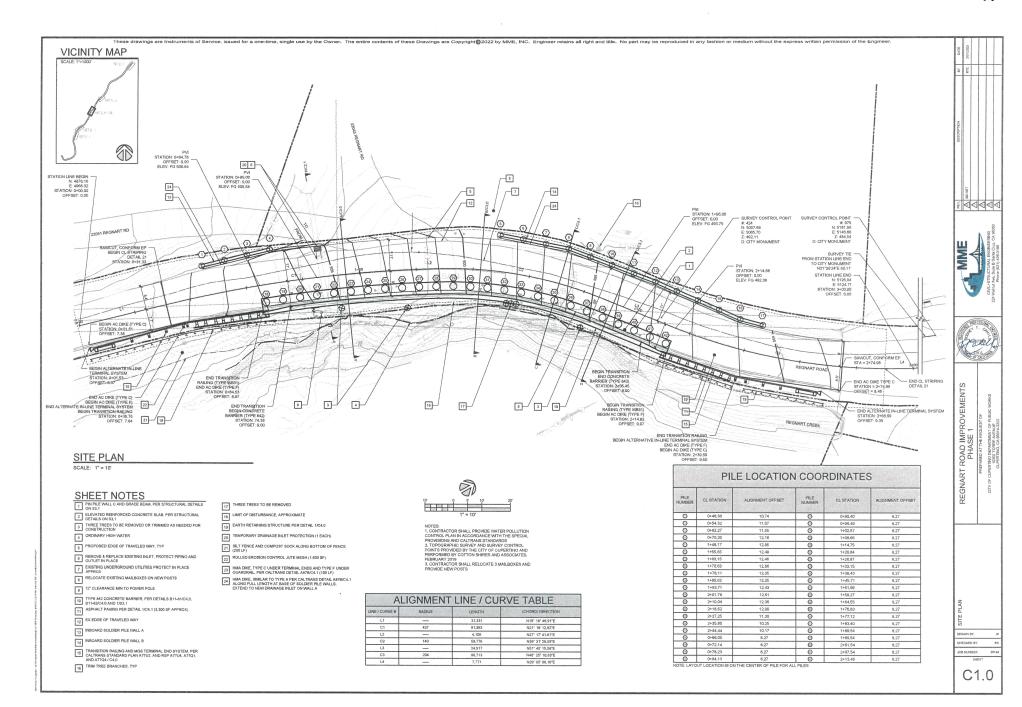
SHEET: C0.2

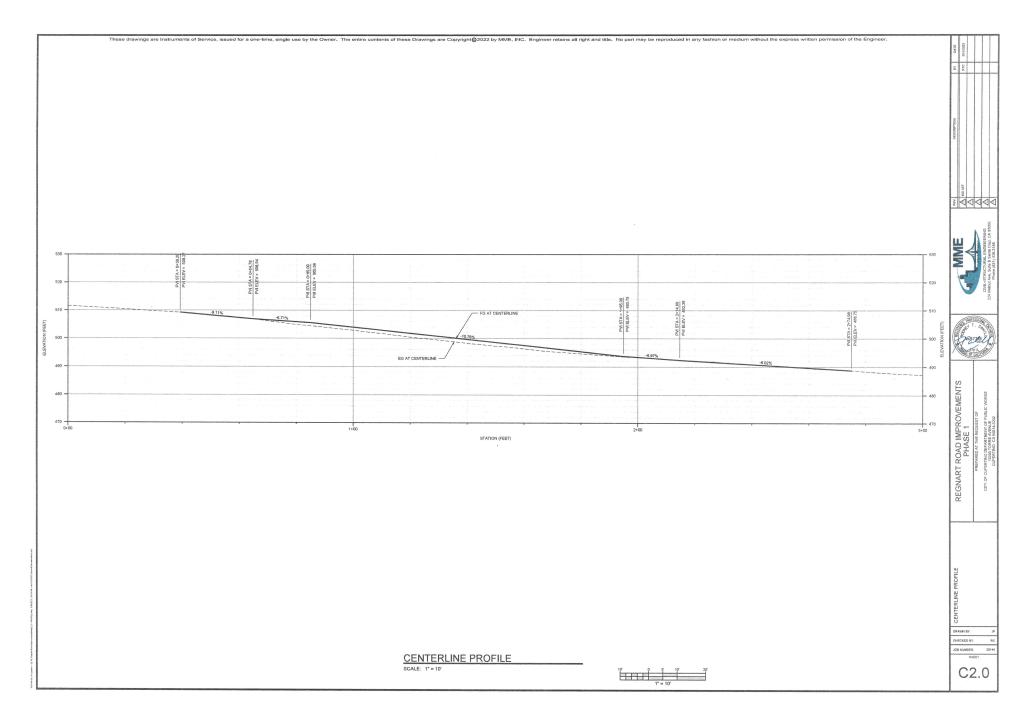
Collect and recycle or appropriately dispose of excess abrasive gravel or sand. ???

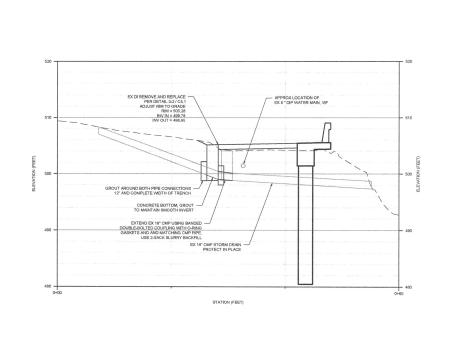
CITY OF CUPERTINO

DEPARTMENT OF PUBLIC WORKS

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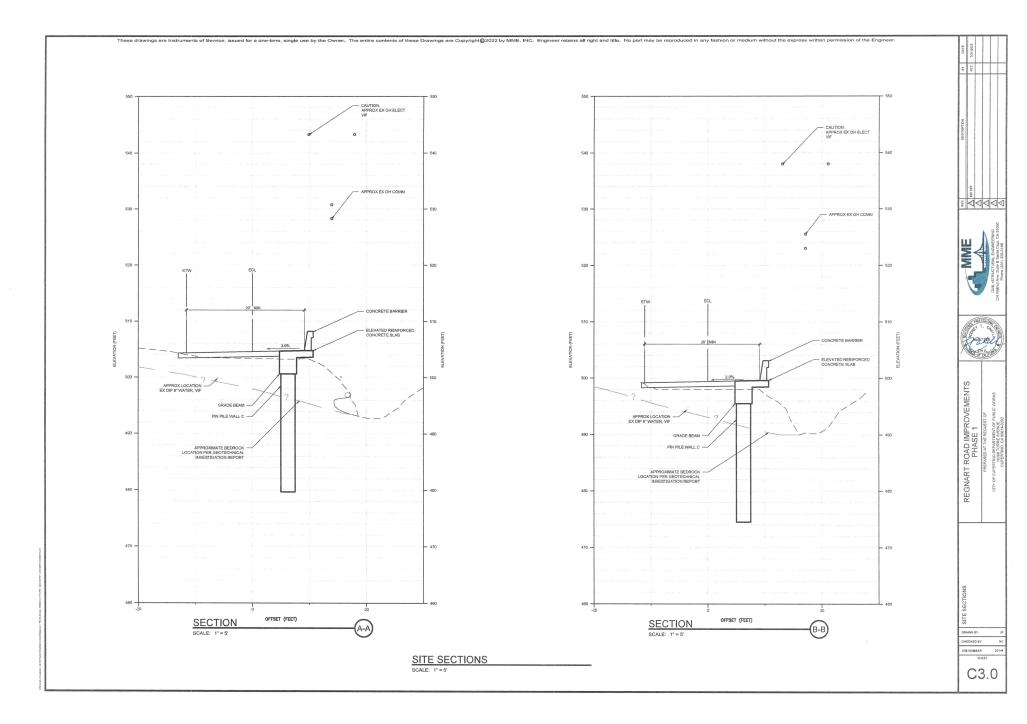


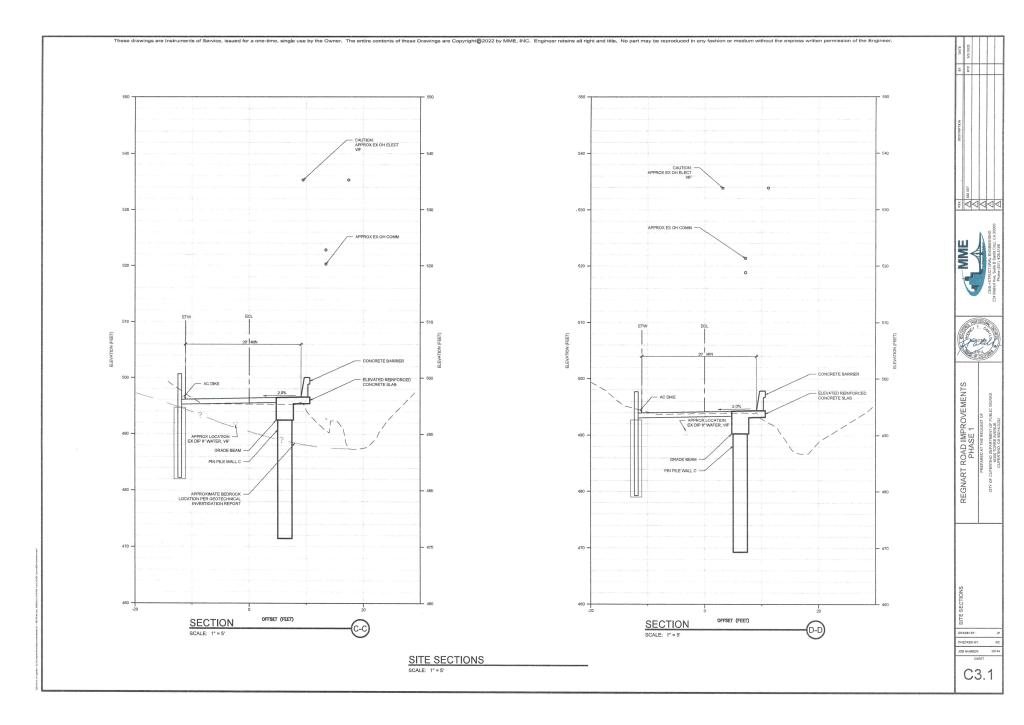
REGNART ROAD IMPROVEMENTS PHASE 1

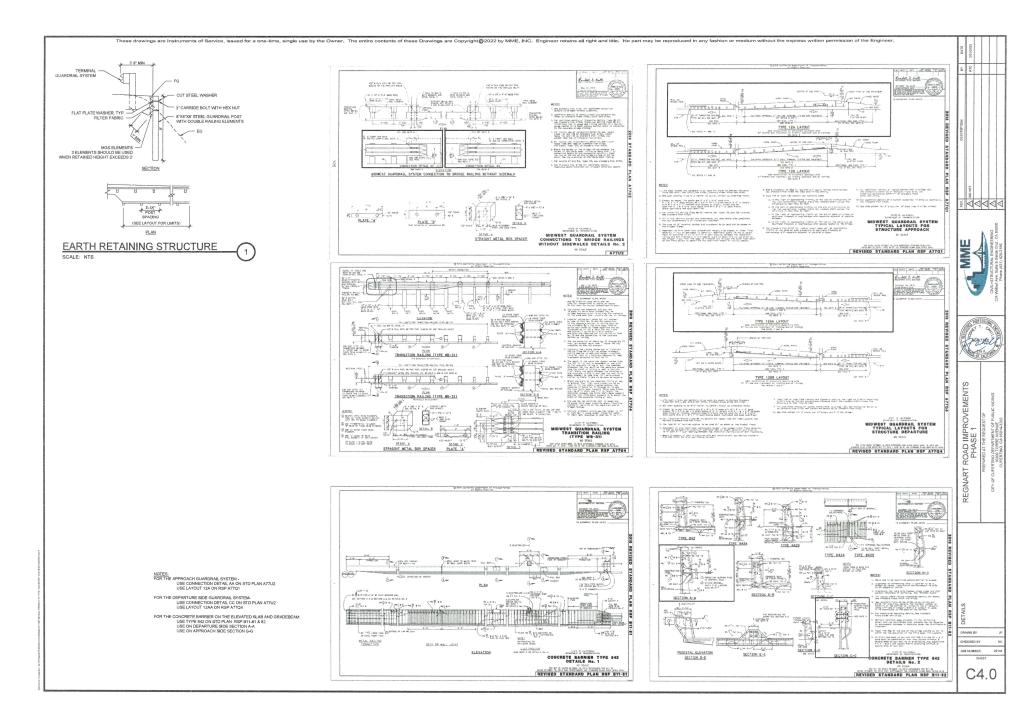
C2.1

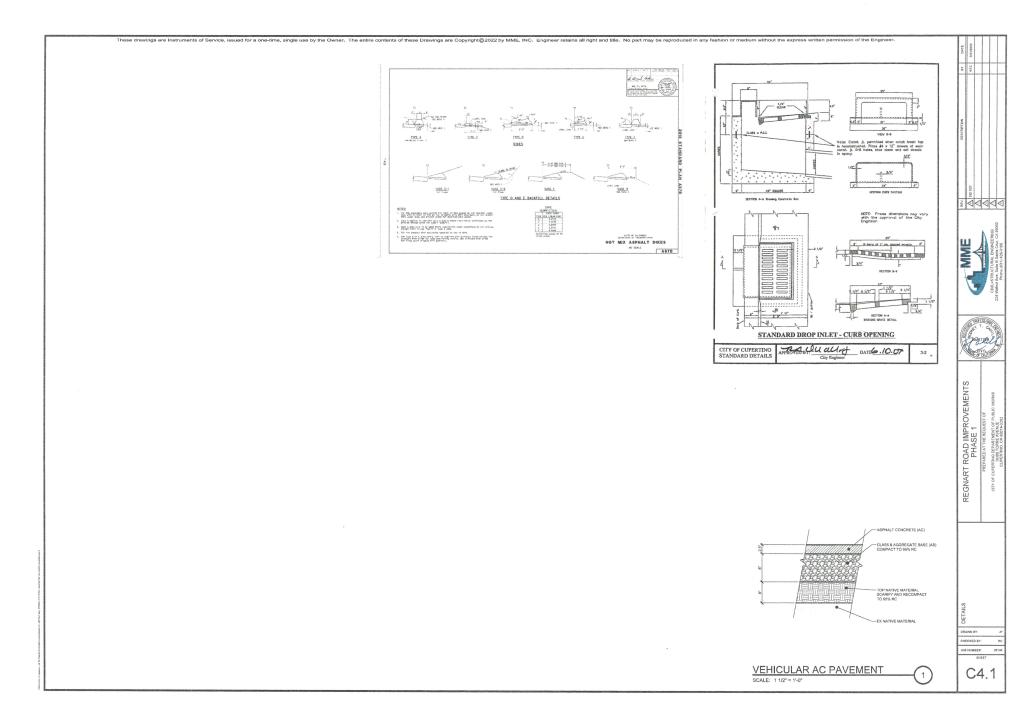
STORM DRAIN PROFILE SCALE: 1" = 5"

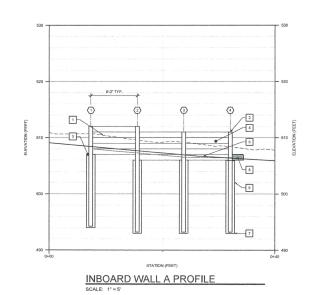












WALL DATA						
PILE NUMBER	0	2	3	④		
TOP OF SOLDIER PILE ELEV (FT)	512,00	512,00	511,00	511.00		
SOLDIER PILE SHAPE	W12x45	W12x45	W12x45	W12x45		
PILE DIAMETER (IN)	24	24	24	24		
BOTTOM OF WALL ELEVATION (FT)	507,00	506,00	508.00	506,00		
BOTTOM OF DRILLED HOLE ELEVATION (FT)	494,00	493,00	493.00	493,00		

SHEET NOTES							
1 EXISTING GRADE AT BACK OF WALL							
2 TOP OF SOLDIER PILE, TYP							
3 BOTTOM OF WALL, TYP (* SEE NOTE BELOW)							
4 CONCRETE LAGGING, TYP							
5 CONCRETE PILE, TYP							
6 FINISHED GRADE IN FRONT OF WALL - 9' OFFSET OF CENTERLINE. ASPHALT CURB NOT SHOWN							
7 BOTTOM OF DRILLED HOLE, TYP							
PERFORATED PLASTIC PIPE, DAYLIGHT AT END OF WALL WITH A 90° BEND AND ENCASE IN CONCRETE - 24" WIDE x 12" HIGH x 24" DEEP							
NOTE: WHERE LAGGING IS STEPPED PER 6/S3.0, THE BOTTOM OF WALL ELEVATION IS FOR THE LOWER SIDE							

GENERAL DESIGN NOTES

INBOARD SOLDIER PILE WALL A AND B SOIL PARAMETERS:

LATERAL ACTIVE PRESSURES: 3:1 BACKSLOPE: 2.5:1 BACKSLOPE: 2:1 BACKSLOPE:

Pa = 46 Pa = 55 Pa = 65

PASSIVE PRESSURES:

Pp = 0 pstrit FOR UPPER 4' Pp = 500 pstrit FOR BELOW 4'

OUTBOARD PIN PILE WALL C SOIL PARAMETERS:

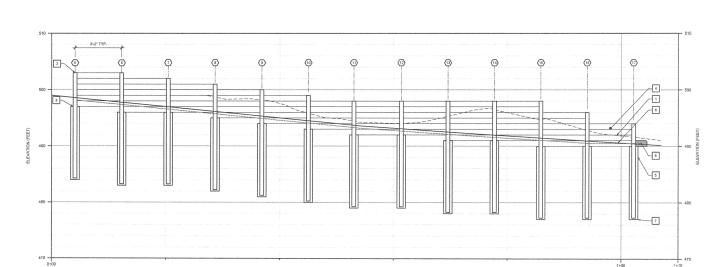
LATERAL ACTIVE PRESSURE: VEHICULAR SURCHARGE PRESSURE: SEISMIC LOADING: PASSIVE PRESSURE:

600 pst/ft 625 pst/ft EOR SEISMIC LOAD!

