

CC 06-07-2022

Oral Communications

Written Communications

From: [Kirsten Squarcia](#)
To: [Lauren Sapudar](#)
Subject: FW: Cupertino PUBLIC COMMENT - Comments Santa Clara County Agenda Item #29 Lehigh
Date: Tuesday, June 7, 2022 8:16:05 PM
Attachments: [2022-6-6 BOS LEHIGH VIOLATIONS COMMENTS.pdf](#)
[labor safety NEW.PDF](#)
[2013 Lehigh Fire - reduced file size.pdf](#)
[Hernandez - lists criminal counts.pdf](#)
[image001.png](#)
[image003.png](#)
[image005.png](#)
[image007.png](#)
[image009.png](#)
[image011.png](#)
[image013.png](#)
[image015.png](#)



Kirsten Squarcia

City Clerk
City Manager's Office
KirstenS@cupertino.org
[\(408\) 777-3225](tel:(408)777-3225)



From: Rhoda Fry <fryhouse@earthlink.net>
Sent: Monday, June 6, 2022 5:27 PM
To: Cupertino City Manager's Office <citymanager@cupertino.org>; City Council <CityCouncil@cupertino.org>; City Clerk <CityClerk@cupertino.org>
Subject: Cupertino PUBLIC COMMENT - Comments Santa Clara County Agenda Item #29 Lehigh

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Dear City Council,
On June 7, Lehigh will be on the Santa Clara County Board of Supervisors meeting Agenda Item #29.
Attached are my comments and supporting files.
Regards,
Rhoda Fry

A FDID 43080 State CA Incident Date 01/27/2013 Station LO Incident Number 13-0270009 Exposure 000

B Location* [X] Street address 24001 STEVENS CREEK BL 95014 CUPERTINO CA

C Incident Type * 138 Off-road vehicle or heavy E1 Date & Times 01/27/2013 05:42:15 E2 Shift & Alarms A 01 CTY D Aid Given or Received* 1 Mutual aid received 2 Automatic aid rcv. 3 Mutual aid given 4 Automatic aid given 5 Other aid given N [X] None

F Actions Taken * 11 Extinguishment by fire 81 Incident command 861 Provide fire G1 Resources * [X] Apparatus Personnel Suppression 0010 0032 EMS Other G2 Estimated Dollar Losses & Values

Completed Modules [X] Fire-2 H1* Casualties [X] None H3 Hazardous Materials Release I Mixed Use Property NN [X] Not Mixed

J Property Use* Structures 131 Church, place of worship 161 Restaurant or cafeteria 162 Bar/Tavern or nightclub 213 Elementary school or kindergarten 215 High school or junior high 241 College, adult education 311 Care facility for the aged 331 Hospital Outside 124 Playground or park 655 Crops or orchard 669 Forest (timberland) 807 Outdoor storage area 919 Dump or sanitary landfill 931 Open land or field

K1 Person/Entity Involved ☐ Local Option LEHIGH SOUTHWEST CEMENT COMPANY 408 - 996 - 4231
Business name (if applicable) Area Code Phone Number

☒ Check This Box if same address as incident location. Then skip the three duplicate address lines.

ALAN SABAWI
Mr., Ms., Mrs. First Name MI Last Name Suffix

24001 STEVENS CREEK BL
Number Prefix Street or Highway Street Type Suffix

CUPERTINO
City

CA 95014 -
State Zip Code

☐ More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary

K2 Owner ☐ Same as person involved? Then check this box and skip The rest of this section. LEHIGH SOUTHWEST CEMENT COMPANY 408 - 996 - 4231
Local Option Business name (if Applicable) Area Code Phone Number

☒ Check this box if same address as incident location. Then skip the three duplicate address lines.

CEMENT GROUP HEIDELBERG
Mr., Ms., Mrs. First Name MI Last Name Suffix

24001 STEVENS CREEK BL
Number Prefix Street or Highway Street Type Suffix

CUPERTINO
City

CA 95014 -
State Zip Code

L Remarks

Local Option

1. Engine 16, Rescue 14, and Battalion 14 responded to report of a possible vegetation fire in the hills near Freeway 280. Additional information from County Communications indicated an updated location at the Lehigh Cement Quarry. Battalion 14 upgraded the response to a structure response, causing Engine 7 to be attached to the call.

2. Engine 16 and Battalion 14 arrived on scene concurrently at the security gate of the Lehigh Cement Plant. They were met by an escort car, who escorted both units to the fire scene approximately 2 miles uphill from the gate. Battalion 14 established Lehigh Incident Command, and Engine 16 crew arrived to find a row of very large dump trucks parked side-by-side with 4 vehicles fully involved with fire and two trucks being threatened by fire.

3. Engine 16 crew was assigned Fire Attack and deployed two 2.5" hoseline's to the fire. Rescue 14 crew was assigned Water Supply and their personnel evaluated the water sources on scene, which consisted of water storage tanks and water tenders. Incident Command requested two additional fire engines.

Engine 7 crew arrived and was assigned to Fire Attack. Battalion 2, Engine 1, and Engine 2 arrived. Battalion 2 was assigned Safety Officer and both Engine 1 and Engine 2 crews were assigned to Water Supply. These units provided their tank water and provided water shuttle operations.

An agency representative from Lehigh provided a driver who was able to move the two trucks being threatened by fire. The two outside trucks were moved to a safe location. A continuous water supply was established with Engine 1 and Engine 2's water tanks, drafting

L Authorization

16475 Salazar, Richard BC E16 01 31 2013
Officer in charge ID Signature Position or rank Assignment Month Day Year

Check Box if ☐ 39865 Mayfield, David C E16 01 31 2013
same as Officer making report ID Signature Position or rank Assignment Month Day Year

Narrative:

1. Engine 16, Rescue 14, and Battalion 14 responded to report of a possible vegetation fire in the hills near Freeway 280. Additional information from County Communications indicated an updated location at the Lehigh Cement Quarry. Battalion 14 upgraded the response to a structure response, causing Engine 7 to be attached to the call.

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Engine 7 crew arrived and was assigned to Fire Attack. Battalion 2, Engine 1, and Engine 2 arrived. Battalion 2 was assigned Safety Officer and both Engine 1 and Engine 2 crews were assigned to Water Supply. These units provided their tank water and provided water shuttle operations.

An agency representative from Lehigh provided a driver who was able to move the two trucks being threatened by fire. The two outside trucks were moved to a safe location. A continuous water supply was established with Engine 1 and Engine 2's water tanks, drafting by Rescue 14 crew from a stationary tank, and from water pumped into Engine 16's tank overflow box by two water tenders provided by Lehigh Cement Plant.

We found fuel and hydraulic fluid leaking from all of the burning trucks. A representative from Lehigh Cement was able to use a bulldozer to build a dike around the leaking fluids for containment. The fire was brought under control approximately an hour and forty minutes after Engine 16's crew arrived.

Investigator Davis arrived later and started investigating the cause and origin of the fires. Pacific Gas and Electric was initially notified and responded to the front gate of the complex, but they were canceled by the facility's representative because the power lines in question are on private property and maintained by Lehigh Cement Plant employees.

4. Multiple representatives from Lehigh Cement Plant were present throughout the event to assist fire department personnel. The City Manager of Cupertino also was notified.

Other three involved vehicle's information:

#2 . Caterpillar, Model 777C, VIN: 4XJ00525, year is 2000.