SEE SHEET \$3.0 FOR MATERIAL SPECIFICATIONS

REGNART ROAD IMPROVEMENTS PHASE 1

S2.0



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STATION (FEET) INBOARD WALL B PROFILE SCALE: 1* = 5'

				WA	LL DA	TA							
PILE NUMBER	(5)	6	7	(8)	9	10	11)	(12)	(13)	(14)	(16)	(16)	1
TOP OF PILE ELEV (FT)	503,00	503,00	502,00	501,00	500,00	499.00	498,00	498,00	498,00	498,00	498,00	496,00	494.00
SOLDIER PILE SHAPE	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45	W12x45
PILE DIAMETER (IN)	24	24	24	24	24	24	24	24	24	24	24	24	24
BOTTOM OF WALL ELEVATION (FT)	497.00	496.00	496,00	495.00	494.00	493,00	492.00	492.00	491.00	491.00	490.00	490.00	490.00
PILE TIP ELEVATION (FT)	484,00	483,00	483,00	482.00	481.00	480,00	479,00	479.00	478.00	478,00	477,00	477,00	477,00

SHEET NOTES

2 TOP OF SOLDIER PILE, TYP

3 BOTTOM OF WALL, TYP (* SEE NOTE BELOW)

4 CONCRETE LAGGING, TYP

5 CONCRETE PILE, TYP

6 FINISHED GRADE IN FRONT OF WALL - 9' OFFSET OF CENTERLINE. ASPHALT CURB NOT SHOWN

7 BOTTOM OF DRILLED HOLE, TYP

GENERAL DESIGN NOTES

LATERAL ACTIVE PRESSURES: 3:1 BACKSLOPE: 2:5:1 BACKSLOPE: 2:1 BACKSLOPE:

PASSIVE PRESSURES:

Pp = 0 psf/ft FOR UPPER 4' Pp = 500 psf/ft FOR BELOW 4'

OUTBOARD SHEAR PIN WALL "C" SOIL PARAMETERS:

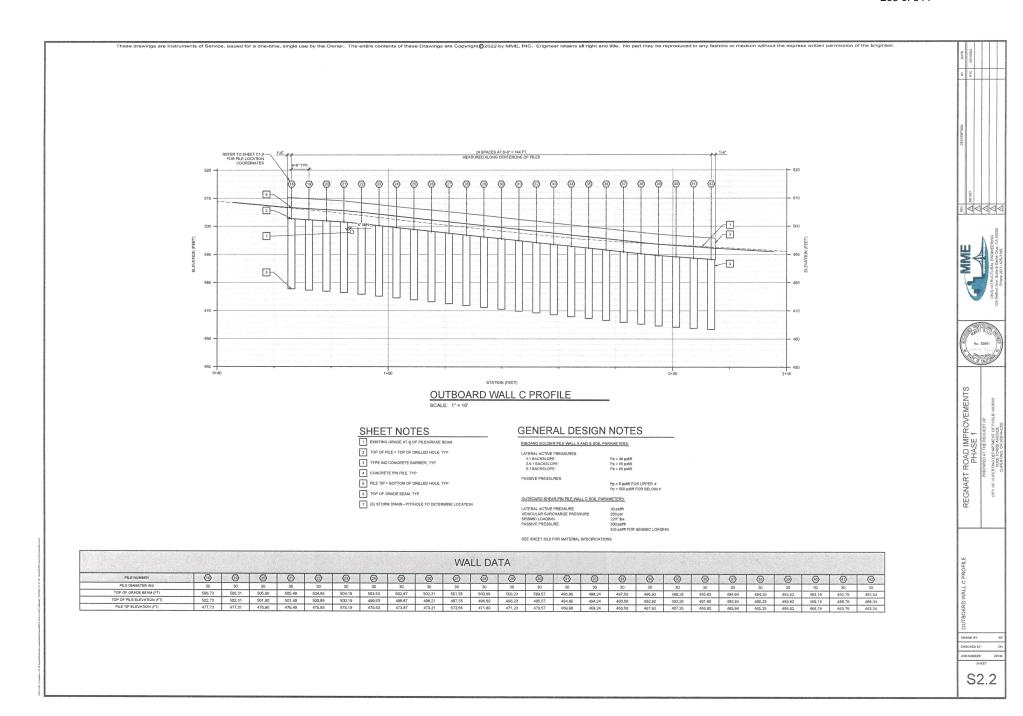
LATERAL ACTIVE PRESSURE: VEHICULAR SURCHARGE PRESSURE SEISMIC LOADING: PASSIVE PRESSURE:

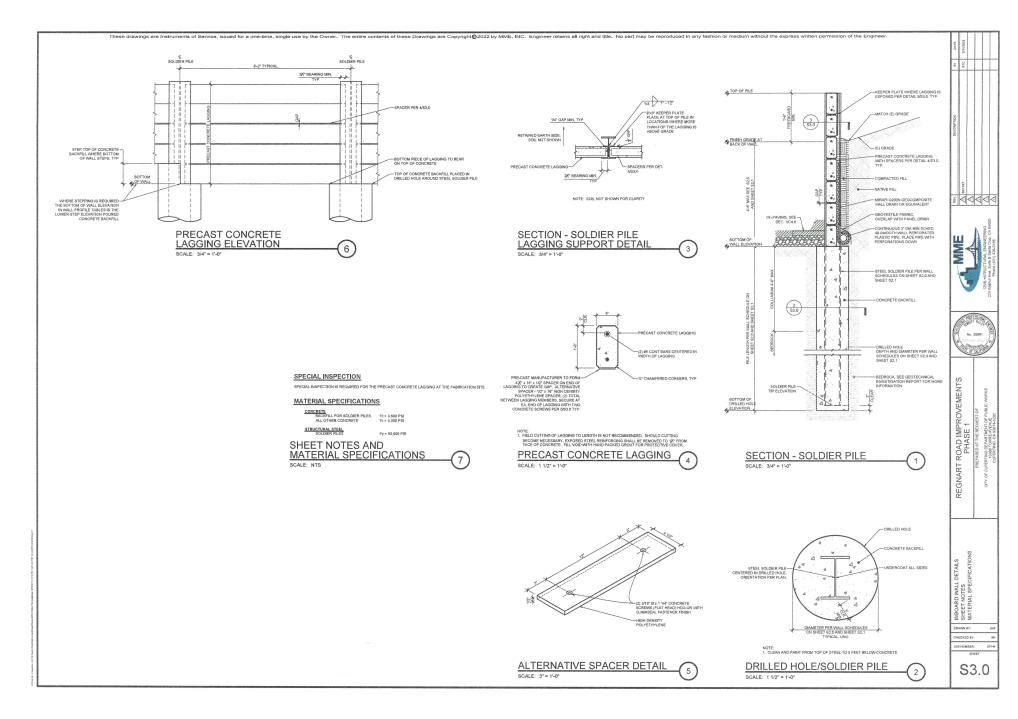
SEE SHEET \$3.0 FOR MATERIAL SPECIFICATIONS

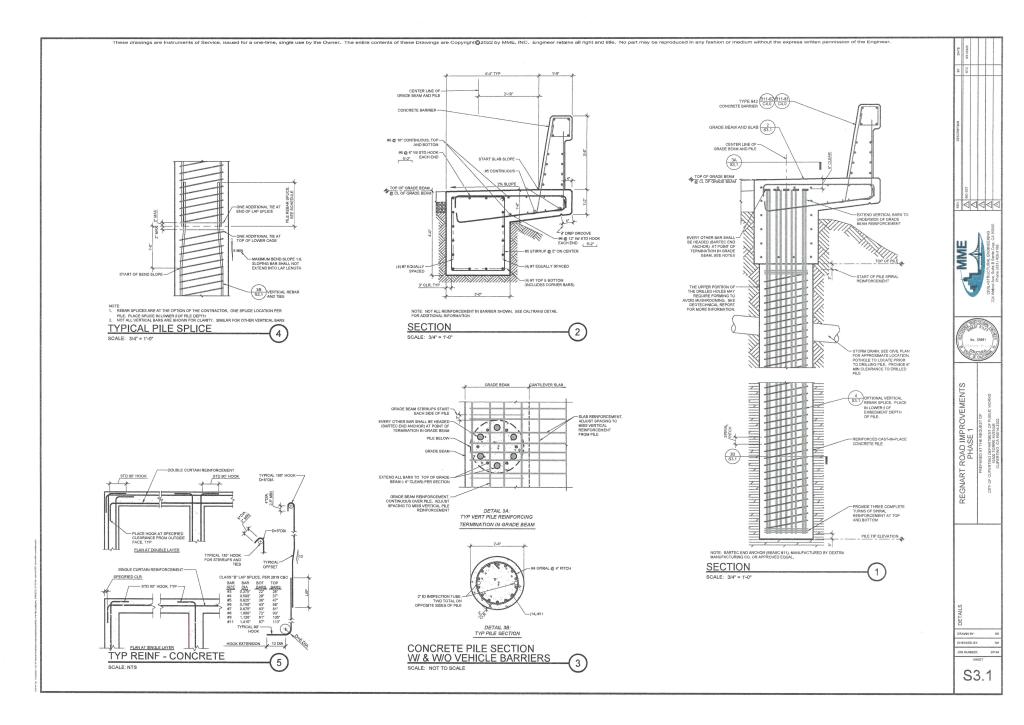
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- BABAE	MINIT			CIVIL+STRUCTURAL ENGINEERING	224 Welnut Ave. Suite B Santa Cruz, CA 95060
S SCION		No. 1	R/L 8/L 5599		

REGNART ROAD IMPROVEMENTS
PHASE 1

S2.1







Regnart Phase 1 Final Plans

Final Audit Report 2023-04-27

Created:

2023-04-27

By:

Julia Kinst (juliak@cupertino.org)

Status:

Signed

Transaction ID:

CBJCHBCAABAAZN54SI5nkVEKXwxiaWy3vUxyAZaUO8H0

"Regnart Phase 1 Final Plans" History

- Document created by Julia Kinst (juliak@cupertino.org) 2023-04-27 5:27:31 PM GMT- IP address: 98.97.58.121
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- Email viewed by Chad Mosley (chadm@cupertino.org) 2023-04-27 6:21:22 PM GMT- IP address: 104.47.74.126
- Document e-signed by Chad Mosley (chadm@cupertino.org)

 Signature Date: 2023-04-27 6:21:49 PM GMT Time Source: server- IP address: 64.165.34.3
- Agreement completed. 2023-04-27 - 6:21:49 PM GMT





ADDENDUM NO. 1

Regnart Road Improvements Phase 1 PROJECT NO. 2019-08

Bid Opening: June 15, 2023 - 2:00 P.M. Issue Date: June 1, 2023

The following revisions are hereby made to the above referenced project:

- 1. Add two documents:
 - a. '2019-08 Regnart Road Improvements Phase 1_Geotechnical Report'
 - b. '2019-08 Regnart Road Improvements Phase 1_Environmental Permit'

No other changes were made to the Manual and Plan Set.

Only questions received in writing will be accepted for response. Send questions by e-mail to EvelynM@cupertino.org. Questions regarding this project should be sent to the attention of the designated project manager, Evelyn Moran no later than June 9, 2023, attention.org. Questions regarding this project should be sent to the attention of the designated project manager, Evelyn Moran no later than June 9, 2023, attention of the designated project manager.

You must indicate receipt of this addendum on the last page of the Proposal. Failure to do so may cause rejection of your bid.

APPROVED BY:

Chad Mosley

Acting Director of Public Works/City Engineer



ADDENDUM NO. 2

Regnart Road Improvements Phase 1 PROJECT NO. 2019-08

Bid Opening: June 15, 2023 - 2:00 P.M. Issue Date: June 1, 2023

The following revisions are hereby made to the above referenced project:

1. Replace Addendum 1 document:

'2019-08 Regnart Road Improvements Phase 1_Environmental Permit'

with

'2019-08 Regnart Road Improvements Phase 1_California Department of Fish and Wildlife Streambed Alteration Agreement'

No other changes were made to the Manual and Plan Set.

Only questions received in writing will be accepted for response. Send questions by e-mail to EvelynM@cupertino.org. Questions regarding this project should be sent to the attention of the designated project manager, Evelyn Moran no later than June 9, 2023, at 5:00 PM.

You must indicate receipt of this addendum on the last page of the Proposal. Failure to do so may cause rejection of your bid.

APPROVED BY:

Chad Mosley

Acting Director of Public Works/City Engineer



CITY OF CUPERTINO

Agenda Item

23-12329 Agenda Date: 7/6/2023

Agenda #: 12.

Subject: Award a contract for the Creekside Park School Age Play Area to Ross Recreation Equipment, Inc. for the purchase and installation of themed playground equipment.

- 1. Award an equipment procurement and installation contract for the Creekside Park School Age Play Area (Budget Unit 420-99-085) in the amount of \$283,873.50 to Ross Recreation Equipment, Inc. using pricing established through the National Purchasing Partners;
- 2. Authorize the City Manager to execute an equipment procurement and installation contract when all conditions have been met; and
- 3. Authorize the Director of Public Works to execute any necessary change orders up to a contingency amount of \$28,388 (10%) for a total contract amount of \$312,261.50.



PUBLIC WORKS DEPARTMENT

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

CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

Subject

Award a contract for the Creekside Park School Age Play Area to Ross Recreation Equipment, Inc. for purchase and installation of themed playground equipment.

Recommended Action

- 1. Award an equipment procurement and installation contract for the Creekside Park School Age Play Area (Budget Unit 420-99-085) in the amount of \$283,873.50 to Ross Recreation Equipment, Inc. using pricing established through the National Purchasing Partners;
- 2. Authorize the City Manager to execute an equipment procurement and installation contract when all conditions have been met; and
- 3. Authorize the Director of Public Works to execute any necessary change orders up to a contingency amount of \$28,388 (10%) for a total contract amount of \$312,261.50.

Reasons for Recommendation

The Annual Playground Equipment Replacement Project (Project) was initially authorized as a five-year program in Fiscal Year (FY) 2020 – 2021 committing \$300,000 each year to fund the replacement of aging playgrounds. The Creekside Park Play Areas were selected to be the first of the replacement projects due to their age and condition. The City of Cupertino completed improvements to the Creekside Park Tot Lot in FY 2022 - 2023.

The Parks and Recreation System Master Plan (Master Plan) calls for support of all-inclusive and universal play by providing a destination for all-inclusive play and adding additional inclusive elements to existing play areas. Inclusive elements allow users with special needs or sensory challenges access to enjoyable recreation opportunities. The playground equipment that will be installed in this project incorporates inclusive elements, meets Americans with Disabilities Act (ADA) requirements, and meets the Master Plan goal of building and repairing existing parks. This increases the level of service while allowing a specific demographic an equal opportunity to play using specialized playground equipment.

Background

A November 2020 community survey considered themed playground equipment for Creekside Park and the residents selected "creek" as the top theme. Having themed playground equipment addresses the Master Plan recommendation to incorporate themed play areas as part of a diversity initiative for outdoor recreation.

On May 4, the proposed layout, inclusive elements, and theme were presented to the Parks and Recreation Commission for input and the Commission selected three inclusive elements for the design. Attachment A illustrates the proposed playground equipment with these inclusive design elements incorporated.

Discussion

Competitive pricing for playground equipment purchases and installation for this project was provided through the National Purchasing Partners LLC dba NPPGov. This program allows California State and local agencies to contract with qualified suppliers without a separate competitive bidding process. Ross Recreation Equipment Inc. (Ross) is a qualified supplier whose equipment options and proposed design layout were the best match for the park playground's requirements, including theme and inclusivity. The scope of work will include design, manufacturing, installation of the playground equipment, and the installation of surfacing. Ross is a qualified contractor that can meet the requirements of this project.

Award of this project using the NPPGov pricing meets public contract code requirements for a competitive process pursuant to Public Contracts Code section 10298(a). The City could decide to bid the project through the typical Request for Proposal process, but it is unlikely to result in increased savings and would take additional time.

Accessibility improvements to the pathway from the playground will be required. This additional work will be contracted and implemented by others, separate from this project.

Sustainability Impact

This project increases the level and diversity of services within walking distance of many homes. Increasing amenities accessed by walkers, people with strollers, and wheelchair access is consistent with the Climate Action Plan Goal 2 – Encourage Alternative Transportation.

Fiscal Impact

No additional funding is needed. Approving this item will expend \$283,873.50, with a project contingency of \$28,388.00. The current Capital Improvement Budget for this program (Account # 420-99-085) contains \$602,861.04.

Current Fiscal Summary:

Current Funding Status	Amount
Budgeted Funds for Playground	
Replacement projects (Capital	
Reserve)	\$900,000.00
Expenses to Date (Creekside Park	(\$297,138.96)
Tot Lot)	

Subtotal \$602,861.04

Proposed Funding Impact	Amount
Projected Misc. Project Costs	
(permit fees, ADA scope, etc.)	(\$68,654.21)
Projected Construction Total	(\$312,261.50)

Subtotal (\$380,915.71)

Total Remaining Program Budget

after Project Completion \$221,945.33

California Environmental Quality Act (CEQA)

The project is categorically exempt from CEQA per CEQA Guidelines sections 15301 (existing facilities), 15302(replacement or reconstruction of existing structures), and 15304(minor alterations to land).

Prepared by: Evelyn Moran, Project Manager

Reviewed by: Susan Michael, Capital Improvement Programs Manager

Reviewed by: Chad Mosley, Interim Public Works Director

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Representation of Proposed Playground Equipment

B - Draft Contract



Playground Design

Creekside School Age: "Creek" theme



Playground Design - Inclusive Elements

Creekside School Age: "Creek" theme



PUBLIC WORKS CONTRACT



1. PARTIES

This public works contract ("Contract") is made by and between the	City of Cupertino ("City"), and
Ross Recreation Equipment, Inc.	, a Corporation
("Contractor") for Playground Equipment Replacement Project 2021-02	
and is effective on the last date signed below ("Effective Date").	

2. SCOPE OF WORK

Contractor will perform and provide all labor, materials, equipment, supplies, transportation and any other items or work necessary to perform and complete the work required for the Project ("Work"), as required in the Scope of Work, attached here and incorporated as **Exhibit A**, and in accordance with the terms and conditions of this Contract. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID 19.

3. TIME FOR COMPLETION

- 3.1 Term. This Contract begins on the Effective Date and ends on September 30, 2024 ("Contract Time") unless terminated earlier as provided herein. Contractor's Work shall begin on the date shown on a written Notice to Proceed ("NTP") and must be fully completed within the Contract Time or on the date specifically provided in the Notice to Proceed. The City Engineer will not issue a NTP until the Contract is fully executed by both parties and City has received satisfactory proof of insurance and any performance and payment bonds that may be required. The Director of Public Works may authorize the extension of the Contract Time by up to sixty (60) calendar days through a written amendment to this Agreement, provided such extension does not include additional contract funds.
- 3.2 Time is of the essence for Contractor's performance and completion of the Work. Contractor must have sufficient time, resources, and qualified staff to deliver the work on time.
- 3.3 Liquidated damages of \$500 will be charged for each day of unexcused delay, or City may deduct the amount from Contractor's payments. Liquidated damages are based on reasonably foreseeable consequences of delay and may include intangible losses which the Parties agree may be difficult to ascertain, such as loss of public confidence in City and its contractors, interference or loss of use of public facilities, and extended disruption to the public.

4. <u>COMPENSATION</u>

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Work an amount that will based on actual costs but that will be capped so as not to exceed \$283,873.50 ("Contract Price"), for all of Contractor's direct and indirect costs, including all labor, materials,

supplies, equipment, taxes, insurance, bonds, and all overhead costs.

4.2 Invoices and Payments. Contractor must submit an invoice on the first day of each month, describing the Work performed during the preceding month, itemizing labor, materials, equipment and any incidental costs incurred. Contractor will be paid ninety-five percent (95%) of the undisputed amounts billed within thirty (30) days after City receives a properly submitted invoice. Any retained amounts will be included with Contractor's final payment within sixty (60) days of City's acceptance of the Work as complete.

5. <u>INDEPENDENT CONTRACTOR</u>

- **5.1 Status.** Contractor is an independent contractor and not an employee of City. Contractor is solely responsible for the means and methods of performing the Work and for the persons under this employment. Contractor is not entitled to worker's compensation or any other City benefits.
- **5.2** Contractor's Qualifications. Contractor 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.
- **5.4 Subcontractors.** Only Contractor's employees are authorized to work under this Contract. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Contract will apply to any approved subcontractor.
- **Tools, Materials, and Equipment.** Contractor will supply all tools, materials and equipment required to perform the Work under this Contract.
- employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this

Agreement, or to promptly remint to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

6. CHANGE ORDERS

Amendments and change orders must be in writing and signed by City and Contractor. Contractor's request for a change order must specify the proposed changes in the Work, Contract Price, and Contract Time. Each request must include all the supporting documentation, including but not limited to plans/drawings, detailed cost estimates, and impacts on schedule and completion date.

7. ASSIGNMENTS; SUCCESSORS

Contractor shall not assign, hypothecate, or transfer this Contract or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Contract and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity. This Contract is binding on Contractor, its heirs, successors, and permitted assigns.

8. PUBLICITY / SIGNS

Any publicity generated by Contractor for the Project during the Contract Time, and for one (1) year thereafter must credit City contributions to the Project. The words "City of Cupertino" must be displayed in all pieces of publicity, flyers, press releases, posters, brochures, interviews, public service announcements, and newspaper articles. No signs may be posted or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

9. <u>SUBCONTRACTORS</u>

- 9.1 Contractor must perform all the Work with its own forces, except that Contractor may hire qualified subcontractors to perform up to _____1010% of the Work, provided that each subcontractor is required by contract to be bound by the provisions of this Contract. Contractor must provide City with written proof of compliance with this provision upon request.
- 9.2 City may reject any subcontractor of any tier and bar a subcontractor from performing Work on the Project, if City in its sole discretion determines that subcontractor's Work falls short of the requirements of this Contract or constitutes grounds for rejection under the Public Contract Code. If City rejects a subcontractor, Contractor at its own expense must perform the subcontractor's Work or hire a new subcontractor that is acceptable to City. A Notice of Completion must be recorded within fifteen (15) days after City accepts the Work if the Contract involves work by subcontractors.

10. RECORDS AND DAILY REPORTS

10.1 Contractor must maintain daily reports of the Work and submit them to City upon request and at completion of Project. The reports must describe the Work and specific tasks performed, the number of

workers, the hours, the equipment, the weather conditions, and any circumstances affecting performance. City will have ownership of the reports, but Contractor will be permitted to retain copies.

- 10.2 If applicable, Contractor must keep a separate set of as-built drawings showing changes and updates to the Scope of Work or the original drawings as changes occur. Actual locations to scale must be identified for all major components of the Work, including mechanical, electrical and plumbing work; HVAC systems; utilities and utility connections; and any other components City determines should be included in the final drawings of the Project. Deviations from the original drawings must be shown in detail, and the location of all main runs, piping, conduit, ductwork, and drain lines must be shown by dimension and elevation.
- 10.3 Contractor must maintain complete and accurate accounting records of its Work, in accordance with generally accepted accounting principles, which must be available for City review and audit, kept separate from other records, and maintained for four (4) years from the date of City's final payment.

11. <u>INDEMNIFICATION</u>

- 11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor 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, stop notices, actions, causes of action, demands, charges, losses 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 Contract or in any manner relating to any of the following:
 - (a) Breach of contract, obligations, representations or warranties;
 - (b) Performance or nonperformance of the Work or of any obligations under the Contract by Contractor, its employees, agents, servants, subcontractors or subcontractors;
 - (c) Payment or nonpayment by Contractor or its subcontractors or sub-subcontractors for Work performed on or off the Project Site; and
 - (d) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors.
- 11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor 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, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Contract.
- 11.3 Contractor's duties under this entire Section 11 are not limited to Contract Price, Workers' Compensation, or other employee benefits, or the insurance and bond coverage required in this Contract. Nothing in the Contract shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.
- 11.4 Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Contract, a purchase order or other transaction.

- 11.5 Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.
- 11.6 This Section 11 shall survive termination of the Contract.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit B.** Contractor must provide satisfactory proof of insurance and maintain it for the Contract Time or longer as required by City. City will not execute the Contract until City has approved 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 at Contractor's expense, deducting the costs from Contractor's compensation, or terminating the Contract.

13. COMPLIANCE WITH LAWS

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

13.2 Labor Laws.

- (a) The following provisions apply to contracts of \$1,000 or more:
 - (i) In General. For purposes of California labor law, this is a public works contract subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.). In accordance with Labor Code Section 1771, Contractor and all subcontractors shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations ("DIR") to all workers employed on this project. In accordance with Labor Code Section 1815, Contractor and all subcontractors shall pay all workers employed on this project 1 ½ the basic rate of pay for work performed in excess specified hour limitations. The work performed pursuant to this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
 - (ii) Registration. Contractor and all subcontractors shall not engage in the performance of any work under this Contract unless currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. Contractor represents and warrants that it is registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code and will provide its DIR registration number, along with the registration numbers of any subcontractors as required, to the City.

- (iii) **Posting**. Contractor shall post at the job site the determination of the DIR director of the prevailing rate of per diem wages together with all job notices that are required by regulations of the DIR.
- (iv) **Reporting.** Contractor and any subcontractors shall keep accurate payroll records in accordance with Section 1776 of the Labor Code and shall furnish the payroll records directly to the Labor Commissioner in accordance with the law.
- (v) Report on Prevailing Rate of Wages. The City has obtained the general prevailing rate of per diem wages in the vicinity of the project for each type of worker needed, a copy of which is on file at the City of Cupertino City Hall, and shall be made available to any interested party upon request.
- (vi) Employment of Apprentices. Contractor's attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor. It shall be the responsibility of the Contractor to effectuate compliance on the part of itself and any subcontractors with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- (vii) Penalties. Contractor's attention is directed to provisions in Labor Code Sections 1775 and 1813. In accordance with Labor Code Section 1775, Contractor and subcontractors may be subject to penalties for Contractor's and subcontractors' failure to pay prevailing wage rates. In accordance with Labor Code Section 1813, Contractor or subcontractors may be subject to penalties for Contractor's or subcontractors' failure to pay overtime pay rates for hours worked by workers employed on this project in excess specified hour limitations.
- (b) Contractor must compensate workers who are paid less than prevailing wages or required to work more than a legal day's work. Contractor 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 Contract Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code 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 work of this contract."
- 13.3 Discrimination Laws. Contractor 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. Contractor 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, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

- 13.4 Conflicts of Interest. Contractor, its employees, subcontractors, servants and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract 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 Contract, 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. Contractor, its employees, subcontractors, servants, and agents warrant they are not employees of City nor do they have any relationship with City officials, officers, or employees that creates a conflict of interest. Contractor 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 Title 2 of the California Code of Regulations. Contractor agrees to abide by City rules governing gifts to public officials and employees.
- 13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating the Contract. City reserves all rights and remedies under the law and this Contract, including seeking indemnification.

14. **BONDS**

For contracts of \$25,000 or more, Contractor must obtain a payment bond and a performance bond, each in the penal sum of 100% of the Contract Price, using the Bond Forms attached and incorporated here as **Exhibit C**. Each bond must be issued by a surety admitted in California, with a financial rating from A.M. Best Company of Class A- or higher, or as otherwise acceptable to City. If an issuing surety cancels a bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable to City within seven (7) calendar days after written notice from City. If Contractor fails to do so, City may in its sole discretion and without prior notice, purchase bonds at Contractor's expense, deduct the cost from payments due Contractor, or terminate the Contract. City will not execute the Contract nor issue the NTP until the required bonds are submitted.

15. UTILITIES, TRENCHING, AND EXCAVATION

- 15.1 Contractor must call the Underground Service Alert ("USA") 811 hotline and request marking of utility locations before digging or commencing Work. 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 Contractor to notify City and Utility in writing if it discovers utilities or utility facilities not identified in the Contract.
- 15.2 Pursuant to Government Code Section 7104, Contractor must stop work, notify City in writing, and wait for instructions if one of the conditions below is found at the worksite. City will work with Contractor to amend the Contract or issue a change order if the discovered conditions materially change the Work/Performance, Contract Time or Contract Price.
 - (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 Contractor; and

- (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.
- 15.3 For contracts \$25,000 or higher that require excavation or involve trenches five feet or more in depth, Contractor 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.

16. <u>URBAN RUNOFF MANAGEMENT</u>

- 16.1 All Work must fully comply with federal, state, and local laws and regulations concerning storm water management. Contractor must avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, Contractor will use only the amount of water necessary to dampen the dust. Contractor will take all steps necessary to keep wash water out of the streets, gutters, and storm drains. Prior to the start of the Work, Contractor 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 Contract 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.
- 16.2 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. Contractor's failure to comply with this Section will result in the issuance of noncompliance notices, citations, Work stop orders and regulatory fines.

17. PROJECT COORDINATION

City Project Manager. City assigns Evelyn Moran	as
the City representative for all purposes under this Contract, with authority to require compliance v	with
the Scope of Work. City may substitute Project Managers at any time and without prior notice to	
Contractor.	
Contractor Project Manager. Subject to City approval, Contractor assigns David Ruggles	
David Ruggles as its single representative for all purposes un-	der this
Contract, with the responsibility to ensure progress with the Work. Contractor'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 substitution	ons must
be approved in writing by City.	

18. <u>ABANDONMENT AND TERMINATION</u>

- 18.1 City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Work performed through the date of abandonment and will be given reasonable time to close out the Work. With City's pre-approval in writing, the time spent in closing out the Work will be compensated up to ten percent (10%) of the total time expended in performing the Work.
- 18.2 City may terminate the Contract for cause or without cause at any time. Contractor will be paid for satisfactory Work rendered through the termination date and will be given reasonable time to close out the Work.
- 18.3 Final payment will not be made until Contractor delivers the Work and provides records documenting the Work, products and deliverables completed. Nothing in the Section below is intended to delay, abridge or bar City's right under this Section.

19. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

This Contract 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, et seq., incorporated here by reference, apply to this Contract and Contractor is required to continue the Work pending resolution of any dispute. Prior to filing a lawsuit, Contractor 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. ATTORNEY 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 Contract, the prevailing party will be entitled to reasonable attorney fees and costs.

21. SIGNS/ADVERTISEMENT

No signs may be displayed on or about City's property, except signage which is required by law or by the Contract, without City's prior written approval as to size, design and location.

22. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Contract.

23. WAIVER

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

24. WARRANTY

Contractor warrants that materials and equipment used will be new, of good quality, and free from defective workmanship and materials, and that the Work will be free from material defects not intrinsic in the design or materials. All Work, materials and equipment should pass to City free of claims, liens or encumbrances. Contractor warrants the Work and materials for one year from the date of City's acceptance of the Work as complete ("Warranty Period"), except when a longer guarantee is provided by a supplier, manufacturer or is required by this Contract. During the Warranty Period, Contractor will repair or replace any Work defects or materials, including damage that arises from Contractor's Warranty Work, except any wear and tear or damage resulting from improper use or maintenance.

25. ENTIRE CONTRACT

This Contract and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete contract between City and Contractor with respect to the Work and the Project. No oral contract or implied covenant will be enforceable against City. If there is any inconsistency between any term, clause, or provision of the main Contract and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Contract shall prevail and be controlling.

26. <u>SEVERABILITY/PARTIAL INVALIDITY</u>

If a court finds any term or provision of this Contract to be illegal, invalid, or unenforceable, the legal portion of said provision and all other contract provisions will remain in full force and effect.

27. SURVIVAL

The contract provisions which by their nature should survive the Contract or Completion of Project, including without limitation all provisions regarding warranties, indemnities, payment obligations, insurance, and bonds, shall remain in full force and effect after the Work is completed or Contract ends.

28. INSERTED PROVISIONS

Each provision and clause required by law to be inserted in this Contract 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.

29. <u>CAPTIONS</u>

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

30. COUNTERPARTS

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

31. 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 (5th) calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

To City of Cupertino:

10185 N. Stelling Rd, Cupertino CA 9501

Attention: cc: Representative/Coordinator

Copy to: Evelyn Moran

Email: evelynm@cupertino.org

To Contractor:

Ross Recreation Equipment, Inc.

100 Brush Creek Road, #206, Santa Rosa, CA, 95404 Attention: cc: Representative/Coordinator

Copy to: Heather Hailey

Email: heatherh@rossrec.com

32. <u>EXECUTION</u>

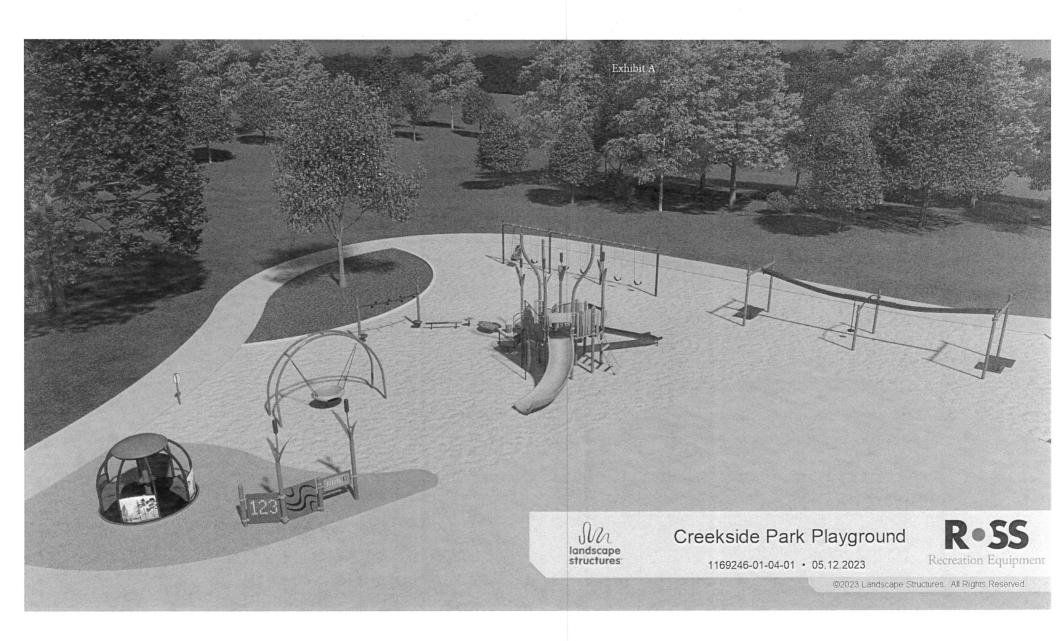
The persons signing below warrant they have the authority to enter into this Contract and to legally bind their respective Parties. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK [SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the Execution Date first above written.

CITY OF CUPERTINO,	CONTRACTOR
a Municipal Corporation	Ross Recreation Equipment, Inc.
	_100 Brush Creek Road, #206, Santa Rosa
	By:
By:	By:
City Manager	Titl Contract Administrator
Title: City Manager	Title: Contract Administrator
S'	G' Lun 15, 2023
Signature Date:	Signature Date: Jun 15, 2023
APPROVED AS TO FORM:	
ATTROVED AS TO FORM.	
By:	
CHRISTOPHER D. JENSEN	
Cupertino City Attorney	
ATTEST:	
By:	
KIRSTEN SQUARCIA, City Clerk	
Date:	

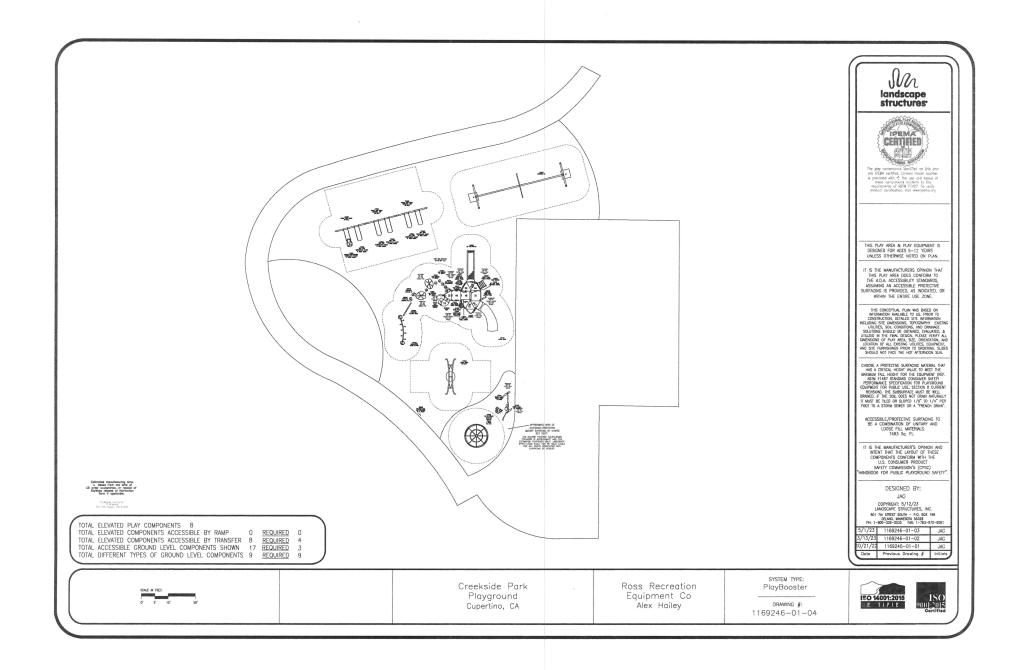
Page 12 of 12













ALL PURCHASE ORDERS, CONTRACTS, AND CHECKS TO BE MADE OUT TO:
Ross Recreation Equipment, Inc.
100 Brush Creek Road, #206
Santa Rosa, CA. 95404
707.538.3800 - accounting@rossrec.com

PS21070

Prepared For:

Bill To Name

Cupertino, City of

Bill To

10555 Mary Ave

Cupertino, California 95014

United States

Ship To Name

Creekside Park

Ship To

10455 Miller Ave

Cupertino, California

United States

Quote Number

00039900

Quote Date

5/15/2023

Opportunity Name

Creekside Upper Playground

Quote Exp Date

6/15/2023

Quote Name

Creekside Upper Playground

Est Lead Time

Check with Sales Rep

Quantity	Product	Product Description	Sales Price	Total Price
1.00	Rentals	500 linear feet of temporary construction fencing	\$3,192.00	\$3,192.00
1.00	Demolition	Removal and haul away of existing PlayBooster structure and swings. *Footings will remain in place except where in conflict with new post footings.	\$9,334.00	\$9,334.00
1.00	Site Work	New concrete ADA transition ramp from sidewalk into EWF, estimated at 4' x 6'	\$2,000.00	\$2,000.00
1.00	PlayBooster, 5-12	Landscape Structures PlayBooster, ages 5-12. Design #1169246-01-04	\$149,665.00	\$149,665.00
		Installation of Landscape Structures design #1169246-01-04 by a manufacturer certified installer.		
1.00	Install - Play Equipment	*Project DIR # needed for State Prevailing Wage projects. *Installation price quoted for favorable working conditions. If rock, poor soil conditions, a high water table and/or other unforeseen site conditions exist requiring additional materials and labor, additional charges may be incurred. *Installation quoted includes standard manufacturer provided footing details. If different footing details are provided by the owner/specifier, a change order will be required. *Installation quoted includes installing footings through native soil or 95% compacted base rock. If installing through concrete, asphalt or through less compacted or permeable base or drain rock, or in other conditions, please provide additional details and a change order may be required.	\$52,383.00	\$52,383.00
1.00	Engineered Wood Fiber	Fibar engineered wood fiber safety surfacing materials, approximately 4" of top off material for play area. If additional depth is determined to be needed, a change order can be provided.	\$4,398.00	\$4,398.00
1.00	Install - Wood Fiber	Blow in installation of 4" of engineered wood fiber for play area footprint. Install site must be within 250' feet of semi-truck access or additional charges may apply.	\$6,136.00	\$6,136.00
1.00	Bond	Payment & Performance Bonds	\$8,268.11	\$8,268.11
		Surface America Poured-In-Place Rubber surfacing materials: ~ Square Footage: 648 sqft (per takeoff of playground drawing + bevel into wood chips) ~ Thickness: 1-3/4" (per 4' CFH of play equipment) ~ Binder: Aliphatic		
1.00	Surface America PIP	~ Color: 50% Color & 50% Black speckled mix *Rubber surfacing will follow the contour of the sub-base and will be 1.75" thick throughout the area.	\$8,597.00	\$8,597.00

\$283,873.50

Alex Hailey

alexh@rossrec.com

	Rubber	*Any change to color, thickness, square footage order. *Pricing does not include sub-base materials. *Thicknesses quoted to meet industry standards GMax.	, , , , , , , , , , , , , , , , , , , ,		
1.00	Install - Rubber Surfacing	Installation of Surface America Poured-in-Place in a 1-3/4" thickness by a manufacturer certified inspreparation, drainage, design work or inspections standards for ASTM testing of 1000 HIC/200 GM	staller. Price does not include sub-base s. *Thicknesses installed to meet industry	\$8,135.00	\$8,135.00
1.00	Security	Customer is declining security; a security opt out	waiver will be required.	\$0.00	\$0.00
1.00	Site Work	Supply and installation of 648sf of compacted ba rubber in We-Go-Swing area. Base to be beveled	귀장 되는 마음을 하여 하게 되는 수 없는 수 있다. 그는 그들은 그리고 있다면 그게 하는데 되었다.	\$7,776.00	\$7,776.00
1.00	NPP Ross Discount	NPP Contract Discount on Materials: Please Pro	vide Customer NPP #	-\$11,212.22	-\$11,212.22
Cı	redit Terms	Net 30 On Materials Shipment	Materials Amount		\$151,447.78
			Tax Amount		\$13,819.61
			Labor Amount		\$97,224.11
			Freight Amount		\$21,382.00

Notes to Customer

SIGNATURE BELOW ACCEPTING THIS PROPOSAL WILL CONSTITUTE A PURCHASE ORDER ONLY UPON APPROVAL BY ROSS RECREATION EQUIPMENT, INC. CUSTOMER RECEIPT OF AN ORDER ACKNOWLEDGEMENT CONSTITUTES SUCH APPROVAL.

New Section	
Signature	The second section of the second section of the second section of the second section section of the second section sec
Name	
Title	
Date	

Note to Customer

Total

Thank you for the opportunity to quote your upcoming project. PLEASE NOTE: Quote does not include engineering calculations, security, storage, permits, inspection or safety surfacing, unless otherwise noted. Unless noted, freight costs are based on semi-truck access and do not include a lift-gate. Your purchase is subject to the terms and conditions of this quote. Approval of this quote agrees to those terms. Sales tax will be based on the current rate at the time of shipping, not the order date. Customer will be expected to cover these, or any changes, to sales taxes.

If ordering materials after the quoted expiration date, please contact your sales representative for current pricing. Due to material cost increases and a fluid pricing environment, Ross Recreation cannot hold pricing past the stated Expiration Date on this quote. To secure current pricing, Ross Recreation will require the following:

- PO, signed quote or contract with approval for the order.
- Deposit if required by credit terms.

Alex Hailey

alexh@rossrec.com

- Color selections and/or approved submittals.
- Acceptance of delivery when materials or equipment is ready to ship. Products cannot be held nor stored.