#3 . Caterpillar, Model 777D, VIN: AGC00478, year is 2001

#4 . Caterpillar, Model 777D, BIN: AGC2531, year is 2006

A		FDID		43080		State		CA		Incident Date		MM DD YYYY		01 27 2013		Station		LO		Incident Number		13-0270009		Exposure		000		<input type="checkbox"/> Delete <input type="checkbox"/> Change <input type="checkbox"/> No Activity		NFIRS -2 Fire	
---	--	------	--	-------	--	-------	--	----	--	---------------	--	------------	--	------------	--	---------	--	----	--	-----------------	--	------------	--	----------	--	-----	--	--	--	------------------	--

B Property Details B1 <input type="checkbox"/> <input checked="" type="checkbox"/> Not Residential Estimated Number of residential living units in building of origin whether or not all units became involved			C On-Site Materials or Products <input type="checkbox"/> None Complete if there were any significant amounts of commercial, industrial, energy or agricultural products or materials on the property, whether or not they became involved Enter up to three codes. Check one or more boxes for each code entered. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> 812 Construction On-site material (1) </div> <div style="width: 45%;"> 1 <input type="checkbox"/> Bulk storage or warehousing 2 <input checked="" type="checkbox"/> Processing or manufacturing 3 <input type="checkbox"/> Packaged goods for sale 4 <input type="checkbox"/> Repair or service </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> On-site material (2) </div> <div style="width: 45%;"> 1 <input type="checkbox"/> Bulk storage or warehousing 2 <input type="checkbox"/> Processing or manufacturing 3 <input type="checkbox"/> Packaged goods for sale 4 <input type="checkbox"/> Repair or service </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> On-site material (3) </div> <div style="width: 45%;"> 1 <input type="checkbox"/> Bulk storage or warehousing 2 <input type="checkbox"/> Processing or manufacturing 3 <input type="checkbox"/> Packaged goods for sale 4 <input type="checkbox"/> Repair or service </div> </div>		
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D Ignition D1 83 Engine area, running Area of fire origin *		E1 Cause of Ignition <input type="checkbox"/> Check box if this is an exposure report. Skip to section G 1 <input checked="" type="checkbox"/> Intentional 2 <input type="checkbox"/> Unintentional 3 <input type="checkbox"/> Failure of equipment or heat source 4 <input type="checkbox"/> Act of nature 5 <input type="checkbox"/> Cause under investigation U <input type="checkbox"/> Cause undetermined after investigation		E3 Human Factors Contributing To Ignition Check all applicable boxes 1 <input type="checkbox"/> Asleep <input checked="" type="checkbox"/> None 2 <input type="checkbox"/> Possibly impaired by alcohol or drugs 3 <input type="checkbox"/> Unattended person 4 <input type="checkbox"/> Possibly mental disabled 5 <input type="checkbox"/> Physically Disabled 6 <input type="checkbox"/> Multiple persons involved	
D2 UU Undetermined Heat source *		E2 Factors Contributing To Ignition <input checked="" type="checkbox"/> None NN None Factor Contributing To Ignition (1)		7 <input type="checkbox"/> Age was a factor Estimated age of person involved	
D3 UU Undetermined Item first ignited * 1 <input type="checkbox"/> Check Box if fire spread was confined to object of origin		Factor Contributing To Ignition (2)		1 <input type="checkbox"/> Male 2 <input type="checkbox"/> Female	
D4 <input type="checkbox"/> <input type="checkbox"/> Type of material first ignited Required only if item first ignited code is 00 or <70					

F1 Equipment Involved In Ignition <input checked="" type="checkbox"/> None If Equipment was not involved, Skip to Section G NNN None Equipment Involved Brand Model Serial # Year		F2 Equipment Power <input type="checkbox"/> <input type="checkbox"/> Equipment Power Source		G Fire Suppression Factors Enter up to three codes. <input type="checkbox"/> None Fire suppression factor (1) Fire suppression factor (2) Fire suppression factor (3)	
		F3 Equipment Portability 1 <input type="checkbox"/> Portable 2 <input type="checkbox"/> Stationary Portable equipment normally can be moved by one person, is designed to be use in multiple locations, and requires no tools to install.			

H1 Mobile Property Involved <input type="checkbox"/> None 1 <input type="checkbox"/> Not involved in ignition, but burned 2 <input type="checkbox"/> Involved in ignition, but did not burn 3 <input checked="" type="checkbox"/> Involved in ignition and burned		H2 Mobile Property Type & Make 60 Industrial, constr., Mobile property type CP Caterpillar Mobile property make		Local Use <input type="checkbox"/> Pre-Fire Plan Available Some of the information presented in this report may be based upon reports from other Agencies <input type="checkbox"/> Arson report attached <input type="checkbox"/> Police report attached <input type="checkbox"/> Coroner report attached <input type="checkbox"/> Other reports attached	
785 Mobile property model		1983 Year			
NONE License Plate Number		6HK00157 State VIN Number			

A	FDID * 43080	State *	CA	MM 1	DD 27	YYYY 2013	Station	LO	Incident Number * 13-0270009	Exposure *	000	<input type="checkbox"/> Delete <input type="checkbox"/> Change	NFIRS - 9 Apparatus or Resources
B	Apparatus or * Resource	Date and Times <small>Check if same as alarm date</small>					Sent <input checked="" type="checkbox"/>	Number of * People	Use <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>	Actions Taken			
		<small>Month</small>	<small>Day</small>	<small>Year</small>	<small>Hour</small>	<small>Min</small>							
1	ID <input type="text" value="B72"/> Type <input type="text" value="92"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:25"/>	<input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="55"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:25"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="07:13"/>							
2	ID <input type="text" value="B74"/> Type <input type="text" value="92"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="05:45"/>	<input checked="" type="checkbox"/>	<input type="text" value="2"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="81"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="05:54"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="17:05"/>							
3	ID <input type="text" value="DTINV"/> Type <input type="text" value="00"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="08:05"/>	<input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="861"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="08:43"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="17:14"/>							
4	ID <input type="text" value="E71"/> Type <input type="text" value="11"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:03"/>	<input checked="" type="checkbox"/>	<input type="text" value="3"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="76"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:11"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="08:58"/>							
5	ID <input type="text" value="E72"/> Type <input type="text" value="11"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:05"/>	<input checked="" type="checkbox"/>	<input type="text" value="3"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="76"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:15"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="07:56"/>							
6	ID <input type="text" value="E75"/> Type <input type="text" value="11"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:03"/>	<input checked="" type="checkbox"/>	<input type="text" value="3"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="93"/>	<input type="text"/>		
		Arrival <input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="06:05"/>							
7	ID <input type="text" value="E76"/> Type <input type="text" value="11"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="05:43"/>	<input checked="" type="checkbox"/>	<input type="text" value="3"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="11"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="05:54"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="14:47"/>							
8	ID <input type="text" value="E77"/> Type <input type="text" value="11"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="05:51"/>	<input checked="" type="checkbox"/>	<input type="text" value="5"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="11"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="05:56"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="08:57"/>							
9	ID <input type="text" value="E77"/> Type <input type="text" value="11"/>	Dispatch <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="12:32"/>	<input checked="" type="checkbox"/>	<input type="text" value="5"/>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<input type="text" value="731"/>	<input type="text"/>		
		Arrival <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="12:32"/>	<input checked="" type="checkbox"/>						
		Clear <input checked="" type="checkbox"/>	<input type="text" value="1"/>	<input type="text" value="27"/>	<input type="text" value="2013"/>	<input type="text" value="17:50"/>							

A FDID <u>43080</u> *		MM <u>1</u> DD <u>27</u>		YYYY <u>2013</u>		LO <u>13-0270009</u>		000		<input type="checkbox"/> Delete	NFIRS - 9 Apparatus or Resources
		State <u>CA</u> *		Incident Date *		Station		Incident Number *		Exposure *	