Ross Recreation will provide labor using a subcontractor for all installation and labor quoted. Neither Ross Recreation, nor our subcontractors, are signatory to any unions; however, compliance with prevailing wage rate requirements will occur. If union enrollment is required by our subcontractor for completion of this project, Ross Recreation will require a Change Order to cover the costs of a per project enrollment and additional wage/benefit requirements.

ROSSREC-01

CC 07-06-2023

265 of 344 VRYAN

DATE (MM/DD/YYYY) 6/13/2023

ACORD

CERTIFICATE OF LIABILITY INSURANCE

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

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

CONTACT Victoria Ryan

PRC	DUCER				NAME:	· victoria i	tyan			
	Co Insurance Services E Hamilton Ave			,	PHONE (A/C, No,	Ext): (408) 5	10-5440	FAX (A/C, No):	(415)	382-0676
#41	0				E-MAIL ADDRES	s: victoria.r	yan@proc	o.global		
Can	npbell, CA 95008					INS	URER(S) AFFOR	RDING COVERAGE		NAIC#
					INSURER			es Insurance Compan	y, Inc.	
INSL	JRED							Company of Wiscons		24414
	Ross Recreation Equipment	Con	anan	v Inc			-	ce Company		34630
	100 Brush Creek Road, Ste 2		ipaii	у, шс.	INSURER		or mounding	oo oompany		0.1000
	Santa Rosa, CA 95404				INSURER					
					INSURER					
-	VEDACES CED	TIFI	- A T	NUMBED.	INSURER	(F:		REVISION NUMBER:		
	VERAGES CER HIS IS TO CERTIFY THAT THE POLICIE			ENUMBER:	LAVE DE	ENTRELEDIT			HE DO	LICY DEDICE
	NDICATED. NOTWITHSTANDING ANY R									
С	ERTIFICATE MAY BE ISSUED OR MAY	PER	TAIN,	THE INSURANCE AFFORD	DED BY	THE POLICI	ES DESCRIB			
	XCLUSIONS AND CONDITIONS OF SUCH									
INSR LTR		INSD	SUBR	POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	S	4 000 000
Α	X COMMERCIAL GENERAL LIABILITY							EACH OCCURRENCE	\$	1,000,000
	CLAIMS-MADE X OCCUR	X	X	AES1029524 04		10/1/2022	10/1/2023	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	50,000
	,							MED EXP (Any one person)	\$	
								PERSONAL & ADV INJURY	\$	1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$	2,000,000
	POLICY X PRO- JECT LOC							PRODUCTS - COMP/OP AGG	\$	2,000,000
	OTHER:							Poli Aggregat	\$	5,000,000
B AUTOMOBILE LIABILITY								COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
	X ANY AUTO	Х	X	BCA000407003		401410000 401410000	BODILY INJURY (Per person)	\$		
	OWNED SCHEDULED AUTOS	-	1					BODILY INJURY (Per accident)		
	HIRED NON-OWNED AUTOS ONLY							PROPERTY DAMAGE (Per accident)	\$	
	AUTOS ONLY AUTOS ONLY							(i oi dooidoit)	\$	
Α	UMBRELLA LIAB X OCCUR							EACH OCCURRENCE	\$	2,000,000
	X EXCESS LIAB CLAIMS-MADE			EXA1055294 04		10/1/2022	10/1/2023	AGGREGATE	\$	
	DED X RETENTION\$							Aggregate	s	2,000,000
С								X PER OTH- STATUTE ER	- D	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Х	ROWC330091		10/1/2022	10/1/2023			1,000,000
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N/A						E.L. EACH ACCIDENT	\$	1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - EA EMPLOYEE	\$	1,000,000
	DESCRIPTION OF OPERATIONS below		-					E.L. DISEASE - POLICY LIMIT	\$	1,000,000
	CRIPTION OF OPERATIONS / LOCATIONS / VEHICL ekside Park	.ES (A	CORE	0 101, Additional Remarks Schedu	ile, may be	attached if more	e space is requir	red)		
	of Cupertino are named as additional in	sure	d on	general liablity and auto c	overage	s per attache	ed endorsem	ent. Waiver of subrogati	on app	lies per
	ched forms.									
can	cellation terms will follow the policy terr	iis ai	iiu co	munions						
CE	RTIFICATE HOLDER				CANC	ELLATION				

City of Cupertino 10555 Mary Ave Cupertino, CA 95014 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

III state

ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations		
All persons or organizations where required by contract with the Named Insured	All locations		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

- A. Section II Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - 1. Your acts or omissions; or
 - The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- **B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or

"Property damage" occurring after:

- All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- C. With respect to the insurance afforded to these additional insureds, the following is added to Section III Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
All persons or organizations where written contract with the Named Insured requires additional insured completed operations coverage	All locations
Information required to complete this Schedule, if not sho	own above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are

- required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER: AES10295 24

COMMERCIAL GENERAL LIABILITY CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

All persons or organizations where required by written contract with the Named Insured

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

POLICY NUMBER: AES10295 24

COMMERCIAL GENERAL LIABILITY CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGES IN COMMERCIAL AUTO COVERAGE FORM

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

A. BROADENED WHO IS AN INSURED

Paragraph A.1. Who Is an Insured of SECTION II
— LIABILITY COVERAGE is amended to include the following:

- d. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.
- e. Any "employee" of yours is an "insured" while using an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.
- f. Each person or Organization to whom you are required by a written contract or agreement to provide additional insured status is an "insured" under Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who is an Insured Provision contained in Section II of the coverage form. The written contract or agreement must be in effect during the policy period shown in the Declarations and must have been executed prior to the "bodily injury" or "property damage."

B. LIABILITY COVERAGE EXTENSIONS SUPPLE-MENTARY PAYMENTS

Paragraphs A.2.a. (2) and A.2.a. (4) Coverage Extensions — Supplementary Payments of SECTION II — LIABILITY COVERAGE are deleted and replaced with the following:

(2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds. (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. FELLOW EMPLOYEE COVERAGE

Paragraph B.5. Fellow Employee Exclusion contained in SECTION II — LIABILITY COVERAGE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire that is not a bus, motorcycle or van used to transport employees.

This Fellow Employee Coverage is excess over any other collectible insurance.

D. POLLUTION LIABILITY — BROADENED COVERAGE FOR COVERED AUTOS

- 1. Liability Coverage is changed as follows:
 - Paragraph B.11.a. of the Pollution Exclusion in SECTION II LIABILITY COVERAGE applies only to liability assumed under a contract or agreement.
 - b. With respect to the coverage afforded by Paragraph 1.a. Above, Exclusion B.6.
 Care, Custody or Control of SECTION II

LIABILITY does not apply.

2. Changes in Definitions

For the purposes of this endorsement, Paragraph **D.** of **SECTION V** — **DEFINITIONS** is replaced by the following:

- **D.** "Covered pollution cost or expense" means any cost or expense arising out of:
 - Any request, demand, order or statutory or regulatory requirement that any
 "insured" or others test for, monitor,
 clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants": or

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Any claim or "suit" by or on behalf of a
governmental authority for damages because of testing for, monitoring, cleaning
up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs a. and b. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

This Pollution Liability Coverage is subject to an Annual Aggregate Limit of Liability of \$100,000.

E. NEWLY ACQUIRED OR FORMED ORGANIZATIONS

Throughout this policy, the words you and your also refer to any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, but only if there is no similar insurance available to that organization.

However:

1. The coverage does not apply to an "accident" which occurred before you acquired or formed the organization.

- Unless you notify us to add coverage to your policy, the coverage under this provision is afforded only until:
 - a. The 120th day after you acquire or form the organization, or
 - The end of the policy period, whichever is earlier.

F. EXTENDED TOWING

Paragraph A.2. Towing of SECTION III — PHYSICAL DAMAGE COVERAGE is deleted and replaced with the following:

We will pay for towing and labor costs each time a covered "auto" is disabled. All labor must be performed at the place of disablement. If the "auto" is of the private passenger type, there will be no deductible. If the "auto" is other than a private passenger type, a \$100 deductible will apply.

The most we will pay under this **EXTENDED TOW-ING** coverage is \$750 per occurrence.

G. PHYSICAL DAMAGE COVERAGE EXTENSIONS

Paragraph A.4. — Coverage Extensions of SECTION III — PHYSICAL DAMAGE COVERAGE is amended as follows:

a. Transportation Expenses

The amount we will pay for temporary transportation expense is increased to \$50 per day to a maximum of \$3,000.

b. Loss of Use Expenses

The amount we will pay for loss of use is increased to \$75 per day and to a maximum limit of \$1,000.

H. RENTAL REIMBURSEMENT

- This coverage applies only to a covered "auto" described or designated in the Schedule or in the Declarations as carrying physical damage coverage.
- 2. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of coverage you have on each covered "auto".
- 3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

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- a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
- **b.** 30 days.
- 4. Our payment is limited to the lesser of the following amounts:
 - Necessary and actual expenses incurred; or
 - **b.** \$50 per day
- This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
- 6. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the paragraph A.4. Coverage Extensions in SECTION III PHYSICAL DAMAGE COVERAGE.

No Deductible applies to this coverage.

I. AIRBAG COVERAGE

Exclusion B.3. in SECTION III — PHYSICAL DAMAGE COVERAGE is amended to add:

This exclusion does not apply to the accidental discharge of an airbag.

J. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT

1. Coverage

- a. We will pay with respect to a covered "auto" described in the Schedule for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".
- b. We will pay with respect to a covered "auto" described in the Schedule for "loss" to any accessories used with the electronic equipment described in Paragraph 1.a. above. However, this does not include tapes, records or discs.

2. Exclusions

The exclusions that apply to **SECTION III** — **PHYSICAL DAMAGE**, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided by this endorsement. In addition, the following exclusions apply:

We will not pay, under this endorsement, for either any electronic equipment or accessories used with such electronic equipment that is:

- a. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
- **b.** Both:
 - (1). An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto"; and
 - (2). Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

3. Limit Of Insurance

With respect to coverage under this endorsement, the Limit Of Insurance provision of SECTION III — PHYSICAL DAMAGE COVERAGE is replaced by the following:

- a. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:
 - (1). The actual cash value of the damaged or stolen property as of the time of the "loss":
 - (2). The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
 - (3). \$1,500.
- b. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".
- c. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

4. Deductible

No deductible applies to this coverage.

The insurance provided by this extension is excess over any other collectible insurance.

K. TAPES, RECORDS AND DISCS COVERAGE

Exclusion **B.4.a.** of **SECTION III** — **PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment except when the tapes, records, discs or other similar audio, visual or data electronic devices:
 - (1) Are your property or that of a family member, and
 - (2) Are in a covered "auto" at the time of "loss".
 - (a). The most we will pay for "loss" is \$200. No Physical Damage Coverage deductible applies to this coverage.

This extension provides coverage only to a covered "auto".

L. PHYSICAL DAMAGE DEDUCTIBLE — SINGLE DEDUCTIBLE AND GLASS REPAIR

Paragraph **D. Deductible** in **SECTION III** — **PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

D. Deductible

For each covered "auto," our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

When two or more covered "autos" sustain "loss" in the same occurrence, the total of all the "loss" for all the involved covered "autos" will be reduced by a single deductible, which will be the largest of all the deductibles applying to all such covered "autos."

No deductible applies to glass damage if the glass is repaired rather than replaced.

M. PERSONAL EFFECTS COVERAGE

 If you purchase Comprehensive Coverage on this policy for a stolen owned "auto", we will pay up to \$600 for "personal effects" stolen with the "auto". "Personal effects" as used in this extension means tangible property that is worn or carried by the "insured". "Personal effects" does not include tools, jewelry, money, securities, radar or laser detectors, or tapes, records, discs or similar audio, visual or data electronic equipment.

No Deductible applies to this extension.

The insurance provided by this extension is excess over any other collectible insurance.

N. LOAN/LEASE PAYOFF COVERAGE

The SECTION III — PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- The amount paid under the Physical Damage Coverage Section of the policy; and
- Any
 - a. Overdue lease/loan payments at the time of the "loss":
 - Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
 - Security deposits not returned by the lessor;
 - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the Ioan or lease; and
 - Carry-over balances from previous loans or leases.

O. CUSTOM SIGNS AND DECORATIONS

In the event of a total loss to a vehicle insured for auto physical damage coverage on this policy, in addition to the ACV of the vehicle, we will pay the actual cost to repair or replace signage or custom paint details up to \$5,000.

P. HIRED AUTO PHYSICAL DAMAGE

If hired "autos" are covered "autos" for Liability Coverage and if Physical Damage Coverage of Comprehensive, Specified Causes of Loss, or Collision are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverage's provided are extended to "autos" you hire of like kind and use subject to the following limit:

The most we will pay for any one loss is the lesser of the following:

1. \$50,000 per accident,

Includes copyrighted material of Insurance Services Office, Inc.,

- 2. Actual Cash Value, or
- 3. The cost of repair.

The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. This Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

Q. DUTIES IN EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

Subparagraphs A.2.a. of SECTION IV — BUSINESS AUTO CONDITIONS is deleted and replaced by:

- a. In the event of "accident", claim, "suit" or "loss", you, your insurance manager or any other person you designate must give us or our authorized representative prompt notice of such "accident" or "loss". Include:
 - How, when and where the "accident" or "loss" occurred;
 - (2) The "insured's" name and address; and
 - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

Knowledge of an "accident" or "loss" by your agent, servant or "employee" shall not be considered knowledge by you unless you, your insurance manager or any other person you designate has received notice of the "accident" or "loss" from your agent, servant, or "employee."

R. WAIVER OF SUBROGATION

SECTION IV — BUSINESS AUTO CONDITIONS— A. 5. Transfer of Rights of Recovery Against Others to Us is amended as follows:

This condition does not apply to any person or organization to which you waived this condition by written contract or agreement, but only to the extent that subrogation is waived prior to the "accident" or "loss" under a contract with that person or organization.

S. UNINTENTIONAL FAILURE TO DISCLOSE HAZ-ARDS

Paragraph B.2. Concealment, Misrepresentation Or Fraud in SECTION IV — BUSINESS AUTO CONDITIONS is amended by adding the following:

Any unintentional failure to disclose all exposures or hazards existing as of the effective date of the Business Auto Coverage Form or at any time during the policy period will not invalidate or adversely affect the coverage for such exposure or hazard. However, you must report the undisclosed exposure or hazard to us as soon as reasonably possible after its discovery.

T. EXTENDED EMPLOYEE HIRED AUTO PHYSICAL DAMAGE

Paragraph B.5.b. Other Insurance of SECTION IV
— BUSINESS AUTO CONDITIONS is deleted and replaced by the following:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:
 - **1.** Any covered "auto" you lease, hire, rent or borrow; and
 - 2. Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

U. POLICY PERIOD, COVERAGE TERRITORY

Paragraph B.7. Policy Period, Coverage Territory of SECTION IV — BUSINESS AUTO CONDITIONS is deleted and replaced by:

7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- **b.** Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- **b.** The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere in the world if:
 - (1) A covered "auto" is leased, hired, rented or borrowed for a period of 30 days or less; and

(2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

V. DEFINITION OF BODILY INJURY AMENDED

Paragraph C. of SECTION V — DEFINITIONS is amended to include:

"Bodily Injury" includes mental anguish or other mental injury resulting from "bodily injury." However, no coverage is provided for mental anguish or mental injury absent physical injury.

None of the extensions provided under this coverage endorsement apply if coverage is more specifically identified elsewhere in the policy or endorsements, for which a premium charge is made or a higher limit is identified. Under no circumstances is any limit provided under this extension to be combined with a limit provided elsewhere in the policy or endorsements.

POLICY NUMBER: BCA0004070-03

COMMERCIAL AUTO AH CA 85 97 09 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED — PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM AUTO DEALERS COVERAGE FORM MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 10/01/2022	Countersigned By:
Named Insured: Ross Recreation Equipment	
Company Inc	(Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s):	
As Per Written Contract	

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

- Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the
 extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.
- 2. This insurance is primary to and non-contributory with any other insurance for each person or organization shown in the schedule, when required by written contract or agreement that is in effect during the policy period and is signed and executed before any damage or "loss" occurs.

POLICY NUMBER: BCA0004070-03

COMMERCIAL AUTO CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM BUSINESS AUTO COVERAGE FORM MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Ross Recreation Equipment Company Inc

Endorsement Effective Date: 10/01/2022

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Any person or organization to which you waived this condition by written contract or agreement, but only to the extent that subgrogation is waived prior to the "accident" or "loss" under a contract with that person or organization.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The Transfer Of Rights Of Recovery Against Others To Us condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA BLANKET BASIS

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be calculated by applying a factor of 2% to the total manual premium, with a minimum initial charge of \$350, then applying all other pricing factors for the policy to this calculated charge to derive the final cost of this endorsement.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

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Blanket Waiver	
Person/Organization	Blanket Waiver – Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
Job Description	Waiver Premium (prior to adjustments)
All CA Operations	350.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 10/01/2022	Policy No.: ROWC330091	Endorsement No.:		
Insured:		Premium \$		
Insurance Company: Oak River Insurance Company				
	Countersign	ned by		

WC 99 04 10 C (Ed. 01-19)

DRAFT Ross Recreation for Playground Equipment Replacement Project 2021-02

Final Audit Report

2023-06-15

Created:

2023-06-14

Bv:

City of Cupertino (webmaster@cupertino.org)

Status:

Signed

Transaction ID:

CBJCHBCAABAAcB-TfbOk02jiRKF46ZkW_Oz-7V_ul1g_

"DRAFT Ross Recreation for Playground Equipment Replaceme nt Project 2021-02" History

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- Signer heatherh@rossrec.com entered name at signing as Heather Hailey 2023-06-15 4:47:49 PM GMT- IP address: 107.209.20.153
- Document e-signed by Heather Hailey (heatherh@rossrec.com)

 Signature Date: 2023-06-15 4:47:51 PM GMT Time Source: server- IP address: 107.209.20.153
- Agreement completed. 2023-06-15 - 4:47:51 PM GMT



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Acrobat Sign



CITY OF CUPERTINO

Agenda Item

Agenda Date: 7/6/2023 23-12335

Agenda #: 13.

Subject: Introduction of Ordinance No. 23-2249, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities)

Conduct a first reading of Ordinance No. 23-2249; "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTER 2.100," (Regulation of Lobbying Activities)



CITY ATTORNEY'S OFFICE

CITY HALL 10300 TORRE AVENUE• CUPERTINO, CA 95014-3255 TELEPHONE: (408) 777-3195 • FAX: (408) 777- 3366 EMAIL: CITYATTORNEY@CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: July 6 2023

<u>Subject</u>					
Introduction of Ordinance No. 23,	amending	Municipal	Code	Chapter	2.100
(Regulation of Lobbying Activities).					

Recommended Action

Conduct a first reading of Ordinance No. 23-_____, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities).

Reasons for Recommendation

The City Council adopted the City's Lobbyist Registration Ordinance (Municipal Code Chapter 2.100) in February 2021. The ordinance was based on the City of Santa Clara's lobbyist registration ordinance and incorporates additional language from the City of San José ordinance. Subject to certain exemptions, the ordinance requires organizations or individuals who conduct lobbying activities, as defined by the ordinance, to register and comply with specified disclosure requirements. Presently, a total of six lobbyists are registered under the ordinance.

On July 19, 2022, the League of Women Voters of Cupertino-Sunnyvale ("LWVCS") filed a complaint against the City in federal district court alleging that the Lobbyist Registration Ordinance violates the First Amendment of the U.S. Constitution and Article 1 of the California Constitution. The City moved to dismiss the complaint on the grounds that it failed to state a claim for relief under the federal or state constitutions, and the court granted the City's motion on May 1, 2023. LWVCS was granted leave to file an amended complaint.

While the City has been successful in defending the ordinance against this challenge to its constitutionality, the City Attorney's Office has identified areas where language in the current ordinance could be clarified. The City Attorney's Office has also consulted with LWVCS, which has provided input on clarifying language and various policy issues. The City and LWVCS have agreed to extend court deadlines to provide the City Council with the opportunity to consider amendments to the ordinance that may resolve disputed issues in the lawsuit.

Proposed revisions to the ordinance are presented in <u>Attachments A</u> and <u>B</u>. For certain provisions, the City Attorney's Office has provided Council with alternative language (labeled Option A and Option B). Staff seeks direction from Council as to which option to include in the first reading of the ordinance. The proposed revisions include the following:

• Section 2.100.030: Revises the definitions of Lobbying and Lobbyist, including the deletion of the registration requirements for "Expenditure Lobbyists."

Option A: Retain the existing \$1,000 threshold compensation for registration as a Contract Lobbyist.

Option B: Increase the threshold compensation to \$5,000 threshold for registration.

- Section 2.100.031: Incorporates the current Section 2.100.030(p) ("Exemptions") as a new section; revises exemptions for Organization Lobbyist and clarifies exemption for media activities; expands and simplifies exemptions for nonprofit organizations.
- Section 2.100.090: Revises information requirements for registration and clarifies the requirement for reporting contacts with City Officials.
- Section 2.100.100: Replaces quarterly reporting requirements with semi-annual reporting, consistent with the City of Santa Clara ordinance, in order to reduce the burden of administering the ordinance.
- Section 2.100.130: Adds knowledge or willfulness requirement for violations of ordinance, as well as the following:

Option A: Revise prohibitions in the City ordinance to conform with state law prohibitions.

<u>Option B</u>: Do not incorporate state law provisions into ordinance; delete current Sections 2.100.130(b), (d), and (e).

- Section 2.100.150: Adds a reference to administrative enforcement provisions of the Municipal Code.
- Section 2.100.170: Deletes practice restrictions section of current ordinance.

The proposed ordinance also includes other revisions for clarity, internal consistency, and/or gender neutrality in Sections 2.100.020, 2.100.030, 2.100.050, 2.100.080, 2.100.120, and 2.100.140, and the proposed Section 2.100.170 (currently Section 2.100.180). In addition to improving the clarity of and removing certain internal inconsistencies in the ordinance, the proposed revisions would emphasize that the ordinance's intent to regulate paid lobbying of public officials by for-

profit entities and not communications to the general public that are entitled to greater protection under the First Amendment.

If the City Council identifies preferred language with respect to each of the options set forth above and conducts a first reading of the ordinance, the ordinance will return to Council on July 18 for its second reading and adoption.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

California Environmental Quality Act

Not applicable.

<u>Prepared by:</u> Christopher D. Jensen, City Attorney <u>Approved for Submission by:</u> Pamela Wu, City Manager

Attachments:

A –Draft Ordinance Amending Chapter 2.100 (clean)

B – Draft Ordinance Amending Chapter 2.100 (blackline)

ORDINANCE NO. 23	3-
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTER 2.100

THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1: Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 4: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

Ordinance No. 23 Page 2	
INTRODUCED at a special meeting of the CENACTED at a regular meeting of the Cupe following vote:	<u> </u>
Members of the City Council	
AYES: NOES: ABSENT: ABSTAIN:	
SIGNED:	
Hung Wei, Mayor City of Cupertino	Date
ATTEST:	
Kirsten Squarcia, City Clerk	Date
APPROVED AS TO FORM:	
Christopher D. Jensen, City Attorney	Date

Attachment A – Amendments to Chapter 2.100: Regulation of Lobbying Activities

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows.

2.100.010 Purpose.

The purpose of this chapter is to impose registration and disclosure requirements on those engaged in efforts to influence the decisions of City policy makers for Compensation. Disclosure of Lobbyists' identities and activities fosters public confidence in government officials by making government decision-making more transparent to the public. Additionally, the disclosure and registration requirements ensure that City Officials are made aware of the interests that Lobbyists represent when the officials are lobbied.

2.100.020 Interpretation.

Unless the term is otherwise specifically defined in this chapter or the contrary is stated, this chapter is intended to be interpreted consistently with the Political Reform Act of 1974, Government Code Section 81000 et seq., as amended from time to time.

2.100.030 Definitions.

For the purposes of this chapter, the following definitions shall be applicable:

- (a) "Activity Expense" means any payment made by a Lobbyist to or directly benefiting any City Official, City Official-elect or member of his or her immediate family. Activity Expenses include Gifts, honoraria, consulting fees, salaries and any other form of Compensation, but do not include campaign contributions.
- (b) "Administrative Action" means the proposal, drafting, development, consideration, advocacy or recommendation of any rule, regulation, agreement or contract, permit, license or hiring action.
- (c) "At the behest" means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective City Official, City Official-elect or candidate for elective City office.
- (d) "City Official" means any public official, or City employee who participates in the consideration of any Legislative Action or Administrative Action other than in a purely clerical, secretarial or ministerial capacity. It shall also include any City board or commission member, or City representative to any joint powers authority to which the City is a party, and any person working in a capacity as a consultant to the City.
- (e) "Client" means a Person who is represented by a Contract Lobbyist, but shall not include the employer, if any, of the Contract Lobbyist.

- (f) "Compensation" includes, but is not limited to, money of any denomination or origin; goods or services or anything of value, delivered or rendered; or promises to perform or provide services or contractual arrangements or awards.
- (g) "Contact" means attendance at a meeting with a City Official or City Officialelect, or any direct communication with a City Official or City Official-elect, whether oral, electronic or in writing, including, but not limited to communication through an agent, associate or employee, for the purpose of Lobbying.
- (h) "Fundraising Activity" means soliciting a contribution; hosting or sponsoring a fundraising event; or hiring a fundraiser or contractor to conduct any event designed for political fundraising at which contributions for any City Official, candidate for elective City office or any controlled committee of an elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization are solicited, delivered or made.
- (i) "Gift" has the definition provided by the California Political Reform Act of 1974, Government Code Section 82028, as amended from time to time.
- (j) "Independent Expenditure" has the definition provided by the California Political Reform Act of 1974, Government Code Section 82031, as amended from time to time.
- (k) "Influencing" or "to Influence" means the purposeful communication, either directly or through agents, promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the behavior of a City Official or official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentives, statistics, studies or analyses.
- (l) "Intermediary" means a Person who makes a campaign or officeholder contribution on behalf of another Person. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. A Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.
- (m) "Legislative Action" means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination, or other action of the Mayor, City Council, any City board, committee, or commission or any joint powers authority of which the City is a party, acting in its official capacity, or the granting, approval, or amendment of contracts or agreements to which the City is a party by any of the foregoing.

(n) "Lobbying" means making a Contact with a City Official for the purpose of Influencing or attempting to Influence, whether or not successful, a Legislative Action or Administrative Action of the City on behalf of his or her employer or client, except as provided in section 2.100.031.

[OPTION A: Revise definition of "Lobbyist," and retain or establish \$1,000 compensation threshold.]

- (o) "Lobbyist" means a Contract Lobbyist or Organization Lobbyist as follows:
- (1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of one thousand dollars (\$1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months; or
- (2) Organization Lobbyist: Any Organization that hires an employee for Compensation to engage in Lobbying on its behalf with the City, provided that the employee is paid one thousand dollars (\$1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation"), during any consecutive three-month period during the preceding twenty-four months specifically for engaging in Lobbying or for time during which Lobbying was the employee's primary duty. Individuals employed by an Organization Lobbyist to engage in Lobbying are not themselves Lobbyists unless they meet the definition of Contract Lobbyist.

[OPTION B: Revise definition of "Lobbyist," and increase compensation threshold to \$5,000.]

- (o) "Lobbyist" means a Contract Lobbyist or Organization Lobbyist as follows:
- (1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of five thousand dollars (\$5,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months; or
- (2) Organization Lobbyist: Any Organization that hires an employee for Compensation to engage in Lobbying on its behalf with the City, provided that the employee is paid five thousand dollars (\$5,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation"), during any consecutive three-month period during the preceding twenty-four months specifically for engaging in Lobbying or for time during which Lobbying was the employee's primary duty. Individuals

employed by an Organization Lobbyist to engage in Lobbying are not themselves Lobbyists unless they meet the definition of Contract Lobbyist.

- (p) "Organization" means any Person that is not an individual.
- (q) "Person" means any individual, domestic or foreign corporation, for-profit or nonprofit entity, firm, association, syndicate, union, chamber of commerce, joint-stock company, partnership of any kind, limited liability company, common-law trust, society, or any other group of Persons acting in concert.

2.100.031 Excluded Activities.

- (a) For the purposes of this chapter, the following activities shall not be considered Lobbying, and the performance of such activities shall not be considered in determining whether a Person is a Lobbyist:
- (1) Any actions taken by a public official acting in his or her official capacity or acting within the scope of his or her employment or appointment;
- (2) Any actions taken by a Person hired by the City for work performed on behalf of the City, or a Person who prepares documents for consideration by the City under the California Environmental Quality Act, when acting in that capacity;
- (3) With respect only to Persons who do not otherwise qualify as Lobbyists, appearing at or submitting testimony for any public meeting held by the City or any of its agencies, offices, or departments, as long as the communications thereto are public records available for public review;
- (4) Providing oral or written information pursuant to a subpoena or otherwise compelled by law or regulation, or in response to an official request;
- (5) Communicating with City Officials in connection with the administration of an existing contract or agreement between the Person (or its employer) and the City;
- (6) Meeting with the City Attorney, or City staff regarding any claim or litigation matter, negotiation of any agreements or contracts where the City is a party, or the requirements or interpretation of this chapter.
- (7) Communications by designated representatives of a recognized employee Organization to City Officials or their representatives regarding (A) wages, hours and other terms or conditions of employment, or (B) the administration, implementation or interpretation of an existing employment agreement;
- (8) Submitting bids or responding to requests for proposals while directly communicating with the official or department specifically designated to receive such information;

- (9) For purposes of the definition of Organization Lobbyist, actions taken by the owners or employees of a business seeking to obtain a permit or other entitlement, license, or similar Administrative Action generally available to qualifying members of the public. This exemption shall not apply to actions taken on behalf of, or for the benefit of, a Client by a Contract Lobbyist;
- (10) For purposes of the definition of Organization Lobbyist, actions taken by the Media in the ordinary course of news gathering, reporting, or editorial activity, as generally carried out by members of the professional or amateur press. "Media" shall mean the publishers of newspapers or any other regularly published periodical or newsletter, a radio or television station or network, and Persons who publish information on the Internet. This exemption shall not apply to actions taken on behalf of, or for the benefit of, a Client by a Contract Lobbyist;
- (11) Communications by individuals who are professionally licensed by a State licensing Organization pursuant to the California Business and Professions Code, including, but not limited to, attorneys, architects and engineers, and whose communications are made in the course of professional activity under such license;
- (12) Actions taken by individuals whose only Compensation for the actions is reimbursement of their own reasonable travel, meals, or incidental expenses; and
 - (13) Actions taken by a nonprofit Organization, or its officers or employees.

2.100.040 Registration.

Lobbyists shall register with the City Clerk within fifteen (15) days after qualifying as a Lobbyist under CMC_2.100.030. Should a Lobbyist have a change to its registration information, including, but not limited to, the City Legislative Action or Administrative Action as to which the Lobbyist has been engaged, after the annual registration period, such Lobbyist shall file an amended registration with the City Clerk within fifteen (15) days of such change with the changed information.

2.100.050 Annual registration renewal.

A Lobbyist shall renew their registration by January 15th of each year unless they have terminated their status as a Lobbyist pursuant to CMC 2.100.060 by such date.

2.100.060 Termination of Lobbyist status.

After initial registration, annual registration renewal will not be required if a declaration attesting to the termination of Lobbying services within the City has been filed with the City Clerk no later than January 15th.

2.100.070 Active status.

All registrations, renewals and terminations will be deemed filed on the date received by the City Clerk. A Lobbyist shall be deemed active for the duration of the year of registration ending December 31st, unless a declaration attesting to termination of Lobbying services within the City is filed.

2.100.080 Registration fees.

Persons subject to the registration requirements of this chapter shall pay an annual fee set by resolution of the City Council.

- (a) The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees may be assessed as specified in subsection (c) of this section, if payment occurs after the due date.
- (b) In addition to the annual fee, each registrant who is a Contract Lobbyist shall pay a fee set by resolution of the City Council per Client for whom Lobbying is undertaken for Compensation in excess of five hundred dollars (\$500.00). The fees for Clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent Clients shall be due and submitted within fifteen (15) days of such change with the changed information pursuant to CMC 2.100.040.
- (c) An administrative penalty of twenty-five dollars (\$25.00) per day for delinquent fees, up to a maximum of five hundred dollars (\$500.00) in total penalties, will be assessed until in compliance with the registration provisions herein.

2.100.090 Required registration information.

The initial registration shall contain the name, business address, telephone, email addresses and, if applicable, business license of all Persons required to register pursuant to this chapter, including the names of all owners of sole proprietorships and partnerships of fewer than ten Persons. If the registrant is a corporation, it shall also include the names of the president, secretary, chief financial officer, and agent for service of process, if any. In addition to this information, the report shall contain the following:

(a) Contract Lobbyists: The name, business address, and telephone number of each Client and the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence on behalf of the Client; and the name of each Person employed or retained by the Lobbyist to lobby on behalf of each Client.

- (b) Organization Lobbyists: The names of owners, officers, or employees engaged in Lobbying on behalf of the Organization, and the item(s) of Legislative Action or Administrative Action t those owners, officers, or employees are seeking to influence.
- (c) Payment received by the reporting Lobbyist for services as a consultant or in any other capacity for services rendered to a City agency, any City Official or any City Official-elect or their controlled committees, or ballot measure committee within the previous calendar year. The dates of payment and name of each payer shall be included.
- (d) Campaign and officeholder contributions that a Lobbyist made, delivered or acted as an Intermediary for, to an elected City Official or candidate for City office made during the preceding calendar year. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. Also, a Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.
- (e) Campaign and officeholder contributions made at the behest of an elected City Official or candidate to any other elected public official or candidate for public office during the preceding calendar year.
- (f) All Independent Expenditures made for or for the benefit of a City Official or candidate for City office made during the preceding calendar year.
- (g) Fundraising Activity for any City Official, candidate for elective City office or any controlled committee of the elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization made at the behest of a City Official during the preceding calendar year. Required information and disclosures must include the name of the City Official, candidate, committee or party on whose behalf the Lobbyist engaged in fundraising activities, or delivered or acted as Intermediary for one or more contributions. The information and disclosures must also include the name of the City Official requesting the Fundraising Activity, the date of the Fundraising Activity, the name of the contributors and the amount of contributions raised, delivered and/or made in connection with which the Lobbyist acted as an Intermediary.
- (h) Donations to for profit or nonprofit Organizations made at the behest of a City Official or candidate for elective City office of any contribution or payment of more than one thousand dollars in the aggregate made during the preceding calendar year.

- (i) Contacts made with City Officials or City Officials-elect during the preceding calendar year for the purpose of to influence Lobbying, which shall describe the matter that the Lobbyist sought to influence.
- (j)Activity Expenses such as payments that directly benefit any City Official, City Official-elect or member of his or her immediate family or domestic partner made during the preceding calendar year. Activity Expenses include Gifts, honoraria, consulting fees, salaries and other forms of Compensation, but do not include campaign contributions.
- (k) The name, address, title and telephone number of the Person responsible for preparing the report, together with that individual's signature attesting to the authority of the signatory and the accuracy and truthfulness of the information submitted.

2.100.100 Semi-annual reports.

Semi-annual reports for the prior six-month period are to be filed with the City Clerk by each Lobbyist on or before July 15th and January 15th of each year, whether or not any Lobbying activities have occurred during such period. Electronic reporting may also be permitted by the City Clerk. Each semi-annual report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that period. If a Lobbyist has terminated all Lobbying activities during such period, the Lobbyist may file a declaration of termination with the semi-annual report. The final semi-annual report shall include disclosure of any Lobbying activities during the period of termination.

2.100.110 Records retention.

All information, reports and statements required to be filed under the provisions of this chapter shall be compiled and preserved by the City pursuant to the City's records retention schedule and shall be open to public inspection. Copies of the records pertaining to the above-required reports shall be preserved by the Lobbyist for inspection and audit for a period of four years from date of production.

2.100.120 Lobbyist identification.

When appearing in a Lobbying capacity at any meeting with a City Official or at a public meeting of the City Council or any other City board, commission or hearing, a Contract Lobbyist shall identify themself and the Client(s) on whose behalf they are appearing, and an individual representing an individual representing an Organization Lobbyist shall identify themself and the Organization they represent.

2.100.130 Prohibitions.

It shall be unlawful for any Person to knowingly or willfully (as those terms are defined in Penal Code section 7) commit any of the following acts:

[OPTION A: Incorporate state law prohibitions into City ordinance.]

- (a) Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter.
- (b) Performing any action with the purpose of placing any City Official or candidate for City office under personal obligation to the Lobbyist or any Contract Lobbyist's Client.
- (c) Deceiving or attempting to deceive any City Official or candidate for City office with regard to any material fact pertinent to any pending or proposed Legislative Action or Administrative Action.
- (d) Causing or influencing the introduction of any Legislative Action for the purpose of thereafter being employed to secure its passage or defeat.
- (e) Attempting to create a fictitious appearance of public favor or disfavor of any proposed Legislative Action or Administrative Action or to cause any communication to be sent to any City Official or candidate for City office in the name of any fictitious person or in the name of any real person, except with the consent of such real person. This section shall not be interpreted to restrict communications made anonymously.
- (f) Representing falsely, either directly or indirectly, that the Lobbyist can control the official action of any City Official or candidate for City office.
- (g) Accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed Legislative Action or Administrative Action.
- (h) Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.

[OPTION B: Do not incorporate state law prohibitions into City ordinance and limit scope of prohibitions to paragraphs (a)-(b), below.]

(a) Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter. (b) Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.

2.100.140 Gifts.

It shall be unlawful for any Lobbyist to deliver or cause to be delivered any Gift to any City Official, and for any City Official to accept any Gift from a Lobbyist. This provision shall be interpreted consistently with Government Code Section 86203.

2.100.150 Enforcement.

Persons or entities that violate this chapter may be subject to penalties as set forth in CMC 1.10.150 and 1.12.010.

2.100.160 Injunction.

The City Attorney may seek injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.

2.100.170 Exemptions.

Any Person who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of CMC 2.100.040 by reason of his or her being excluded under CMC 2.100.031 shall not be deemed to have violated the provisions of this chapter if, within fifteen (15) days after notice from the City, he or she either complies or furnishes satisfactory evidence to the City that he or she is exempt from registration.

ORDINANCE NO.	23-
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTER 2.100

THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1: Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 4: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

Ordinance No. 23 Page 2			
INTRODUCED at a special meeting of the Cupertino City Council on July 6, 2023 and ENACTED at a regular meeting of the Cupertino City Council on July 18, 2023 by the following vote:			
Members of the City Council			
AYES: NOES: ABSENT: ABSTAIN:			
SIGNED:			
Hung Wei, Mayor City of Cupertino	Date		
ATTEST:			
Kirsten Squarcia, City Clerk	Date		
APPROVED AS TO FORM:			
Christopher D. Jensen, City Attorney	Date		

Attachment A – Amendments to Chapter 2.100: Regulation of Lobbying Activities

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows.

2.100.010 Purpose.

The purpose of this chapter is to impose registration and disclosure requirements on those engaged in efforts to influence the decisions of City policy makers for Compensation. Disclosure of Lobbyists' identities and activities fosters public confidence in government officials by making government decision-making more transparent to the public. Additionally, the disclosure and registration requirements ensure that City Officials are made aware of the interests that Lobbyists represent when the officials are lobbied.

2.100.020 Interpretation.

Unless the term is <u>otherwise</u> specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in, <u>this chapter is intended to be interpreted consistently with the Political Reform Act of 1974</u>, Government Code Section 81000 et seq., <u>as amended from time to time shall govern the interpretation of this chapter</u>.

2.100.030 Definitions.

For the purposes of this chapter, the following definitions shall be applicable:

- (a) "Activity Expense" means any payment made by a Lobbyist to or directly benefiting any City Official, City Official-elect or member of his or her immediate family. Activity Expenses include Gifts, honoraria, consulting fees, salaries and any other form of Compensation, but do not include campaign contributions.
- (b) "Administrative Action" means the proposal, drafting, development, consideration, advocacy or recommendation of any rule, regulation, agreement or contract, permit, license or hiring action.
- (c) "At the behest" means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective City Official, City Official-elect or candidate for elective City office.
- (d) "City Official" means any public official, or City employee who participates in the consideration of any Legislative Action or Administrative Action other than in a purely clerical, secretarial or ministerial capacity. It shall also include any City board or commission member, or City representative to any joint powers authority to which the City is a party, and any person working in a capacity as a consultant to the City.