B	Apparatus or * Resource	Date and Times					Sent <input checked="" type="checkbox"/>	Number of * People	Use <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>	Actions Taken	
		Check if same as alarm date									
		Month	Day	Year	Hour	Min					
1	ID <u>E79</u> Type <u>11</u>	Dispatch <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>12:32</u>	<input checked="" type="checkbox"/>	<u>3</u>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u>731</u>	
		Arrival <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>12:32</u>	<input checked="" type="checkbox"/>				
		Clear <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>12:32</u>					
2	ID <u>R74</u> Type <u>11</u>	Dispatch <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>05:43</u>	<input checked="" type="checkbox"/>	<u>8</u>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u>74</u>	
		Arrival <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>05:57</u>	<input checked="" type="checkbox"/>				
		Clear <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>08:58</u>					
3	ID <u>R74</u> Type <u>11</u>	Dispatch <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>11:42</u>	<input checked="" type="checkbox"/>	<u>8</u>	<input checked="" type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u>10</u>	
		Arrival <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>12:37</u>	<input checked="" type="checkbox"/>				
		Clear <input checked="" type="checkbox"/>	<u>1</u>	<u>27</u>	<u>2013</u>	<u>17:06</u>					
4	ID <u> </u> Type <u> </u>	Dispatch <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>	<u> </u>	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u> </u>	<u> </u>
		Arrival <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>				
		Clear <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>					
5	ID <u> </u> Type <u> </u>	Dispatch <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>	<u> </u>	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u> </u>	<u> </u>
		Arrival <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>				
		Clear <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>					
6	ID <u> </u> Type <u> </u>	Dispatch <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>	<u> </u>	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u> </u>	<u> </u>
		Arrival <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>				
		Clear <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>					
7	ID <u> </u> Type <u> </u>	Dispatch <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>	<u> </u>	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u> </u>	<u> </u>
		Arrival <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>				
		Clear <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>					
8	ID <u> </u> Type <u> </u>	Dispatch <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>	<u> </u>	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u> </u>	<u> </u>
		Arrival <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>				
		Clear <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>					
9	ID <u> </u> Type <u> </u>	Dispatch <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>	<u> </u>	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other	<u> </u>	<u> </u>
		Arrival <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<input type="checkbox"/>				
		Clear <input type="checkbox"/>	<u> </u>	<u> </u>	<u> </u>	<u> </u>					

Type of Apparatus or Resources		
Ground Fire Suppression 11 Engine 12 Truck or aerial 13 Quint 14 Tanker & pumper combination 16 Brush truck 17 ARF (Aircraft Rescue and Firefighting) 10 Ground fire suppression, other Heavy Ground Equipment 21 Dozer or plow 22 Tractor 24 Tanker or tender 20 Heavy equipment, other Aircraft 41 Aircraft: fixed wing tanker 42 Helitanker 43 Helicopter 40 Aircraft, other	Marine Equipment 51 Fire boat with pump 52 Boat, no pump 50 Marine apparatus, other Support Equipment 61 Breathing apparatus support 62 Light and air unit 60 Support apparatus, other Medical & Rescue 71 Rescue unit 72 Urban Search & rescue unit 73 High angle rescue unit 75 BLS unit 76 ALS unit 70 Medical and rescue unit, other	<div style="border: 1px solid black; padding: 5px; text-align: center;"> More Apparatus? Use Additional Sheets </div> Other 91 Mobile command post 92 Chief officer car 93 HazMat unit 94 Type 1 hand crew 95 Type 2 hand crew 99 Privately owned vehicle 00 Other apparatus/resource NN None UU Undetermined

A	FDID 43080	State CA	Incident Date 1/27/2013	Station LO	Incident Number 13-0270009	Exposure 000	<input type="checkbox"/> Delete <input type="checkbox"/> Change	NFIRS - 11 Arson
----------	-------------------	-----------------	--------------------------------	-------------------	-----------------------------------	---------------------	--	-----------------------------------

B Agency Referred To <input type="checkbox"/> None	Street Address	Their Case Number
Agency Name	City	Their ORI
Agency Phone Number	State Zip Code	Their Federal Identifier (FID) Their FIDID

C Case Status	D Availability of Material First Ignited
1 <input checked="" type="checkbox"/> Investigation open 2 <input type="checkbox"/> Investigation closed 3 <input type="checkbox"/> Investigation inactive 4 <input type="checkbox"/> Closed with arrest 5 <input type="checkbox"/> Closed with exceptional clearance	1 <input type="checkbox"/> Transport to scene 2 <input checked="" type="checkbox"/> Available at scene U <input type="checkbox"/> Unknown

E Suspected Motivation Factors	Check up to three factors
11 <input type="checkbox"/> Extortion 12 <input type="checkbox"/> Labor unrest 13 <input type="checkbox"/> Insurance fraud 14 <input type="checkbox"/> Intimidation 15 <input type="checkbox"/> Void contract/lease 21 <input type="checkbox"/> Personal 22 <input type="checkbox"/> Hate crime 23 <input type="checkbox"/> Institutional 24 <input type="checkbox"/> Societal 31 <input type="checkbox"/> Protest 32 <input type="checkbox"/> Civil unrest 41 <input type="checkbox"/> Fireplay/curiosity	42 <input type="checkbox"/> Vanity/recognition 43 <input type="checkbox"/> Thrills 44 <input type="checkbox"/> Attention/sympathy 45 <input type="checkbox"/> Sexual excitement 51 <input type="checkbox"/> Homicide 52 <input type="checkbox"/> Suicide 53 <input type="checkbox"/> Domestic violence 54 <input type="checkbox"/> Burglary 61 <input type="checkbox"/> Homicide concealment 62 <input type="checkbox"/> Burglary concealment 63 <input type="checkbox"/> Auto theft concealment 64 <input type="checkbox"/> Destroy records/evidence 00 <input type="checkbox"/> Other motivation UU <input checked="" type="checkbox"/> Unknown motivation

F Apparent Group Involvement	H Incendiary Devices
Check up to three factors	Select one from each category
1 <input type="checkbox"/> Terrorist group 2 <input type="checkbox"/> Gang 3 <input type="checkbox"/> Anti-government group 4 <input type="checkbox"/> Outlaw motorcycle organization 5 <input type="checkbox"/> Organized crime 6 <input type="checkbox"/> Racial/ethnic hate group 7 <input type="checkbox"/> Religious hate group 8 <input type="checkbox"/> Sexual preference hate group 0 <input type="checkbox"/> Other group N <input type="checkbox"/> No Group involvement, acted alone U <input type="checkbox"/> Unknown	CONTAINER NN <input type="checkbox"/> None 11 <input type="checkbox"/> Bottle (Glass) 14 <input type="checkbox"/> Pressurized Container 17 <input type="checkbox"/> Box 12 <input type="checkbox"/> Bottle (Plastic) 15 <input type="checkbox"/> Can 00 <input type="checkbox"/> Other Container 13 <input type="checkbox"/> Jug 16 <input type="checkbox"/> Gasoline or fuel can UU <input type="checkbox"/> Unknown IGNITION/DELAY DEVICE NN <input type="checkbox"/> None 11 <input type="checkbox"/> Wick or Fuse 17 <input type="checkbox"/> Road flare/fuse 12 <input type="checkbox"/> Candle 18 <input type="checkbox"/> Chemical Component 13 <input type="checkbox"/> Cigarette & Matchbook 19 <input type="checkbox"/> Trailer/Streamer 14 <input type="checkbox"/> Electronic Component 20 <input type="checkbox"/> Open flame source 15 <input type="checkbox"/> Mechanical Device 00 <input type="checkbox"/> Other delay device 16 <input type="checkbox"/> Remote Control UU <input checked="" type="checkbox"/> Unknown FUEL NN <input type="checkbox"/> None 11 <input type="checkbox"/> Ordinary Combustibles 16 <input type="checkbox"/> Pyrotechnic material 12 <input type="checkbox"/> Flammable gas 17 <input type="checkbox"/> Explosive material 14 <input type="checkbox"/> Ignitable liquid 00 <input type="checkbox"/> Other material 15 <input type="checkbox"/> Ignitable solid UU <input checked="" type="checkbox"/> Unknown