- (e) "Client" means a Person who is represented by a <u>Contract Lobbyist</u>, <u>but shall not include the employer</u>, if any, of the <u>Contract Lobbyist</u>.
- (f) "Compensation" includes, but is not limited to, money of any denomination or origin; goods or services or anything of value, delivered or rendered; or promises to perform or provide services or contractual arrangements or awards.
- (g) "Contact" means attendance at a meeting with a City Official or City Official-elect, or any direct communication with a City Official or City Official-elect, whether oral, electronic or in writing, including, but not limited to communication through an agent, associate or employee, for the purpose of engaging in Lobbying activity.
- (h) "Fundraising Activity" means soliciting a contribution; hosting or sponsoring a fundraising event; or hiring a fundraiser or contractor to conduct any event designed for political fundraising at which contributions for any City Official, candidate for elective City office or any controlled committee of an elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization are solicited, delivered or made.
- (i) "Gift" means gift as defined in <u>has</u> the <u>definition provided by the California</u> Political Reform Act <u>of 1974</u>, Government Code Section <u>81000 et seq.82028</u>, as amended from time to time.
- (j) "Independent Expenditure" means an expenditure made by any Person, including a payment of public moneys by a state or local governmental agency, in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee has the definition provided by the California Political Reform Act of 1974, Government Code Section 82031, as amended from time to time.
- (k) "Influencing" or "to Influence" means the purposeful communication, either directly or through agents, promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the behavior of a City Official or official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentives, statistics, studies or analyses.
- (l) "Intermediary" means a Person who makes a campaign or officeholder contribution on behalf of another Person. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. A Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another

Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.

- (m) "Legislative Action" means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination, or other action of the Mayor, City Council, any City board, committee, or commission or any joint powers authority of which the City is a party, acting in its official capacity, or the granting, approval, or amendment of contracts or agreements to which the City is a party by any of the foregoing.
- (n) "Lobbying" is the means making a Contact with a City Official for the purpose of means making a Contact with a City Official for the purpose of Influencing or attempting to influence Influence, whether or not successful, a Legislative Action or Administrative Action of the City on behalf of his or her employer or client, except as provided in section 2.100.031.

[OPTION A: Revise definition of "Lobbyist," and retain or establish \$1,000 compensation threshold.]

- (o) "Lobbyist," unless exempt under subsection (p) of this section, means a Contract Lobbyist or Organization Lobbyist as follows:
- (1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of one thousand dollars (\$1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months; or
- (2) Organization Lobbyist: Any business or Organization, whose owner(s), officer(s) or employee(s) carry out Lobbying on its behalf, in an aggregate amount of ten hours or more within any consecutive twelve (12) month period, whether or not such officers or employees are specifically compensated to engage in Lobbying; provided, that the activities of officers shall be considered Lobbying only if those officers receive Compensation by the business or Organization beyond reimbursement for their reasonable travel, meals or incidental expenses Any Organization that hires an employee for Compensation to engage in Lobbying on its behalf with the City, provided that the employee is paid one thousand dollars (\$1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation"), during any consecutive three-month period during the preceding twenty-four months specifically for engaging in Lobbying or for time during which Lobbying was the employee's primary duty. Individuals employed by an Organization Lobbyist to engage in

<u>Lobbying are not themselves Lobbyists unless they meet the definition of Contract Lobbyist</u>.

[OPTION B: Revise definition of "Lobbyist," and increase compensation threshold to \$5,000.]

- (o) "Lobbyist," unless exempt under subsection (p) of this section, means a Contract Lobbyist or Organization Lobbyist as follows:
- (1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of—one thousand dollars (\$1,000.00) five thousand dollars (\$5,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months; or
- (2) Organization Lobbyist: Any business or Organization, whose owner(s), officer(s) or employee(s) carry out Lobbying on its behalf, in an aggregate amount of ten hours or more within any consecutive twelve (12) month period, whether or not such officers or employees are specifically compensated to engage in Lobbying; provided, that the activities of officers shall be considered Lobbying only if those officers receive Compensation by the business or Organization beyond reimbursement for their reasonable travel, meals or incidental expenses Any Organization that hires an employee for Compensation to engage in Lobbying on its behalf with the City, provided that the employee is paid five thousand dollars (\$5,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation"), during any consecutive three-month period during the preceding twenty-four months specifically for engaging in Lobbying or for time during which Lobbying was the employee's primary duty. Individuals employed by an Organization Lobbyist to engage in Lobbying are not themselves Lobbyists unless they meet the definition of Contract Lobbyist.
- —(3)—Expenditure Lobbyist: A Person who makes payments or incurs expenditures of five thousand dollars (\$5,000.00) or more during any calendar year in connection with carrying out public relations, advertising or similar activities with the intent of soliciting or urging, directly or indirectly, other Persons to communicate directly with any City Official in order to attempt to influence Legislative Action or Administrative Action. The five thousand dollar (\$5,000.00) threshold shall not include: (A) Compensation paid to Contract Lobbyists or employees for Lobbying; or (B) dues payments, donations, or other economic consideration paid to an Organization,

regardless of whether the dues payments, donations or other economic consideration are used in whole or in part to lobby.

- (p) Exemptions to "Lobbyist" include:
- (1) Any public official acting in his or her official capacity or acting within the scope of his or her employment or appointment;
- (2) The Media, when limiting its action to the ordinary course of news gathering or editorial activity, as carried out by members of the press. "Media" shall mean newspapers or any other regularly published periodical, radio or television station or network or information published on the Internet. This exemption does not apply to individuals conducting media activities when that individual would otherwise qualify as a Contract Lobbyist under this chapter;
- (3) Persons reimbursed for only their reasonable travel, meals or incidental expenses, including, but not limited to, uncompensated members or directors of nonprofit Organizations, such as chambers of commerce;
- (4) Persons whose communications regarding any Legislative Action or Administrative Action are solely limited to appearing at or submitting testimony for any public meeting held by the City or any of its agencies, offices, or departments, as long as the communications thereto are public records available for public review. Persons who appear or testify at public meetings and who otherwise qualify as Lobbyists due to other activities must register and disclose their Lobbying activities directed toward City Officials, and must identify themselves and their Clients at public meetings, in the same manner and to the same extent such registration, disclosure, and identification is required of all other Lobbyists;
- (5) Persons submitting bids or responding to requests for proposals, provided the provision of such information is limited to direct conversation or correspondence with the official or department specifically designated to receive such information;
- (6) Persons providing oral or written information pursuant to a subpoena or otherwise compelled by law or regulation, or in response to an official request; provided, that the request and response thereto are public records available for public review;
- (7) Designated representatives of a recognized employee Organization whose activities are limited to communicating with City Officials or their representatives regarding (A) wages, hours and other terms or conditions of employment, or (B) the administration, implementation or interpretation of an existing employment agreement;

- (8) Persons who are professionally licensed by a State licensing Organization pursuant to the California Business and Professions Code, including, but not limited to, attorneys, architects and engineers; provided however, the exemption for attorneys shall only be applicable if the attorney is engaged in the practice of law with respect to the subject of the employment;
- (9) Board members or employees of nonprofit 501©(3) corporations, unless the nonprofit Organization is Lobbying for a specific project, issue or Person for which the Organization has received Compensation or a contribution to lobby for or against a specific project, issue or Person;
 - (10) Members of neighborhood associations;
- (11) A Person hired by the City for work performed on behalf of the City, or a Person who prepares documents for consideration by the City under the California Environmental Quality Act;
- (12) The owner of a business whose attempts to influence governmental action are on behalf of the business and:
- (i) The owner or business has not retained a Person to engage in Lobbying activity on behalf of the owner or business; or
- (ii) Officers or employees of the business (not including the owner) have not engaged in Lobbying activity on behalf of the owner or business.

This exemption applies only to the threshold for becoming a Business or Organization Lobbyist as defined under Section 2.100.030(o), subsection (2). An owner of a business who meets this exemption is subject to the requirements of this chapter if he or she meets the definition of Contract Lobbyist or Expenditure Lobbyist as defined under subsections (1) and (3) of Section 2.100.030(o), respectively;

- (13) Persons who meet with City Officials solely to lodge "whistleblower" complaints relating to alleged improper governmental activity such as mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (14) Persons whose communications with City Officials are solely in connection with the administration of an existing contract or agreement between the Person and the City; or
- (15) Persons who meet with the City Attorney, or City staff regarding any claim or litigation matter, negotiation of any agreements or contracts where the City is a party, or the requirements or interpretation of this chapter.

- (q)(p) "Organization" means any Person that is not an individual.
- (r)(q) "Person" means any individual, domestic or foreign corporation, for-profit or nonprofit entity, firm, association, syndicate, union, chamber of commerce, joint-stock company, partnership of any kind, limited liability company, common-law trust, society, or any other group of Persons acting in concert.

2.100.031 Excluded Activities.

- (a) For the purposes of this chapter, the following activities shall not be considered Lobbying, and the performance of such activities shall not be considered in determining whether a Person is a Lobbyist:
- (1) Any actions taken by a public official acting in his or her official capacity or acting within the scope of his or her employment or appointment;
- (2) Any actions taken by a Person hired by the City for work performed on behalf of the City, or a Person who prepares documents for consideration by the City under the California Environmental Quality Act, when acting in that capacity;
- (3) With respect only to Persons who do not otherwise qualify as Lobbyists, appearing at or submitting testimony for any public meeting held by the City or any of its agencies, offices, or departments, as long as the communications thereto are public records available for public review;
- (4) <u>Providing oral or written information pursuant to a subpoena or otherwise</u> <u>compelled by law or regulation, or in response to an official request;</u>
- (5) Communicating with City Officials in connection with the administration of an existing contract or agreement between the Person (or its employer) and the City;
- (6) Meeting with the City Attorney, or City staff regarding any claim or litigation matter, negotiation of any agreements or contracts where the City is a party, or the requirements or interpretation of this chapter.
- (7) Communications by designated representatives of a recognized employee Organization to City Officials or their representatives regarding (A) wages, hours and other terms or conditions of employment, or (B) the administration, implementation or interpretation of an existing employment agreement;
- (8) <u>Submitting bids or responding to requests for proposals while directly communicating with the official or department specifically designated to receive such information;</u>
- (9) For purposes of the definition of Organization Lobbyist, actions taken by the owners or employees of a business seeking to obtain a permit or other entitlement,

license, or similar Administrative Action generally available to qualifying members of the public. This exemption shall not apply to actions taken on behalf of, or for the benefit of, a Client by a Contract Lobbyist;

- (10) For purposes of the definition of Organization Lobbyist, actions taken by the Media in the ordinary course of news gathering, reporting, or editorial activity, as generally carried out by members of the professional or amateur press. "Media" shall mean the publishers of newspapers or any other regularly published periodical or newsletter, a radio or television station or network, and Persons who publish information on the Internet. This exemption shall not apply to actions taken on behalf of, or for the benefit of, a Client by a Contract Lobbyist;
- (11) Communications by individuals who are professionally licensed by a State licensing Organization pursuant to the California Business and Professions Code, including, but not limited to, attorneys, architects and engineers, and whose communications are made in the course of professional activity under such license;
- (12) Actions taken by individuals whose only Compensation for the actions is reimbursement of their own reasonable travel, meals, or incidental expenses; and
 - (13) Actions taken by a nonprofit Organization, or its officers or employees.

2.100.040 Registration.

Lobbyists shall register with the City Clerk within fifteen (15) days after qualifying as a Lobbyist under CMC_2.100.030. Should a Lobbyist have a change to its registration information, including, but not limited to, the City Legislative Action or Administrative Action as to which the Lobbyist has been engaged, after the annual registration period, such Lobbyist shall file an amended registration with the City Clerk within fifteen (15) days of such change with the changed information.

2.100.050 Annual registration renewal.

A Lobbyist shall renew his or her their registration by January 15th of each year unless he or she has they have terminated their status as a Lobbyist pursuant to CMC 2.100.060 by such date.

2.100.060 Termination of Lobbyist status.

After initial registration, annual registration renewal will not be required if a declaration attesting to the termination of Lobbying services within the City has been filed with the City Clerk no later than January 15th.

2.100.070 Active status.

All registrations, renewals and terminations will be deemed filed on the date received by the City Clerk. A Lobbyist shall be deemed active for the duration of the year of registration ending December 31st, unless a declaration attesting to termination of Lobbying services within the City is filed.

2.100.080 Registration fees.

Persons subject to the registration requirements of this chapter shall pay an annual fee set by resolution of the City Council.

- (a) The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees may be assessed as specified in subsection (c) of this section, if payment occurs after the due date.
- (b) In addition to the annual fee, each registrant who is a Contract Lobbyist shall pay a fee set by resolution of the City Council per Client for whom Lobbying is undertaken for Compensation in excess of five hundred dollars (\$500.00). The fees for Clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent Clients shall be due and submitted within fifteen (15) days of such change with the changed information pursuant to CMC 2.100.040.
- (c) A<u>n administrative penalty</u> fine of twenty-five dollars (\$25.00) per day for delinquent fees, up to a maximum of five hundred dollars (\$500.00) in total penalties, will be assessed until in compliance with the registration provisions herein.

2.100.090 Required registration information.

The initial registration shall contain the name, business address, telephone, email addresses and, if applicable, business license of all Persons required to register pursuant to this chapter, including the names of all owners of sole proprietorships and partnerships of fewer than ten Persons. If the registrant is a corporation, it shall also include the names of the president, secretary, chief financial officer, and agent for service of process, if any. Any Organization registering under this act shall also briefly describe the nature of its operations and a contact individual. In addition to this information, the report shall contain the following:

(a) Contract Lobbyists: The name, business address, <u>and</u> telephone number of each Client, the nature of each Client's business_and the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence on behalf of the Client; and the name of each Person employed or retained by the Lobbyist to lobby on behalf of each Client.

- (b) Organization Lobbyists: The names of owners, officers, or employees conductingengaged in Lobbying activities on behalf of the Organization, and the item(s) of Legislative Action or Administrative Action the Lobbyist is those owners, officers, or employees are seeking to influence.
- (c) Expenditure Lobbyists: The item(s) of municipal Legislative Action or Administrative Action the Lobbyist is seeking to influence.
- (d)(c) Payment received by the reporting Lobbyist for services as a consultant or in any other capacity for services rendered to a City agency, any City Official or any City Official-elect or their controlled committees, or ballot measure committee within the previous calendar year. The dates of payment and name of each payer shall be included.
- (e)(d) Campaign and officeholder contributions that a Lobbyist made, delivered or acted as an Intermediary for, to an elected City Official or candidate for City office made during the preceding calendar year. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. Also, a Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.
- (<u>f)(e)</u> Campaign and officeholder contributions made at the behest of an elected City Official or candidate to any other elected public official or candidate for public office during the preceding calendar year.
- (g)(f) All Independent Expenditures made for or on behalf for the benefit of a City Official or candidate for City office made during the preceding calendar year.
- (h)(g) Fundraising Activity for any City Official, candidate for elective City office or any controlled committee of the elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization made at the behest of a City Official during the preceding calendar year. Required information and disclosures must include the name of the City Official, candidate, committee or party on whose behalf the Lobbyist engaged in fundraising activities, or delivered or acted as Intermediary for one or more contributions. The information and disclosures must also include the name of the City Official requesting the Fundraising Activity, the date of the Fundraising Activity, the name of the contributors and the amount of contributions raised, delivered and/or made in connection with which the Lobbyist acted as an Intermediary.

(i)(h) Donations to for profit or nonprofit Organizations made at the behest of a City Official or candidate for elective City office of any contribution or payment of more than one thousand dollars in the aggregate made during the preceding calendar year.

(j)(i) Contacts made with City Officials or City Officials-elect during the preceding calendar year for the purpose of influencing or attempting to influence Legislative Action or Administrative Action. Contact information must include a brief description of the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence, the date(s) of Contact, the method(s) of Contact, and the number of Contacts in the following ranges: (one), (two to five), (six to ten) or (eleven or more) Lobbying, which shall describe the matter that the Lobbyist sought to influence.

(k)(j)-Activity Expenses such as payments that directly benefit any City Official, City Official-elect or member of his or her immediate family or domestic partner made during the preceding calendar year. Activity Expenses include Gifts, honoraria, consulting fees, salaries and other forms of Compensation, but do not include campaign contributions.

(<u>l)(k)</u> The name, address, title and telephone number of the Person responsible for preparing the report, together with that individual's signature attesting to the authority of the signatory and the accuracy and truthfulness of the information submitted.

2.100.100 Quarterly Semi-annual reports.

Quarterly Semi-annual reports for the prior threesix-month period are to be filed with the City Clerk by each Lobbyist on or before July 15th, October 15th, and January 15th, and April 15th of each year, whether or not any Lobbying activities have occurred during such period. Electronic reporting may also be permitted by the City Clerk. Each quarterly semi-annual report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that period. If a Lobbyist has terminated all Lobbying activities during such period, the Lobbyist may file a declaration of termination with the quarterly semi-annual report. The final quarterly semi-annual report shall include disclosure of any Lobbying activities during the period of termination.

2.100.110 Records retention.

All information, reports and statements required to be filed under the provisions of this chapter shall be compiled and preserved by the City pursuant to the City's records retention schedule and shall be open to public inspection. Copies of the records pertaining to the above-required reports shall be preserved by the Lobbyist for inspection and audit for a period of four years from date of production.

2.100.120 Lobbyist identification.

When appearing in a Lobbying capacity at any meeting with a City Official or at a public meeting of the City Council or any other City board, commission or hearing, a Contract Lobbyist shall identify himself/herself and the Client(s) on whose behalf he/she is they are appearing, and an.individual.representing a Business or an.individual.themself and the Organization herself themself and the Organization herself themself and the Organization herself themself and the Organization herself they represent.

2.100.130 Prohibitions.

It shall be unlawful for any <u>Lobbyist Person</u> to <u>knowingly or willfully (as those terms are defined in Penal Code section 7)</u> commit any of the following acts:

[OPTION A: Incorporate state law prohibitions into City ordinance.]

- (a) Unregistered Lobbying: Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter.
- (b) Unauthorized Communications: Sending or causing any communication to be sent to any City Official in the name of any nonexistent Person or in the name of an existing Person without the express or implied consent of such Person.
- (b) Performing any action with the purpose of placing any City Official or candidate for City office under personal obligation to the Lobbyist or any Contract Lobbyist's Client.
- (c) Deceiving or attempting to deceive any City Official or candidate for City office with regard to any material fact pertinent to any pending or proposed Legislative Action or Administrative Action.
- (d) Causing or influencing the introduction of any Legislative Action for the purpose of thereafter being employed to secure its passage or defeat.
- (e) Attempting to create a fictitious appearance of public favor or disfavor of any proposed Legislative Action or Administrative Action or to cause any communication to be sent to any City Official or candidate for City office in the name of any fictitious person or in the name of any real person, except with the consent of such real person. This section shall not be interpreted to restrict communications made anonymously.
- (f) Representing falsely, either directly or indirectly, that the Lobbyist can control the official action of any City Official or candidate for City office.

- (g) Accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed Legislative Action or Administrative Action.
- ($e\underline{h}$) Indirect Violations: Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.
- (d) Creation of Obligations: Performing or sponsoring any act with the purpose and intent of placing any City Official under personal obligation to the Lobbyist.
- (e) Contingent Compensation: Compensation for Lobbying activity when the Compensation is directly dependent on the result of Legislative Action(s) or Administrative Action(s) that are the subject of the Lobbying activity

[OPTION B: Do not incorporate state law prohibitions into City ordinance and limit scope of prohibitions to paragraphs (a)-(b), below.]

- (a) Unregistered Lobbying: Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter.
- (b) Unauthorized Communications: Sending or causing any communication to be sent to any City Official in the name of any nonexistent Person or in the name of an existing Person without the express or implied consent of such Person.
- (e<u>b</u>) Indirect Violations: Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.
- (d) Creation of Obligations: Performing or sponsoring any act with the purpose and intent of placing any City Official under personal obligation to the Lobbyist.
- (e) Contingent Compensation: Compensation for Lobbying activity when the Compensation is directly dependent on the result of Legislative Action(s) or Administrative Action(s) that are the subject of the Lobbying activity.

2.100.140 Gifts.

It shall be unlawful for any Lobbyist to deliver or cause to be delivered any Gift to any City Official, and for any City Official to accept any Gift from a Lobbyist. <u>This provision shall be interpreted consistently with Government Code Section 86203</u>.

2.100.150 Enforcement.

Persons or entities that violate this chapter may be subject to penalties as set forth in CMC <u>1.10.150</u> and <u>1.12.010</u>.

2.100.160 Injunction.

The City Attorney may seek injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.

2.100.170 Practice restrictions.

No Person who the City finds to have violated this chapter may act as a Lobbyist or otherwise attempt to influence municipal Legislative Actions or Administrative Actions for Compensation for one year after such finding of violation. (Ord. 21-2222, § 1 (part), 2021)

2.100.180<u>170</u> Exemptions.