G₁ Entry Method	I Other Investigative Information
UU <input type="checkbox"/> Unknown Entry Method	Check all that apply
	1 <input type="checkbox"/> Code violations 2 <input type="checkbox"/> Structure for sale 3 <input type="checkbox"/> Structure vacant 4 <input type="checkbox"/> Other crimes involved 5 <input type="checkbox"/> Illicit drug activity 6 <input type="checkbox"/> Change in insurance 7 <input type="checkbox"/> Financial problem 8 <input checked="" type="checkbox"/> Criminal/Civil actions pending

G₂ Extent of Fire Involvement on Arrival	J Property Ownership
5 <input type="checkbox"/> Fully involved Extent of Fire Involvement	Check all that apply
	1 <input checked="" type="checkbox"/> Private 2 <input type="checkbox"/> City, town, village, local 3 <input type="checkbox"/> County or parish 4 <input type="checkbox"/> State or province 5 <input type="checkbox"/> Federal 6 <input type="checkbox"/> Foreign 7 <input type="checkbox"/> Military 0 <input type="checkbox"/> Other

K Initial Observations	L Laboratory Used
Check all that apply	Check all that apply
1 <input type="checkbox"/> Windows ajar 5 <input type="checkbox"/> Fire department forced entry 2 <input type="checkbox"/> Doors ajar 6 <input checked="" type="checkbox"/> Forced entry prior to FD arrival 3 <input type="checkbox"/> Doors locked 7 <input type="checkbox"/> Security system activated 4 <input type="checkbox"/> Doors unlocked 8 <input type="checkbox"/> Security present, (didn't activate)	1 <input type="checkbox"/> Local 3 <input type="checkbox"/> ATF 5 <input type="checkbox"/> Other 6 <input type="checkbox"/> Private 2 <input type="checkbox"/> State 4 <input type="checkbox"/> FBI Federal N <input checked="" type="checkbox"/> None
NFIRS-11 Revision 11/17/98	

Arson Narrative:
INVESTIGATION REPORT

SYNOPSIS:

These fires involved six industrial dump truck vehicle, four of them sustained fire, heat, and smoke damage. The dump trucks were intentionally ignited with an unknown ignition device. Vehicles we parked next to each other in secured private property area of large quarry, cement plant. No suspects at this time, no injuries from fire.

INVESTIGATION:

Please see Investigator Davis's investigation report for further information.

SANTA CLARA COUNTY FIRE DEPARTMENT CA- 0432000		<input checked="" type="checkbox"/> CRIME <input type="checkbox"/> ARREST <input type="checkbox"/> OFFICER	<input type="checkbox"/> CITED & RELEASED <input type="checkbox"/> INJURY <input type="checkbox"/> BOOKED	BATS NUMBER	CASE 13-0270009	
<input checked="" type="checkbox"/> FELONY <input type="checkbox"/> MISDEMEANOR <input type="checkbox"/> INFRACTION <input type="checkbox"/> SERVICE		FIREARM TYPE	TYPE OF FORCE: <input type="checkbox"/> HANDS/FEET <input type="checkbox"/> KNIFE/ CUTTING INST. <input type="checkbox"/> FIREARM <input type="checkbox"/> OTHER:			
REPORT TYPE 451(d) P.C. Arson to Property		OCCURRED	DATE	TIME	DAY	
		ON OR FROM	01/27/13	0100	Sun	
LOCATION OF EVENT 24001 Stevens Creek Blvd, Cupertino, CA 95014		TO	01/27/13	0542	Sun	
		REPORTED	01/27/13	0542	Sun	
"V" = VICTIM "W" = WITNESS	"R" = REPORTING PARTY "O" = OTHER	34090.6 GC- VEHICLE#	RECORDER #	DATE	TIME	
BATS ENTRY NEEDED <input type="checkbox"/>	V LAST, FIRST, MIDDLE LEHIGH Hanson Cement Plant	<input type="checkbox"/> STATE OF CA	RACE -	SEX -	DOB -	
			HT -	WT -		
			PRIMARY LANGUAGE <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> ENGLISH <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE			
DISPOSITION						
<input type="checkbox"/> ARREST <input type="checkbox"/> UNFOUNDED <input checked="" type="checkbox"/> ACTIVE FIU ARSON UNIT <input type="checkbox"/> ACTIVE FIU SHIFT INVEST <input type="checkbox"/> INACTIVE <input type="checkbox"/> TO DA FOR COMPLAINT <input type="checkbox"/> INFORMATION ONLY - NO CRIME <input type="checkbox"/> TO ORIGINAL REPORT <input type="checkbox"/> CLEARED/ CLOSED <input type="checkbox"/> CLOSED BY EXCEPTION: <input type="checkbox"/> DEATH OF OFFENDER <input type="checkbox"/> PROSECUTION DECLINED <input type="checkbox"/> VICTIM REFUSED TO COOPERATE <input type="checkbox"/> JUVENILE NO CUSTODY (NOT REFERRED TO JPD)						
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE						
ADDRESS 24001 Stevens Creek Blvd.		CITY Cupertino	STATE CA	ZIP 95014	PHONE 972 653-5500	
EMPLOYER		OCCUPATION	SSN	DL NUMBER	STATE	
WORK ADDRESS		CITY	STATE	ZIP	PHONE 408 996-4211	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS						
W1 LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA	RACE W	SEX M	DOB [REDACTED]	
			HT 6-01	WT 240		
		PRIMARY LANGUAGE <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> ENGLISH <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE				
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE						
ADDRESS [REDACTED]		CITY [REDACTED]	STATE CA	ZIP [REDACTED]	PHONE [REDACTED]	
EMPLOYER LEHIGH Hanson Cement Plant		OCCUPATION HR	SSN	DL NUMBER	STATE CA	
WORK ADDRESS 24001 Stevens Creek Blvd.		CITY Cupertino	STATE CA	ZIP 95014	PHONE [REDACTED]	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS						
VICTIM VEHICLE INFORMATION	YEAR	MAKE	MODEL	BODY TYPE	COLOR	
		LICENSE/ VIN		STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY/ STATE	ZIP	
<input type="checkbox"/> VICTIM		DAMAGE TO VEHICLE				
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> MPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED						
PROPERTY CODES D= Destroyed/ Damaged/ Vandalized L= Lost S= Stolen R= Recovered (Previously Stolen) B= Both Stolen and Recovered			UCR PROPERTY CODES A= Currency/ Notes/ Etc. B= Jewelry C= Clothing and Furs D= Locally Stolen Vehicle E= Office Equipment F= TVs/ Radios/ Stereos/ Etc.			
			G= Firearms H= Household Goods I= Consumable Goods J= Livestock K= Miscellaneous			
OTHER FORMS						
<input type="checkbox"/> JCR <input type="checkbox"/> DV <input type="checkbox"/> HATE <input type="checkbox"/> ELDER <input type="checkbox"/> CHILD <input type="checkbox"/> 148/243 <input type="checkbox"/> GANG <input checked="" type="checkbox"/> PHOTO SCENE <input type="checkbox"/> FINGER PRINTS <input type="checkbox"/> DRUG FIELD TEST <input checked="" type="checkbox"/> PROPERTY <input type="checkbox"/> EVIDENCE <input type="checkbox"/> DIAGRAM <input type="checkbox"/> CRIME LAB						
M.O. Unkown Suspect(s) purposefully ignited four parked dump trucks.						
ITEM# CODE	QTY	BRAND	MODEL	DESCRIPTION OF PROPERTY	SERIAL #	VALUE
1DK	1	CAT	785B	064 Dump Truck	6HK00157	1.5 M
1DK	1	CAT	777C	070 Dump Truck	4XJ00525	1.3 M
1DK	1	CAT	777C	071 Dump Truck	AGC00478	1.3 M
1DK	1	CAT	777C	079 Dump Truck	AGC2531	1.3 M
ASSOCIATED CASE NUMBERS						
SCCSO# 13-066-0099W		BATS ENTRY BY:	DATE PROCESSED	ADDITIONAL OFFICERS		
OFFICER'S NAME Davis D7711	PROP 115	ID NUMBER 50195	SHIFT: A,B,C, 40 HR. 40 HR	DATE 01/27/13	SUPERVISOR REVIEW <i>[Signature]</i>	ID NUMBER 16237
				DATE 3/20/14	PG OF	



**SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000**

REPORT TYPE ☐ SUPPLEMENTAL
451(d) P.C.

SUSPECT PAGE

BATS NUMBER

CASE
13-0270009

☐ BOOKED ☐ CITED ☐ 849 (b) PC ☒ COMPLAINT REVIEW ☐ INFO ONLY ☒ AT LARGE ☐ VMC ☐ SEE JCR

S #1

LAST, FIRST, MIDDLE
[REDACTED]

RACE
[REDACTED]

SEX
[REDACTED]

DOB
[REDACTED]

AGE
[REDACTED]

HT
[REDACTED]

WT
[REDACTED]

HAIR
[REDACTED]

EYES
[REDACTED]

AKA/ MONIKER
None

RELATIONSHIP TO VICTIM
Employee

INTERPRETER ☒ SPANISH ☐ VIETNAMESE
NEEDED: ☐ OTHER

ADDRESS
[REDACTED]

PHONE
[REDACTED]

BUSINESS ADDRESS/ SCHOOL NAME AND ADDRESS
[REDACTED]

PHONE
[REDACTED]

CDL NUMBER
[REDACTED]

STATE
[REDACTED]

SSN
[REDACTED]

CITE #

PFN #
None

CEN #

CLOTHING
[REDACTED]

UNIQUE IDENTIFIER (CI#)

HAIR STYLE

☐ AFRO
☒ BALD/ SHAVED
☐ BRAIDED
☐ COLLAR
☐ CREW CUT
☐ LONG
☐ PONY TAIL
☐ PUNK
☐ SHORT

HAIR TYPE

☐ RECEEDING
☐ STRAIGHT
☐ WAVY/ CURLY
☐ WIG/ TOUPEE

SPEECH

☐ ACCENT
☐ LISP
☐ STUTTER

HANDED

☐ LEFT
☐ RIGHT

FACIAL HAIR

☐ BEARD
☒ CLEAN SHAVEN
☐ FU MANCHU
☐ GOATEE
☐ LOWER LIP
☐ MUSTACHE
☐ SIDE BURNS
☐ UNSHAVEN

CLOTHING

☐ CAP/ HAT
☐ GLOVES
☐ MASK

BUILD

☐ HEAVY
☒ MEDIUM
☐ MUSCULAR
☐ POT BELLY
☐ SMALL
☐ THIN

TEETH

☐ GOLD
☐ MISSING
☐ ROTTEN
☐ SILVER

COMPLEXION

☐ ACNE/ POKED
☐ DARK
☐ FRECKLED
☐ LIGHT
☒ MEDIUM

APPERANCE

☐ BODY ODOR
☐ DISGUISE
☐ UNKEMPT/ DIRTY
☒ WELL GROOMED
☐ ADDITIONAL DESCRIPTION
SEE NARRATIVE

WEAPONS

☐ CUTTING INST.
☐ HANDS/ FEET
☐ REVOLVER
☐ RIFLE
☐ SEMI AUTO
☐ SHOT GUN
☐ SIMULATED
☐ UNKNOWN
☐ OTHER

SCARS, MARKS, TATTOOS, ETC.

CODE:
LOC:
DESC:

☐ ADD'L SEE NARRATIVE

CODE: S= SCAR M= MARK
P= PIERCING T= TATTOO
MB= MISSING BODY PARTS

UNDER THE INFLUENCE

☐ Alcohol
☐
☐ OTHER:

☐ BOOKED ☐ CITED ☐ 849 (b) PC ☐ COMPLAINT REVIEW ☐ INFO ONLY ☐ AT LARGE ☐ VMC ☐ SEE JCR

S #

LAST, FIRST, MIDDLE
[REDACTED]

RACE
[REDACTED]

SEX
[REDACTED]

DOB
[REDACTED]

AGE
[REDACTED]

HT
[REDACTED]

WT
[REDACTED]

HAIR
[REDACTED]

EYES
[REDACTED]

AKA/ MONIKER

RELATIONSHIP TO VICTIM

INTERPRETER ☐ SPANISH ☐ VIETNAMESE
NEEDED: ☐ OTHER

ADDRESS
[REDACTED]

PHONE
[REDACTED]

WORK ADDRESS
[REDACTED]

PHONE
[REDACTED]

CDL NUMBER

STATE

SSN

CITE #

PFN #

CEN #

CLOTHING

UNIQUE IDENTIFIER (CI#)

HAIR STYLE

☐ AFRO
☐ BALD/ SHAVED
☐ BRAIDED
☐ COLLAR
☐ CREW CUT
☐ LONG
☐ PONY TAIL
☐ PUNK
☐ SHORT

HAIR TYPE

☐ RECEEDING
☐ STRAIGHT
☐ WAVY/ CURLY
☐ WIG/ TOUPEE

SPEECH

☐ ACCENT
☐ LISP
☐ STUTTER

HANDED

☐ LEFT
☐ RIGHT

FACIAL HAIR

☐ BEARD
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CLOTHING

☐ CAP/ HAT
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BUILD

☐ HEAVY
☐ MEDIUM
☐ MUSCULAR
☐ POT BELLY
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TEETH

☐ GOLD
☐ MISSING
☐ ROTTEN
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COMPLEXION

☐ ACNE/ POKED
☐ DARK
☐ FRECKLED
☐ LIGHT
☐ MEDIUM

APPERANCE

☐ BODY ODOR
☐ DISGUISE
☐ UNKEMPT/ DIRTY
☐ WELL GROOMED
☐ ADDITIONAL DESCRIPTION
SEE NARRATIVE

WEAPONS

☐ CUTTING INST.
☐ HANDS/ FEET
☐ REVOLVER
☐ RIFLE
☐ SEMI AUTO
☐ SHOT GUN
☐ SIMULATED
☐ UNKNOWN
☐ OTHER

SCARS, MARKS, TATTOOS, ETC.

CODE:
LOC:
DESC:

☐ ADD'L SEE NARRATIVE

CODE: S= SCAR M= MARK
P= PIERCING T= TATTOO
MB= MISSING BODY PARTS

UNDER THE INFLUENCE

☐
☐
☐ OTHER:

SUSPECT VEHICLE INFORMATION
SUSPECT #

YEAR

MAKE

MODEL

BODY TYPE

COLOR

LICENSE/ VIN

STATE

ADDITIONAL IDENTIFIERS: ☐ LOWERED ☐ RAISED ☐ SPECIAL PAINT ☐ SPECIAL WHEELS ☐ SUN ROOF/ T-TOP

R/O NAME (LAST, FIRST, MIDDLE) ☐ SAME AS SUSPECT # 1 ADDRESS CITY/ STATE ZIP

DAMAGE TO VEHICLE

SUSPECT VEHICLE WAS: ☐ STOLEN ☐ IMPOUNDED ☐ STORED ☐ SECURED AT SCENE ☐ RELEASED TO OWNER ☐ HELD FOR PRINTS ☐ PRINTED

OFFICER'S NAME
Davis D7711

☒ PROP. 115

ID NUMBER
50195

A,B,C,40H
40Hr

DATE
11/21/13

SUPERVISOR REVIEW
D. Jones

ID NUMBER
16337

DATE
3/20/14

PG OF



**SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000**

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		ADDITIONAL PARTIES		BATS NUMBER		CASE				
451(d) P.C.						13-0270009				
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER				
01	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]	
	INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER									
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]			STATE [REDACTED]		
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION Unemployed			SSN [REDACTED]		
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
02	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]	
	INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER									
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]			STATE CA		
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION Unemployed			SSN [REDACTED]		
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
03	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]	
	INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER									
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]			STATE CA		
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION Unemployed			SSN [REDACTED]		
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS			CITY	ZIP	DAMAGE TO VEHICLE			
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS			CITY	ZIP	DAMAGE TO VEHICLE			
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS			CITY	ZIP	DAMAGE TO VEHICLE			
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
OFFICER'S NAME		<input checked="" type="checkbox"/> PROP. 115	ID NUMBER	DAYS OFF	DATE	SUPERVISOR REVIEW		ID NUMBER	DATE	PG OF
Davis D7711			50195		01/27/13	[Signature]		16337	3/20/14	



SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL	ADDITIONAL PARTIES		BATS NUMBER		CASE						
451(d) P.C.				13-0270009							
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER					
04	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]		
					INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER						
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE											
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]			STATE [REDACTED]			
WORK ADDRESS			PHONE		OCCUPATION [REDACTED]			SSN [REDACTED]			
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS											
05	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]		
					INTERPRETER <input checked="" type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER						
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE											
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]			STATE CA			
WORK ADDRESS Unemployed			PHONE -		OCCUPATION Unemployed			SSN			
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS											
06	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]		
					INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER						
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE											
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]			STATE [REDACTED]			
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION [REDACTED]			SSN			
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS											
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE			
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS			CITY	ZIP	DAMAGE TO VEHICLE				
<input type="checkbox"/> VICTIM											
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED											
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE			
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS			CITY	ZIP	DAMAGE TO VEHICLE				
<input type="checkbox"/> VICTIM											
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED											
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE			
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS			CITY	ZIP	DAMAGE TO VEHICLE				
<input type="checkbox"/> VICTIM											
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED											
OFFICER'S NAME		<input checked="" type="checkbox"/> PROP. 115	ID NUMBER	DAYS OFF	DATE	SUPERVISOR REVIEW		ID NUMBER	DATE	PG	OF
Davis D7711			50195		01/27/13	D. Johnson		16357	3/29/14		



SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL		ADDITIONAL PARTIES		BATS NUMBER		CASE	
451(d) P.C.						13-0270009	
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER	
07		LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED] SEX [REDACTED] DOB [REDACTED] HT [REDACTED] WT [REDACTED]	
						INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE							
ADDRESS 1241 Parkway Ct, San Jose, CA 95128		PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA	
WORK ADDRESS [REDACTED]		PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS							
08		LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED] SEX [REDACTED] DOB [REDACTED] HT [REDACTED] WT [REDACTED]	
						INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE							
ADDRESS [REDACTED]		PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA	
WORK ADDRESS [REDACTED]		PHONE [REDACTED]		OCCUPATION Supervisor		SSN [REDACTED]	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS							
09		LAST, FIRST, MIDDLE Sata [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED] SEX [REDACTED] DOB [REDACTED] HT [REDACTED] WT [REDACTED]	
						INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER	
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE							
ADDRESS 26684 S. [REDACTED]		PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA	
WORK ADDRESS [REDACTED]		PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]	
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS							
VICTIM VEHICLE INFORMATION		YEAR		MAKE		MODEL	
VICTIM #							
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY		ZIP	
<input type="checkbox"/> VICTIM						DAMAGE TO VEHICLE	
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED							
VICTIM VEHICLE INFORMATION		YEAR		MAKE		MODEL	
VICTIM #							
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY		ZIP	
<input type="checkbox"/> VICTIM						DAMAGE TO VEHICLE	
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED							
VICTIM VEHICLE INFORMATION		YEAR		MAKE		MODEL	
VICTIM #							
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY		ZIP	
<input type="checkbox"/> VICTIM						DAMAGE TO VEHICLE	
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED							
OFFICER'S NAME		ID NUMBER		DATE		PG OF	
Davis D7711		50195		01/27/13		16337 3/20/14	



SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL 451(d) P.C.	ADDITIONAL PARTIES	BATS NUMBER	CASE 13-0270009							
"V" = VICTIM "R" = REPORTING PARTY "W" = WITNESS "O" = OTHER										
O10	LAST, FIRST, MIDDLE [REDACTED]	<input type="checkbox"/> STATE OF CA	RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]			
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER										
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]		PHONE [REDACTED]	DL NUMBER [REDACTED]		STATE [REDACTED]					
WORK ADDRESS [REDACTED]		PHONE [REDACTED]	OCCUPATION [REDACTED]		SSN [REDACTED]					
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
O11	LAST, FIRST, MIDDLE [REDACTED]	<input type="checkbox"/> STATE OF CA	RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]			
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER										
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]		PHONE [REDACTED]	DL NUMBER [REDACTED]		STATE CA					
WORK ADDRESS [REDACTED]		PHONE [REDACTED]	OCCUPATION [REDACTED]		SSN [REDACTED]					
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
O12	LAST, FIRST, MIDDLE [REDACTED]	<input type="checkbox"/> STATE OF CA	RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]			
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER										
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]		PHONE [REDACTED]	DL NUMBER [REDACTED]		STATE CA					
WORK ADDRESS [REDACTED]		PHONE [REDACTED]	OCCUPATION Hauler		SSN [REDACTED]					
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE				
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE				
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE				
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
OFFICER'S NAME		<input checked="" type="checkbox"/> PROP. 115	ID NUMBER	DAYS OFF	DATE	SUPERVISOR REVIEW	ID NUMBER	DATE	PG	OF
Davis D7711			50195		01/27/13	[Signature]	16337	3/20/14		



SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL	ADDITIONAL PARTIES		BATS NUMBER		CASE					
451(d) P.C.					13-0270009					
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER				
O13	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]	
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER										
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE			
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]			
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
O14	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]	
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER										
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA			
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION Laborer		SSN [REDACTED]			
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
O15	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]	
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER										
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE										
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA			
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]			
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS										
VICTIM VEHICLE INFORMATION		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
VICTIM #										
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY		ZIP		DAMAGE TO VEHICLE		
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
VICTIM VEHICLE INFORMATION		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
VICTIM #										
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY		ZIP		DAMAGE TO VEHICLE		
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
VICTIM VEHICLE INFORMATION		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE		
VICTIM #										
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY		ZIP		DAMAGE TO VEHICLE		
<input type="checkbox"/> VICTIM										
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED										
OFFICER'S NAME		<input checked="" type="checkbox"/> PROP. 115	ID NUMBER	DAYS OFF	DATE	SUPERVISOR REVIEW		ID NUMBER	DATE	PG OF
Davis D7711			50195		01/27/13	D. Johnson		16337	3/2/14	



SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL	ADDITIONAL PARTIES		BATS NUMBER		CASE						
451(d) P.C.					13-0270009						
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER					
016	LAST, FIRST, MIDDLE [REDACTED] <input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]				
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER											
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE											
ADDRESS [REDACTED]		PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA					
WORK ADDRESS [REDACTED]		PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]					
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS											
017	LAST, FIRST, MIDDLE [REDACTED] <input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]				
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER											
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE											
ADDRESS [REDACTED]		PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA					
WORK ADDRESS [REDACTED]		PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]					
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS											
018	LAST, FIRST, MIDDLE [REDACTED] <input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]				
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER											
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE											
ADDRESS [REDACTED]		PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE CA					
WORK ADDRESS [REDACTED]		PHONE [REDACTED]		OCCUPATION Water Supp		SSN [REDACTED]					
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS											
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE			
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE					
<input type="checkbox"/> VICTIM											
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED											
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE			
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE					
<input type="checkbox"/> VICTIM											
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED											
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE			
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE					
<input type="checkbox"/> VICTIM											
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED											
OFFICER'S NAME		<input checked="" type="checkbox"/> PROP. 115	ID NUMBER	DAYS OFF	DATE	SUPERVISOR REVIEW		ID NUMBER	DATE	PG	OF
Davis D7711			50195		01/27/13	D. Johnson		16337	3/29/14		