Any Person who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of CMC 2.100.040 by reason of his or her being exempt excluded under CMC 2.100.030(p)2.100.031 shall not be deemed to have violated the provisions of CMC 2.100.040 this chapter if, within fifteen (15) days after notice from the City, he or she either complies or furnishes satisfactory evidence to the City that he or she is exempt from registration.



CITY OF CUPERTINO

Agenda Item

23-12343 Agenda Date: 7/6/2023

Agenda #: 14.

Subject: Consider actions for the surplus determination and disposal of 10301 Byrne Avenue, Assessor Parcel Number (APN) 357-11-020

- 1. Authorize the City Manager to record a Roadway Dedication (Attachment A) for a portion of 10301 Byrne Avenue, APN 357-11-020 (Property); and
- 2. Adopt Resolution No. 23-083 (Attachment B) declaring the remaining property at 10301 Byrne Ave, APN 357-11-020 surplus to the needs of the City and direct the City Manager to proceed with outreach as required by the Surplus Land Act; and
- 3. Authorize the City Manager to offer the Property for sale subsequent to completion of the requirements of the Surplus Land Act



CITY MANAGER'S OFFICE

CITY HALL 10300 TORRE AVENUE • CUPERTINO, CA 95014-3255 TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366 CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

<u>Subject</u>

Consider actions for the surplus determination and disposal of 10301 Byrne Avenue, Assessor Parcel Number (APN) 357-11-020.

Recommended Action

- 1. Authorize the City Manager to record a Roadway Dedication (Attachment A) for a portion of 10301 Byrne Avenue, APN 357-11-020 (Property); and
- 2. Adopt Resolution No. 23-XXX (Attachment B) declaring the remaining property at 10301 Byrne Ave, APN 357-11-020 surplus to the needs of the City and direct the City Manager to proceed with outreach as required by the Surplus Land Act; and
- 3. Authorize the City Manager to offer the Property for sale subsequent to completion of the requirements of the Surplus Land Act.

Reasons for Recommendation

On December 19, 2017 the City Council approved the purchase of the Property at 10301 Byrne Avenue. The purpose of the purchase was to facilitate right-of-way modification to create space for an enhanced pedestrian entrance to Blackberry Farm.

Following the purchase, staff studied various improvements to enhance pedestrian and bicycle access to Blackberry Farm, and prepared roadway dedication documents including a revised Plat and Legal description for the Property that, when recorded with the County, will dedicate a portion of the Property frontage along San Fernando Avenue for roadway purposes. This dedication would provide adequate space to construct pedestrian and bicycle access improvements to Blackberry Farm. Upon recordation of the documents with the County, the City will no longer have a use for the remaining residential portion of the Property.

The Surplus Land Act (Act) (California Government Code Section 54222 et seq), defines the process for disposition of real property owned by government entities. In summary, prior to offering the property for sale, the City must offer this property for sale or lease to the following types of organizations as defined in the Act:

- 1. Public entities and Housing Sponsors for the development of low- or moderate-income housing.
- 2. Entities involved in parks, recreation, and open space.
- 3. School districts.

Any interested entity would have 60 days to respond to the notice as provided by the City. Should the City receive a response from an interested entity, the City will need to negotiate in good faith for the sale or lease of the property for terms satisfactory to the City. If there is expressed interest in the property through this process, staff will work toward a market rate proposal for Council consideration. Should the City receive no interest in the property, the City may proceed to sell the property through a defined process at market price.

To facilitate sale of the property following the notification process, staff proposes listing the property with a qualified residential real estate agent and selling the property to the highest qualified proposer following at least two weeks on the market with no seller contingencies or requirements. The final sale amount and terms will be presented to the City Council for approval at a future date.

Sustainability Impact

The recordation of the Roadway Dedication will allow for future pedestrian and Bicycle access to Blackberry Farm, enhancing the connection to the surrounding neighborhood.

Fiscal Impact

There is no fiscal impact from the recommended actions in this report. Future revenue will be received by the General Fund in the event of the sale of the property.

California Environmental Quality Act (CEQA)

The proposed project is exempt from CEQA under CEQA Guidelines section 15312 (surplus government property sales).

<u>Prepared by</u>: Matt Morley, Assistant City Manager <u>Approved for Submission by</u>: Pamela Wu, City Manager Attachment:

A – Plat and Legal Descriptions for APN 357-11-020

B – Draft Resolution Declaring the Property Surplus

C – Aerial map showing the property location.

EXHIBIT 'A' LEGAL DESCRIPTION STREET DEDICATION LANDS OF [THE] CITY OF CUPERTINO 10301 BYRNE AVENUE, CUPERTINO, SANTA CLARA COUNTY

All that certain real property situate in the City of Cupertino, County of Santa Clara, State of California, being a portion of Lot 11 as said Lot is shown on the Map of Tract No. 150 Stevens Creek Subdivision No. 2, said Map having been recorded on August 12, 1940 in Book 5 of Maps at Pages 4 and 5, Official Records of Santa Clara County, California, being also a portion of said Lands of [the] City of Cupertino as said lands are described in the Grant Deed recorded December 22, 2017 as Document 23833717, Official Records of Santa Clara County, described as follows:

BEGINNING at the southwesterly corner of said lands of [the] City of Cupertino, said corner also being a southeasterly corner of the Lands of Blackberry Farm as said lands are shown on the Record of Survey recorded July 20. 1995 in Book 667 of Maps at Pages 35 through 37;

Thence along the westerly line of said Lot 11, said line also being the easterly line of said Lands of Blackberry Farm North 22.51 feet;

Thence leaving said westerly line North 66°23'12" East 85.71 feet;

Thence North 89°53'07" East 23.61 feet to a line drawn parallel with and distant at right angles 4.00 feet from the primary southeasterly line of said Lot 11;

Thence along said parallel line North 62°50'30" East 48.37 feet, more or less, to an arc in a non-tangent 30.00 foot radius curve to the right having a radial bearing of South 57°04'23" East along the general southeasterly line of said Lot 11, said general southeasterly line also being the general northwesterly line of San Fernando Avenue as said Avenue is shown on the aforementioned Map of Tract No. 150;

Thence along the general southeasterly line of said Lot 11 and the general northwesterly line of said San Fernando Avenue the following two courses:

Along said 30.00 foot radius curve to the right through a central angle of 29°54'53" a distance of 15.66 feet to its point of tangency with the primary southeasterly line of said lot 11;

Thence along said primary southeasterly line South 62°50'30" West 150.26 feet to the southerly corner of said Lot 11 and the POINT OF BEGINNING.

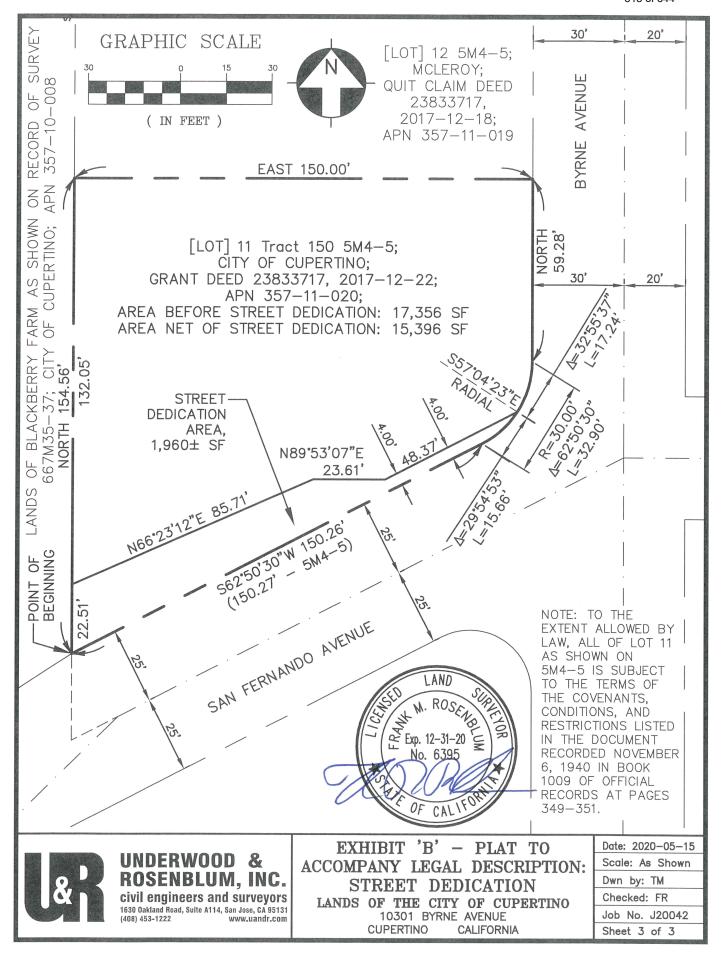
Containing an area of 1,960 square feet, more or less.

The Basis of Bearings for this legal description is based on the bearings shown in the Map of Tract No. 150 Stevens Creek Subdivision No 2 recorded August 12, 1940 in Book 5 of Maps at Pages 4 and 5, Official Records of Santa Clara County.

A corresponding plat entitled "Exhibit 'B' – Plat to Accompany Legal Description", attached hereto and by this reference incorporated herein, shall be recorded contemporaneously with this exhibit.

End of description.





RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CUPERTINO CITY COUNCIL DECLARING 10301 BYRNE AVENUE, ASSESSOR PARCEL NUMBER 357-11020 SURPLUS TO THE NEEDS OF THE CITY

WHEREAS, on December 19, 2017 the City Council approved the purchase of the property at 10301 Byrne Avenue; and

WHEREAS, the property was purchased to facilitate right-of-way acquisition for an enhanced bicycle and pedestrian entry to Blackberry Farm; and

WHEREAS, the City has prepared the appropriate plat and legal documents for recordation with the County dedicating a portion of the property as right-of-way; and

WHEREAS, the remainder property is now no longer needed for municipal use.

NOW, THEREFORE, BE IT RESOLVED, by the City Council, that the property at 10301 Byrne Ave, Assessor Parcel Number 357-11-020 is surplus to the needs of the City.

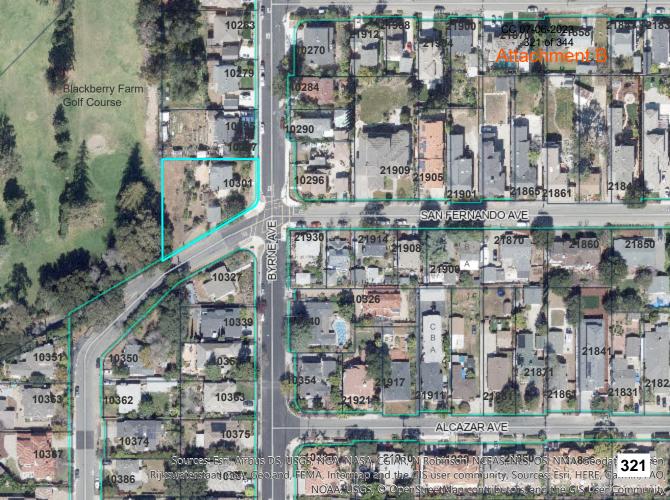
PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 6th day of July 2023, by the following vote:

Members of the City Council

AYES: NOES: ABSENT: ABSTAIN:

SIGNED:	
Hung Wei, Mayor	Date
City of Cupertino	
ΔTTFST.	

Resolution NoPage 2	
Kirsten Squarcia, City Clerk	Date





CITY OF CUPERTINO

Agenda Item

Agenda Date: 7/6/2023 23-12418

Agenda #: 15.

Subject: Consideration of a resolution amending the established City Council meeting calendar through January 2, 2024

Adopt Resolution 23-084 amending the established City Council meeting calendar through January 2, 2024



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: July 6, 2023

Subject

Consideration of a resolution amending the established City Council meeting calendar through January 2, 2024

Recommended Action

Adopt Resolution 23-___ amending the established City Council meeting calendar through January 2, 2024

Reasons for Recommendation

Cupertino Municipal Code Section 2.04.010 sets regular City Council meetings on the first and third Tuesdays of each month at 6:45 p.m. The City Council may cancel a regular meeting by a vote of a majority of the Council. Special meetings that are held outside of the regular meeting day and time may be called at any time by the Mayor or by three Councilmembers (CMC Section 2.04.020).

On January 17, Council adopted Resolution No. 23-013 setting an annual City Council meeting calendar through January 2, 2024. The calendar established dates and times to assist City Council and staff with advance planning and scheduling of City business. On March 7, City Council adopted Resolution 23-027 amending the established City Council calendar for meetings occurring in April, June, July, and September. The meeting calendar has been further amended because of a potential meeting conflict in October. The draft resolution (Attachment A) amends the established City Council meeting dates in October for the calendar year 2023.

Mayor Hung Wei will be out of the country during the first week of October. These dates conflict with the Tuesday, October 3, 2023 regular City Council meeting. Council may wish to consider an alternate meeting date when the Mayor is available to consider matters of City business. If the regular meeting on October 3 is cancelled, a special meeting may be called in its place. An alternate special meeting date is recommended for Tuesday, October 10, 2023. Councilmembers have been polled for availability on this date, and Community Hall Council Chamber is available for use on that date. The regularly scheduled Planning Commission meeting that would normally be conducted on the second Tuesday in October would be cancelled.

It is recommended that City Council adopt Resolution 23-___ amending the established City Council meeting calendar through January 2, 2024. If Council wishes to authorize the changes, staff will provide meeting notifications to the public in advance. The proposed resolution does not limit the ability of Council to schedule additional meetings as authorized by the Municipal Code and in compliance with the Brown Act.

AMENDED 2023 COUNCIL MEETING CALENDAR			
Meeting Date	Open		
	Session		
	Start Time		
Tuesday, February 7, 2023	6:45 PM		
Tuesday, February 21, 2023	6:45 PM		
Tuesday, March 7, 2023	6:45 PM		
Tuesday, March 21, 2023	6:45 PM		
Tuesday, April 4, 2023	6:45 PM		
Thursday, April 13, 2023	6:45 PM	Moved due to Sister City	
		Delegation Visit	
Tuesday, May 2, 2023	6:45 PM		
Tuesday, May 16, 2023	6:45 PM		
Tuesday, June 6, 2023	6:45 PM		
Wednesday, June 21, 2023	6:45 PM	Moved due to Juneteenth	
		Holiday	
Thursday, July 6, 2023	6:45 PM	Moved due to July 4 Holiday	
Tuesday, July 18, 2023	6:45 PM		
Tuesday, August 1, 2023	6:45 PM	Cancelled	
Tuesday, August 15, 2023	6:45 PM	Cancelled	
Wednesday, September 6,	6:45 PM	Moved due to Labor Day	
2023		Holiday	
Tuesday, September 19, 2023	6:45 PM		
Tuesday, October 3, 2023	6:45 PM	Cancelled	
Tuesday, October 10, 2023	<u>6:45 PM</u>	Special Meeting	
Tuesday, October 17, 2023	6:45 PM		
Tuesday, November 7, 2023	6:45 PM		
Tuesday, November 21, 2023	6:45 PM		
Tuesday, December 5, 2023	6:45 PM		
Tuesday, December 19, 2023	6:45 PM		

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

<u>California Environmental Quality Act</u>
No California Environmental Quality Act impact.

Prepared by: Kirsten Squarcia, City Clerk

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Resolution

RESOLUTION NO. 23-

A RESOLUTION OF THE CUPERTINO CITY COUNCIL AMENDING THE ESTABLISHED CITY COUNCIL MEETING SCHEDULE FOR THE CALENDAR YEAR OF 2023

WHEREAS, on January 17, 2023 the City Council adopted Resolution No 23-013 setting an annual City Council meeting calendar to establish dates and times assisting City Council and staff with advance planning and scheduling of City business; and

WHEREAS, on March 7, 2023 the City Council adopted Resolution No 23-027 amending the annual City Council meeting calendar; and

WHEREAS, pursuant to Cupertino Municipal Code Section 2.04.010, the calendar was established, notwithstanding the scheduling of additional regular meetings and the addition of special meetings and study sessions pursuant to the Brown Act; and

WHEREAS, pursuant to Cupertino Municipal Code Section 2.04.020, the City Council sets aside a time period for closed sessions before the open session portion of each regular meeting; and

WHEREAS, the City Council has established a recess beginning the first Tuesday in August and ending the Tuesday following the week of Labor Day; and

WHEREAS, the City Council has established 6:45 p.m. as the regular meeting time for each regular meeting, except when Council is in recess. Closed sessions may be held at 6:00 p.m. No closed session of the regular meeting will be held at that time unless the posted agenda of the regular meeting indicates that such closed session will take place; and

WHEREAS, the regular Council meeting scheduled for January 2, 2024 was cancelled. Council will consider a meeting schedule for 2024 at its January 16, 2024 meeting; and

WHEREAS, the City Council amended the meeting calendar to cancel meetings on April 18, 2023, June 20, 2023, July 5, 2023, and September 5, 2023 and call special meetings on April 13, 2023, June 21, 2023, July 6, 2023, September 6, 2023.

Resolution No. 23-___ Page 2

WHEREAS, the City Council wishes to amend the meeting calendar to cancel a meeting on October 3, 2023 and call a special meeting on October 10, 2023.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby establish and order as follows.

<u>SECTION 1</u>. The City Council establishes the following amended meeting schedule for the calendar year of 2023.

AMENDED 2023 COUNCIL MEETING CALENDAR				
Meeting Date	Open			
11120411.8 2 440	Session			
	Start Time			
Tuesday, February 7, 2023	6:45 PM			
Tuesday, February 21, 2023	6:45 PM			
Tuesday, March 7, 2023	6:45 PM			
Tuesday, March 21, 2023	6:45 PM			
Tuesday, April 4, 2023	6:45 PM			
Thursday, April 13, 2023	6:45 PM	Moved due to Sister City		
		Delegation Visit		
Tuesday, May 2, 2023	6:45 PM			
Tuesday, May 16, 2023	6:45 PM			
Tuesday, June 6, 2023	6:45 PM			
Wednesday, June 21, 2023	6:45 PM	Moved due to Juneteenth		
		Holiday		
Thursday, July 6, 2023	6:45 PM	Moved due to July 4		
		Holiday		
Tuesday, July 18, 2023	6:45 PM			
Tuesday, August 1, 2023	6:45 PM	Cancelled		
Tuesday, August 15, 2023	6:45 PM	Cancelled		
Wednesday, September 6,	6:45 PM	Moved due to Labor Day		
2023		Holiday		
Tuesday, September 19,	6:45 PM			
2023				
Tuesday, October 3, 2023	6:45 PM	Cancelled		
Tuesday, October 10, 2023	<u>6:45 PM</u>	Special Meeting		
Tuesday, October 17, 2023	6:45 PM			

Page 2		
Tuesday, November 7, 2023	6:45 PM	
Tuesday, November 21, 2023	6:45 PM	
Tuesday, December 5, 2023	6:45 PM	

6:45 PM

<u>SECTION 2</u>. With proper notice during the year, meetings may be cancelled or added as necessary pursuant to the Brown Act.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 6th day of July, 2023, by the following vote:

Members of the City Council

Resolution No. 23-___

Tuesday, December 19,

AYES:	
NOES:	
ABSENT:	
ABSTAIN:	

2023

SIGNED:	
Hung Wei, Mayor City of Cupertino	Date
ATTEST:	
Kirsten Squarcia, City Clerk	Date



CITY OF CUPERTINO

Agenda Item

Agenda Date: 7/6/2023 Agenda #: 16. 23-12285

Subject: Councilmember Reports



Meeting: Thursday, July 6, 2023

Reporting Councilmember: Councilmember J.R. Fruen

Report Activity Dates: 6/13/23 to 6/26/23

Event Date, Title, and Description:

Event 1. 06/15/2023 – MEMORIAL PARK SPECIFIC PLAN & CARRIAGE HOUSE PROJECT STAFF BRIEFING – I attended a briefing hosted by staff to cover conceptual plan for the Memorial Park Specific Plan in advance of the study session scheduled for 6/21/2023, as well as the Carriage House project application.

Event 2. 06/16/2023 – ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG) GENERAL ASSEMBLY MEETING – I the annual meeting of the ABAG General Assembly held in San Francisco. On our business calendar, we approved the operating budget and work program for the coming financial year. One of the challenges that ABAG faces is the cost of pension liabilities for which ABAG remains responsible prior to the merger of the agency with the Metropolitan Transportation Commission. The organization approved a (previously delayed) membership fee increase. The General Assembly also hosted its annual conference, featuring a keynote presentation from Tracy Hadden Loh of the Brookings Institution's Center for Transformative Placemaking entitled "Prosperity and the Power of Place in the Bay Area." A panel presentation and discussion then followed. Recordings are available through ABAG's Granicus system here.