**SANTA CLARA COUNTY
FIRE DEPARTMENT
CA-0432000**

REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL 451(d) P.C.		ADDITIONAL PARTIES		BATS NUMBER		CASE 13-0270009			
"V" = VICTIM		"R" = REPORTING PARTY		"W" = WITNESS		"O" = OTHER			
O19	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]
	INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER								
	VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE								
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE [REDACTED]		
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION Crusher		SSN [REDACTED]		
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS									
O20	LAST, FIRST, MIDDLE [REDACTED]		<input type="checkbox"/> STATE OF CA		RACE [REDACTED]	SEX [REDACTED]	DOB [REDACTED]	HT [REDACTED]	WT [REDACTED]
	INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER								
	VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE								
ADDRESS [REDACTED]			PHONE [REDACTED]		DL NUMBER [REDACTED]		STATE [REDACTED]		
WORK ADDRESS [REDACTED]			PHONE [REDACTED]		OCCUPATION [REDACTED]		SSN [REDACTED]		
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS									
LAST, FIRST, MIDDLE		<input type="checkbox"/> STATE OF CA		RACE	SEX	DOB	HT	WT	
INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> VIETNAMESE NEEDED: <input type="checkbox"/> OTHER									
VICTIM ADVISED: <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> VICTIM /WITNESS ASSISTANCE <input type="checkbox"/> DOMESTIC VIOLENCE									
ADDRESS			PHONE		DL NUMBER		STATE		
WORK ADDRESS			PHONE		OCCUPATION		SSN		
VICTIM INFORMATION: <input type="checkbox"/> NON DISCLOSURE (WHERE APPLICABLE) <input type="checkbox"/> INJURY <input type="checkbox"/> SART <input type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> PHOTOGRAPHS									
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE	
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE			
<input type="checkbox"/> VICTIM									
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED									
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE	
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE			
<input type="checkbox"/> VICTIM									
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED									
VICTIM VEHICLE INFORMATION VICTIM #		YEAR	MAKE	MODEL	BODY TYPE	COLOR	LICENSE	STATE	
R/O NAME (LAST, FIRST, MIDDLE)		ADDRESS		CITY	ZIP	DAMAGE TO VEHICLE			
<input type="checkbox"/> VICTIM									
VICTIM VEHICLE WAS: <input type="checkbox"/> STOLEN <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> STORED <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER <input type="checkbox"/> HELD FOR PRINTS <input type="checkbox"/> PRINTED									
OFFICER'S NAME		<input checked="" type="checkbox"/> PROP. 115	ID NUMBER	DAYS OFF	DATE	SUPERVISOR REVIEW	ID NUMBER	DATE	PG OF
Davis D7711			50195		01/27/13	D. Johnson	16337	3/20/14	

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Attachments:

- Property Report
- DVD containing copy of photographs of the scene
- Copy of LEHIGH Visitor Sign-In Sheets for 1/25/13 to 1/27/13
- Letter from Turner Construction Crew
- Copy of photographs of vehicles from LEHIGH photo radar camera
- LEHIGH Mobile Equipment List
- Registration information for 6NLN081
- Registration information for 4MUZ954
- Statements from witnesses taken by (O7) [REDACTED]
- Statements from witnesses taken by (W1) [REDACTED]
- Termination letter for (O5) [REDACTED]
- Google Earth Map of the scene

Synopsis:

An unknown suspect or suspects set fire to a large caterpillar dump truck located at the LEHIGH Quarry. The original set fire extended to three other large caterpillar dump trucks causing major damage to them. The suspect is unknown and outstanding at this time.

Security:

LEHIGH Quarry is accessed using Stevens Creek Blvd. This is the only vehicular access point not secured by a locked gate. The entrance is under video surveillance with a security guard posed 24 hours a day. The security guard stops and documents each driver who enters in the quarry without an employee pass.

Weather:

The weather conditions were taken from (<http://www.wunderground.com>). The temperature was 46F, humidity of 77%, clear with calm winds.

Reporting Officer	Davis #50195
CJIC #	07711
Date:	01/27/13

Reviewed By: D. Johnson 16337 Date: 3/23/14 Processed By: _____ Date: _____

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REV- 04/2010

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Scene Description:

The LEHIGH Quarry is a earth and rock quarry located just west of Cupertino. The quarry is a limestone and aggregate mining operation and cement plant, owned by Lehigh Southwest Cement, a subsidiary of Heidelberg Cement. The quarry runs east/west parallel to the upper watershed of Permanente Creek to the south and to Permanente Ridge and Rancho San Antonio Open Space Preserve to the north.

The involved dump trucks were located in the quarry approximately two and a half miles past the entrance of the quarry. This is a dirt area approximately 600 feet by 400 feet. The dump trucks were parked side by side in the northeast corner of the lot. (See attachment, Google Earth Map for overview of the lot.)

Utility Service:

Pacific Gas and Electric, (PG&E) provides electricity to this area using overhead wiring, transformers, and power poles owned and maintained by LEHIGH Quarry. No other utility service was provided in the area of the quarry.

Fire Protection Systems:

No fire protection systems were provided in this area.

Investigation:

I was dispatched by Santa Clara County Communications to respond to conduct a fire origin and cause investigation. I arrived on scene and was met by Battalion Chief Salazar. Chief Salazar stated the fire had been extinguished and the scene is safe for me to conduct my investigation. I found four dump trucks on the northwest side of the lot, parked side-by-side facing north approximately 100 feet south of the base of the mountain. Each dump truck was identified with a number fabricated out of metal located to the rear of each dump truck. The following dump trucks sustained fire and heat damage. Moving west from Truck 71, was Truck 70, Truck 79, and on the end of the row was Truck 64.

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CJIC #	D7711
Date:	01/27/13

Reviewed By: [Signature] Date: 3/27/14 Processed By: _____ Date: _____

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Investigation Continued:

I inspected each of the dump trucks looking for possible heat sources and locating heat and fire patterns. During my inspection, I discovered each of the four dump trucks had a master battery switch and each switch was in the "OFF" position. The master battery switch opens and closes the circuit between the batteries and the electrical components of the dump truck.

The area of fire origin is located between the rear driver's side of truck number 70 and the rear passenger's area of truck number 79. The following fire and heat patterns support this area of fire origin.

Truck number 71 was located on the east side of the scene. This truck sustained heat and fire damage to the driver's side, which was located approximately four feet east of truck 70's, passenger's side. The rear of truck 71 sustained more heat and fire damage than the front. The driver side tires failed due to heat and fire damage and the tires on the passenger's side were in good condition with no heat or fire damage. The fire patterns support the fire traveling towards truck 71 from truck 70.

Truck number 70 was located on the west side of truck 71 and the east side of truck 79. This truck sustained major heat and fire damage to both the driver and passenger's side. All of the tires failed due to heat and fire damage. The tires located on the driver's side were more consumed by fire than the tires located on the passenger side. The tires to the rear of the truck were more consumed than the tires at the front of the truck. The fire patterns support the fire traveling towards truck 71 and 79 from truck 70.

Truck number 79 was located between truck 64 and 70. This truck sustained heat and fire damage to the passenger's side, which was located approximately four feet west of truck 70's, driver's side. The rear of truck 79 sustained more heat and fire damage than the front. The passenger side tires sustained more heat and fire damage than the driver's side. The fire patterns support the fire traveling towards truck 64 from the passenger's side of truck 79.