Event 3. 06/22/2023 – SAN JOSE DOWNTOWN PRIDE MONTH PARTY – I attended a gathering hosted by San Jose Councilmember Omar Torres, California Assemblymember Alex Lee, and Berryessa Union School District Board Trustee Jaria Juag to honor individuals and organizations that made a positive impact for the LGBTQ+ community in the prior year.

Event 4. 06/23/2023 – SILICON VALLEY COMMUNITY FOUNDATION BOOK DISCUSSION OF "HOMELESSNESS IS A HOUSING PROBLEM" – I attended a book discussion presented

by Prof. Gregg Colburn on the topic of his book "Homelessness is a Housing Problem." The Silicon Valley Community Foundation and Destination: Home hosted the event for a wide group of members of city councils and boards of supervisors in San Mateo and Santa Clara counties. The essential takeaway is that the primary structural driver of regional variation in levels of homelessness is tight housing supply in high-cost housing markets. The book is available at: https://www.amazon.com/Homelessness-Housing-Problem-Structural-Patterns/dp/0520383761

Event 5. 06/23/2023 – ASIAN PACIFIC AMERICAN LEADERSHIP INSTITUTE (APALI) 26th ANNIVERSARY CELEBRATION – Together with Mayor Wei and City Manager Wu, I presented a certificate to Dr. Michael Chang in recognition of the occasion of the 26th Anniversary of APALI. The event was exceedingly well-attended by both APALI alumni and public officials.

Event 6. 06/24/2023 – PROGRESSIVE LEADERSHIP LAB – Together with a variety of Bay Area local electeds, I attended the last session of the Progressive Leadership Lab in Hayward for a discussion of land use principles, affordable housing, and the implementation of the Regional Housing Needs Allocation in the Bay Area.



Meeting: Thursday, July 6, 2023

Reporting Councilmember: Councilmember Kitty Moore

Report Activity Dates: 4/5/2023 to 6/28/2023

Event Date, Title, and Description:

April 5, 2023, Discover Stanford for You: Preventing Housing Displacement – One Family at a Time. End of COVID protections: funds and arguments which protected families struggling with rent payments resulting in housing displacement. Discussion of how Legal Aid Society of San Mateo County (and Law Foundation of Silicon Valley) help with housing displacement.

April 6, 2023, Santa Clara Valley Water Water Ambassador Program, Moore initiatied – application approved by SCVW BOD member. Attending multi-week course on water challenges, role of Valley Water, Valley Water Projects, and Organizational structure. Course begins today.

April 8, 2023, Cupertino Big Bunny Fun Run! Participated in the 5K, helped Parks and Recreation Staff give out all of the prize medals, placed 3rd for age group:) Great and healthy fun for the community!

April 10, 2023, CPUC meeting, voluntary attendance.

April 12, 2023, Santa Clara Valley Water Commission, Chair was unable to attend, as Vice Chair I ran the meeting. We had a robust discussion on the water rates and proposed rate hikes and recommended the BOD not approve the rate hike, elected to hold the August meeting and will hold it at the Advanced Water Purification Center.

April 13, 2023, Apple site visit RE Agenda item project on Vallco Parkway and Tantau.

April 16, 2023, Continuing Environmental Studies program: Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste April 20, 2023, Santa Clara Valley Water Water Ambassador Program, Moore initiatied – application approved by SCVW BOD member. Attending multi-week course on water challenges, role of Valley Water, Valley Water Projects, and Organizational structure. Deep dive into the water system.

April 22, 2023 Attended Cupertino Earth Day from 11-2:20pm and visited many booths and collected lots of information. Great to see the event growing from last year! Cupertino has a lot to be proud of regarding Bird Safe/Dark Skies, Single Use Plastics, Climate Action 2.0, Reach Codes, and more!

April 24, 2023 Attended Senator Josh Becker and San Jose Mayor Matt Mahan's press conference in support of Transitional Housing SB 643 to help provide sites for transitional homeless housing as a step to permanent housing.

April 26, 2023 Attended Supervisor Simitian's 8th Lehigh Cement Plant and Quarry Community meeting. Of note was the mention of a 15 M gallon spill of potable water in 2022. (That is equivalent to 46 acre-ft which is 46 times the amount of water an average family of 4 would use inside and outside in a year). Efforts underway to ensure that the plant is permanently closed and begin remediation.

April 27, 2023 Attended Santa Clara County Homelessness Prevention meeting by Destination Home. Santa Clara County Homelessness Prevention System (HPS). Emergency financial assistance was analyzed and found to be very effective. HPS has had to turn away about 2/3ds of the people seeking assistance due to lacking capacity. Since starting the Eviction Diversion and Settlement Program in April 2022, they have served 167 cases, \$2.9 M award, \$17,608 average award per household, demand is great. Average rent for HPS participants is \$1,987/month which is an increase of 12% YOY. More than half of the households HPS serves were not earning enough income to cover their monthly rent. More cost effective to prevent homelessness than to provide for homeless. Needs more funding, Measure A does not apply to this program.

April 29, 2023 Attended Cherry Blossom Festival and toured all of the indoor exhibits. Very well-attended and organized!

April 29, 2023 Attended the Grand Opening of Berraco Coffee at Stevens Creek Blvd. and S. Tantau across from Main Street Cupertino. This new shop is one-of-a-kind and features specialty coffee.

April 30, 2023 Ongoing Environmental Studies Environmental Resource Management and Pollution Provention: Energy, Chemicals and Waste, this week's topic: Solid and Medical Waste Management: Legal and Technical Aspects. Very timely subject which included an overview of MRFs and Santa Clara County landfills with multiple videos on waste processing.

May 4, 2023 Santa Clara Valley Water Water Ambassador Program, Moore initiatied – application approved by SCVW BOD member. Attending multi-week course on water challenges, role of Valley Water, Valley Water Projects, and Organizational structure.

May 6, 2023 Attended Supervisor Simitian and the City of Mountain View's Asian American Pacific Islander AAPI Heritage Month Celebration in Mountain View. Beautiful fusion of classical and contemporary music along with classic dance, fellowship, and community celebration of the founders of the local Asian Americans for Community Involvement and AACI's 50 years of service to the community.

May 7, 2023 Continued Environmental Resource Management and Pollution Prevention course. Waste: Current Topics & Issues.

May 8, 2023 2-hour Budget review with Senior City Staff, provided to all Councilmembers individually.

May 13, 2023 Ongoing Environmental Studies Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste, this week's topic: Chemical and Chemical Products: Legal and Management Aspects. Excellent overview of the Toxic Substances Control Act and its historical ineffectiveness (as compared to the FDA which requires drug testing prior to coming onto the market).

May 18, 2023 Santa Clara Valley Water Water Ambassador Program, Moore initiatied – application approved by SCVW BOD member. Attending multi-week course on water challenges, role of Valley Water, Valley Water Projects, and Organizational structure. This week's course included Purified Water projects, Emergency Services, Racial Equity, diversity and Inclusion, Civic Engagement, Government Relations, and Communications.

May 20, 2023 National Creek Cleanup Day at Regnart Creek! Volunteers pulled out 300 pounds of trash. I am holding part of a shopping cart:



May 21, 2023 Ongoing Environmental Studies Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste, this week's topic: Evaluation and Design of Chemicals and Chemical Products, in depth look at TSCA and the Green Chemistry initiative.

May 23, 2023 Santa Clara Valley Water Salt Pond Restoration update

May 24, 2023 Santa Clara Valley Water Anderson Dam update

May 25, 2023 Cupertino CREST Awards to congratulate our community volunteers!

May 26, 2023 Material Recover Facility Tour. Extensive tour of a MRF with Councilmember Chao and our Environmental Programs Manager: Ursula Syrova. Resource recovery has come a long way from the days of sending everything into an unlined open pit dump to optically sorting plastics, baling plastics, cardboard, aluminum, and grinding food waste to be dried and pelletized for animal feed.

May 28, 2023 Ongoing Environmental Studies Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste, this week's topic: Chemicals and Pesticides: Current Topics and Issues. Overview of PFAS, Paper making process using Green Chemistry, Paper recycling, Chemical Safety Board activities, Safer Choice labeling, Underground Storage Tanks, Right-to-Know Network's Risk Mgmt Plan database etc.

June 1, 2023 LGBTQ+ Pride Flag Raising for the City of Cupertino. I shared a speech regarding one of my sibling's experiences in the U.S. Army under DADT, the recording of the event is available on the City's Youtube Channel.

June 3, 2023 Santa Clara Valley Water Water Ambassador Program, Moore initiatied – application approved by SCVW BOD member. Attending multi-week course on water challenges, role of Valley Water, Valley Water Projects, and Organizational structure. This was an all-day tour of various water facilities in Santa Clara Valley Water and included a view of one of the new murals, tour of the Anderson Dam seismic retrofit project (Anderson Dam fits all of the other 9 reservoirs in the district and will take about ten years to be rebuilt), Upper Llagas Creek Flood Protection Project, Penetencia Water Treatment Plant, Alviso Marina County Park Mural, San Francisco Bay Shoreline Project, and the Silicon Valley Advanced Water Purification Center. This was a fantastic tour and the SCVW Water Ambassador program is very educational and well-run, please apply!

June 5, 2023 Ongoing Environmental Studies Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste, this week's topic: Non-renewable fuel sources (oil, coal, nuclear)

June 8, 2023 Santa Clara Valley Water Water Ambassador Graduation! Those who made it through the whole program graduated in a ceremony and we are officially Water Ambassadors!

June 9, 2023 Silicon Valley Leadership Group and Western Digital Energy and Sustainability Summit at the Oracle Conference Center. Guest speakers included Jennifer Granholm, Energy Secretary for the US DOE, Michael Regan, Administrator for the USEPA, Guest Panel on Transit including Darlene Gee, Sr. VP HNTB, Veronica Vaterpool, Deputy Admin. FTA, Carolyn Gonot, GM SCVTA, Jeff Tumlin, GM SFMTA, and Michelle Bouchard, Exec. Dir. Caltrain, followed by Billionair Tom Styer, Co-Exec. Director Galvanize Climate Solutions. Topics included sustainable real estate investing, needs and challenges in public transportation, diversity in democracy, and the need to expand the electrical grid.



USEPA Administrator Michael Regan (right)

June 10, 2023 Wilson Park Ribbon Cutting for the new Community Garden and Basketball Court. Take note of the metal siding on the Community Garden to help keep the squirrels out, and the bioswale on the south side of the basketball court to help retain water.

June 11, 2023 Ongoing Environmental Studies Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste, this week's topic: Renewable Energy Sources (wind, solar, geothermal). When environmental costs of energy resources are included in market prices, wind energy is the least expensive and least polluting way to produce electricity (surpassing coal).

June 11, 2023 Attended Cupertino Library Foundation panel on drought and water in the beautiful Library Expansion. Sashi Begur moderated the panelists of water experts sharing information of the water system, drought status, and that our focus needs to be on outdoor watering conservation!



June 22-23, 2023, Self-funded trip to Pomona, CA to attend the third CalCities Environmental Quality Policy Committee in person at the Sheraton Conference Center. This is the third year I have been appointed to this CalCities Committee by the Peninsula Division. This is the first time the Committee has met in person and all of the CalCities Committees came together for this event to hold the meetings. It was great to meet people we have only seen on Zoom for the past 2.5 years! After receiving a legislative update which included an appeal to all of the cities to join CalCities in their opposition to SB 423 (which modifies SB 35 and over 100 cities have signed on to oppose), the committees broke out into our respective groups to discuss pertinent legislation. The Environmental Quality Policy Committee discussed a water diversion penalty bill, SB 460, first, and I contributed the Author's amendments from the state Judiciary Committee as recommendations which the Committee moved to include in the Support position. The next bill, SB 1337, was also regarding water use that would impact pre-1914 water rights, and received a Neutral position. If you are interested in water rights in California, this is a good source: https://solano.com/collections/natural-resource-management/products/california-water-3rd-edition

June 24, 2023 I attended the CARES Field Day at Memorial Park/Quinlan Field in the afternoon. I hope everyone had a chance to stop by our volunteers who held their annual all-day event sharing their technical communications expertise. This year they had set up and secured their tall, multi-band antennae. When I stopped by their communications efforts had reached Hawaii and Pennsylvania. Our volunteers are prepared and trained to work on communications during an emergency or other communications-needed event such as their important help in public utility shutoff communications. Hats off to their excellent work!

June 25, 2023 Finals Week for the Environmental Studies Environmental Resource Management and Pollution Prevention: Energy, Chemicals and Waste Course. This is the second year of a self-funded Environmental Studies certificate program I began 1/2022 for further background related to Council topics such as Climate Change, Energy use, environmental law, and water usage.



Meeting: Thursday, July 6, 2023

Reporting Councilmember: Vice Mayor Sheila Mohan

Report Activity Dates: 6/12/23 to 6/23/23

Event Date, Title, and Description:

6/12/23: **Teen Commission**: Along with the other Councilmembers, I interviewed candidates for the Teen Commission – and was awed by how intelligent, articulate and poised the applicants were.

6/1423: **Silicon Valley Clean Energy Board Meeting**. Participated in a special study session to review SVCE's efforts to meet its goal of providing 100 % clean energy to customers / rate payers. SVCE has invested \$ 2.0 billion in renewable projects such solar battery storage, wind and geothermal energy, and in addition, is committed to balancing its investment in clean energy resources with reliability and affordability.

6/15/23 **Coach House Development Project**. Attended a prep session provided by City Manager and Planning staff for the Coach House Mixed-Use Redevelopment Project which will result in 34 residential units plus commercial space.

6/17/23 **Relay for Life**. With Mayor Wei, participated in the Relay for Life Cancer Awareness Event at Memorial Park. A heartwarming celebration of cancer survivors, their families and caregivers. I spoke on how honored I felt to attend and feel connected with all who have been touched in one form or another by cancer.

6/19/23 **California Cricket Academy**. Attended the 20th year celebration of the CCA held on the library field and presented awards to winners and championship teams. Hundreds of young, high-energy cricket players representing teams from many other States participated in the tournament.

6/24/23 **Special Olympics of Northern California**. Attended the 2023 Summer Games held on the beautiful Santa Clara University campus to showcase the talents and determination of

children and adults with intellectual disabilities. Made a few remarks to honor athletes, coaches and volunteers and thanked the organizers for using Cupertino High School for its track and field events.



Meeting: Thursday, July 6, 2023

Reporting Councilmember: Mayor Hung Wei

Report Activity Dates: 6/13/23 to 6/26/23

Event 1. June 13, 2023, Growing Climate Resilient Urban Forests Webinar

Attended the Webinar and received information on how to grow the best possible urban forests and create effective cross-disciplinary collaborations to guide nature interventions in urban settings.

Event 2. June 14, 2023, Commissioners/Mayor Monthly Meeting

Attended the Commissioners/Mayor Monthly Meeting with City Manager Pamela Wu and listened to reports on updated activities from eleven Commission/Committee representatives.

Event 3. June 14, 2023, Silicon Valley Clean Energy (SVCE) Study Session

SVCE staff led a Study Session for its Directors and Alternate Directors on Clean Power Standards and Reporting which included various emerging issues on Emissions Accounting, Clean Standards, Regulatory Mechanisms, Clean Product Challenges, Clean Standard Pathways, and staff also reported on a Pathway Study to be presented to the Board in the 4th quarter.

Event 4. June 15, 2023, Stanford University "Central Energy Facility" Tour

SVCE arranged a tour of the Central Energy Facility at Stanford University followed by a staffled discussion and Q&A. This is a one-of-a-kind Energy System Innovations Program with a heat-recovery system that meets 88% of campus heating load, with multiple 5-million+ thermal storage tanks, a high-voltage substation, and a sophisticated control room.

Event 5. June 15, 2023, Meeting with Student Delegation from Taipei

Met with a Middle School Student Delegation from Taipei at the City Hall. City Manager Pamela Wu made a presentation on the City of Cupertino followed by Q&A led by Assistant City Manager Matt Morley. City Summer Intern Erik Wang was also present to interact with the students.

Event 6. June 15, 2023, Briefing Meeting with City Staff on upcoming City Council Agenda Items

Met with City staff to go over details and questions on Memorial Park Specific Plan Conceptual Design, the Joint Policy Framework Agreement Regarding the Restoration and Potential Future Development of the Lehigh Quarry Property between the City of Cupertino and Santa Clara County, and the Coach House Development Project.

Event 7. June 15, 2023, Cities Association of Santa Clara County Annual Dinner

Attended the Annual Dinner hosted by the Cities Association of Santa Clara County and networked with City Councilmembers and County Board of Supervisors.

Event 8. June 16, 2023, Quarterly Mayor/City Manager Meeting with the Cities of Sunnyvale, Santa Clara, and Mountain View

Attended the Quarterly Meeting with Mayors and City Managers from Sunnyvale, Santa Clara, and Mountain View. Each City reported on its budget, recent and future developments, and specific opportunities and challenges, with discussions focused on collaborative opportunities on community shuttles (Silicon Valley Hopper), Clean Energy Standards, and Revenue Generating Measures. Santa Clara Mayor Lisa Gilmor reported that the City of Santa Clara would host both Superball 60 in February 2026 and World Cup in June 2026 and would need regional support from neighboring Cities to support two big events within 2026.

Event 9. June 16, 2023, Visited the Softball Field at Memorial Park

Visited the softball field at Memorial Park, listened to players who were having a game at the softball fields, and chatted with spectators.

Event 10. June 17, 2023, American Cancer Society's Relay for Life event at Memorial Park

Attended the Opening Ceremony of the Relay for Life event at Memorial Park with Vice Mayor Sheila Mohan, made a short speech welcoming relay walkers to Cupertino, thanked the participants for raising awareness and fund to support cancer research, 24/7 care for cancer patients, and a cancer-free future. I bid on the auction items and successfully brought home three baskets.

Event 11. June 19, 2023, California Cricket Academy Awards Ceremony at the Cupertino Library Field

Attended and presented Awards to the winning teams of the Tournament hosted by California Cricket Academy.

Event 12. Year of the Rabbit Community Art Project Kick Off by the Rotary Club of Cupertino

Attended the Kick Off Exhibition of the Year of the Rabbit Community Art Project championed by the Rotary Club of Cupertino at the Cupertino Chamber of Commerce.

Event 13. National Association of Women Business Owners (NAWBO) Board Installation Mixer

Attended the NAWBO's Board Installation mixer at Tessora's Barra di Vino in Campbell and networked with members of NAWBO.

Event 14. Golden Bank Grand Opening Ceremony in Fremont

Attended the Grand Opening of Golden Bank's branch in Fremont and celebrated the opening of three Golden Bank branches in Cupertino, Fremont, and San Mateo.

Event 15. "Homeless Is A Housing Problem" Seminar hosted by Destination Home and Silicon Valley Community Foundation at the Garden House in Shoup Park in Los Altos

Attended a presentation by Gregg Colburn, the author of Homeless Is A Housing Problem, followed by Q & A and discussions on homeless issues in the region.

Event 16. Stevens Creek Corridor Steering Committee Meeting at San Jose City Hall

Attended the Stevens Creek Corridor Steering Committee Meeting with representatives from the City of Santa Clara, San Jose, County Board of Supervisors, and City staff from Cupertino, Santa Clara, San Jose, and the County. The Consultants made a presentation of progress made in 2022. The Committee members reviewed and proposed edits of the Bylaws and elected Chair of the Steering Committee.

Event 17. Asian Pacific Islander Leadership Institute (APALI) 26th Anniversary Celebration

Attended the 26th Anniversary Celebration and Fundraiser of APALI. Networked with elected officials and APALI alumni and supported the current class of APALI with a contribution.

Event 18. Cupertino Amateur Radio Emergency Services Field Day at Memorial Park

Attended the Field Day at Memorial Park. Met with volunteers of the Cupertino Amateur Emergency Services and learned how the operations work.

Event 19. Grand Opening Ceremony of the Community Garden at the Northwest YMCA in Cupertino

Attended the Grand Opening Ceremony of the Community Garden at the Northwest YMCA – a service project championed by the Rotary Club of Cupertino in collaboration with scouts, Northwest YMCA Board of Directors and staff.. The Project was designed by Water Efficient Gardens and completed with 120+ volunteers from the community – a true testimonial that collaboration works!