Truck number 64 was located on the west side of the scene. This truck sustained heat and fire damage to the passenger's side, which was located approximately four feet west of truck 79's, driver's side. The rear of truck 64 sustained more heat and fire damage than the front. The passenger side tires sustained heat and fire damage and the tires on the driver's side were in good condition with no heat or fire damage. The fire patterns support the fire traveling towards truck 64 from truck 79.

Reporting Officer	Davis #50195
CJIC #	D7711
Date:	01/27/13

Reviewed By: D. Johnson Date: 3/20/14 Processed By: _____ Date: _____

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Investigation Continued:

The heat and fire patterns support the area of fire origin within the rear of truck 70 and 79. The fire originated in this location and spread out towards the other dump trucks. The fuels first ignited were the tires of truck 70 and 79 and the tires were the main fuel source for this fire.

There were no heat sources found in the area of fire origin. The dump trucks did not have any electrical components in this area.

The dump trucks were parked and not operating for approximately 24 hours prior to the fire, his would eliminate the heat source of friction caused by a mechanical failure within the wheel assembly. I have concluded this to be an Arson Fire deliberately set by unidentified suspect(s).

Statements of (07) [REDACTED]:

I interviewed (07) [REDACTED] who identified himself as the Quarry Manager for LEHIGH Quarry. The following are his statements:

(07) [REDACTED] said he is the manager of the quarry and is aware of the day-to-day operations of the dump trucks. He said the dump trucks have been parked in the same location since Friday, January 25th. (07) [REDACTED] said the involved dump trucks; 64, 79, 70, and 71 were in good working order with no known malfunctions. He confirmed the dump truck's master battery switch were in the "OFF" position.

(07) [REDACTED] explained the dump trucks were an intricate part of the quarry. The trucks are the only way to haul material out of the quarry and transport it to the cement plant. If material is not hauled out of the quarry the factory would have to shut down.

(07) [REDACTED] said he was not sure who would want to burn the dump trucks. He said the quarry had fired five employees in the past couple of months and one of them may have been angry enough to burn the trucks. (07) [REDACTED] said I would need to speak to (W1) [REDACTED], who is the Human Resources Manager, for details on the employees who were terminated.

(07) [REDACTED] explained to get into the quarry, you must either sign in at the guard station or have an employee permit. When you arrive at the front gate, where the guard station is located, you will either be waved into the quarry if the person has an employee permit displayed on their windshield or they will be handed clipboard to write their name and list who they are there to see.

Reporting Officer	Davis #50195
CJIC #	D7711
Date:	01/27/13

Reviewed By: D. Johnson Date: 3/28/14 Processed By: _____ Date: _____

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Statements of (07) ██████████ Continued:

(07) ██████████ said the guard does not verify the identity of the person who signs in at the gate. It is possible the person could write any name down without any verification. (See Attachment: Copy of LEHIGH Visitor Sign-In Sheets for 1/25/13 to 1/27/13).

(07) ██████████ said there are cameras throughout the property, mainly in the area of the cement plant. He said there was a camera at the entrance of the quarry. This camera recorded all vehicles passing the guard shack to enter the quarry. He said there used to be a camera covering the area where the dump trucks were parked. This camera was attached to one of the portable offices on the site. After the prior shooting incident, the quarry removed the portable office and replaced it with a new one. When this happened, the camera was never replaced onto the new office building. This was common knowledge and most employees knew there was no longer a camera in this area.

(07) ██████████ said the quarry also has a photo radar system set up on Stevens Creek Blvd. approximately ¼ mile east of the quarry entrance. This system will photograph the vehicle and license plate of all vehicles that exceeds the speed limit in the location of the photo radar system.

(07) ██████████ said he would make arrangements for me to receive copies of the video footage and any photographs from their photo radar system. (See Attachment: Copy of photographs of vehicles from LEHIGH photo radar camera).

Statements of W1) ██████████

I interviewed (W1) ██████████ who identified himself as the Human Resources Manager for LEHIGH Quarry. The following are his statements:

(W1) ██████████ identified himself as the Human Resources Manager for LEHIGH. He confirmed there have been five employees terminated within a seven-month period. (W1) ██████████ said he had not received any threats from any of the terminated employees.

(W1) ██████████ described an incident, which occurred on October 9th, 2012. On this date an argument had taken place in the quarry garage lunchroom before the start of the shift. The supervisor, (O8) ██████████ conveyed that he heard (O1) ██████████ remark, "If anyone touches my coffee I'll shoot you."

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CJIC #	D7711
Date:	01/27/13

Reviewed By: D. Johnson Date: 3/20/14 Processed By: _____ Date: _____

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Statements of W1) ██████████ Continued:

(W1) ██████████ said (O8) ██████████ called him and notified him of the threat. (W1) ██████████ interviewed all of the employees who witnessed the incident. (See Attachment: Statements from witnesses taken by (O7) ██████████ and (W1) ██████████)

At the completion of the investigation (O1) ██████████ and (O2) ██████████ were terminated for misconduct. (W1) ██████████ said both employees brought their termination to a Skelly Hearing, which occurred on January 30, 2013. The hearing upheld their termination.

(W1) ██████████ said (O5) ██████████ was an employee who was assigned to the cement plant. He said (O5) ██████████ was responsible to lubricate and maintain equipment in the cement plant and the quarry. On October 15th 2012, a movable gearbox failed, the investigation into this failure concluded the moveable gearbox was not properly maintained and lubricated by (O5) ██████████. (W1) ██████████ said he terminated (O5) ██████████ for the incident. (See Attachment: Termination letter for (O5) ██████████.)

(W1) ██████████ said (O3) ██████████ was terminated on December 12th 2012 because of his lack of attendance. He said, (O3) ██████████ worked at the cement plant and was responsible for lubricating and maintaining equipment in the cement plant and quarry.

(W1) ██████████ said (O4) ██████████ was terminated in June 2012 because of multiple safety issues and large equipment accidents. (W1) ██████████ said he had not heard from (O4) ██████████ since his termination.

(W1) ██████████ said out of the five people terminated in the past year, ██████████, ██████████, and ██████████ felt their termination was not justified, were very upset, and are still trying to get their terminations overturned. He stated he has not received any threats from anyone retaliating against him or the quarry surrounding their termination.

Injuries:

This fire caused no injuries.

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CJIC #	D7711
Date:	01/27/13

Reviewed By: D. Johnson Date: 3/20/14 Processed By: _____ Date: _____

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Evidence:

- JD-1: DVD containing video and photographs of the fire scene
- JD-2: Sample of dump truck tire

P.L.E.O.

- ATF Special Agent Barbara Maxwell (Assist)

Disposition:

An unknown suspect or suspects set fire to a large caterpillar dump truck located at the LEHIGH Quarry. The original set fire extended to three other large caterpillar dump trucks causing major damage to them. The suspect or suspects are unknown and outstanding. Investigation is active and ongoing at this time.

Reporting Officer	Davis #50195
CJIC #	D7711
Date:	01/27/13

Reviewed By: D. John Date: 3/20/14 Processed By: _____ Date: _____

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SUPPLEMENTAL REPORT:

INVESTIGATION:

On 11/22/13, I interviewed (O1) [REDACTED] at the Saratoga Fire Station. The following is a summary of his statements.

Statement from (O1) [REDACTED]

(O1) [REDACTED] said he has worked at Lehigh for approximately ten years. He has been responsible for the crusher operations.

(O1) [REDACTED] described the incident that occurred on October 9, 2012, which lead to his termination. On this date an argument had taken place in the quarry garage lunchroom before the start of the shift. (O1) [REDACTED] said he was brewing a pot of coffee when (O15) [REDACTED] started to get a cup of coffee before it was finished brewing. (O1) [REDACTED] said he told everyone in the room, "If anyone touches my coffee I'll throw a shoe at you" the people in the room thought he said "If anyone touches my coffee I'll shoot you." (O1) [REDACTED] said he did not mean it but was angry at the time. (O1) [REDACTED] said he was later called into (W1) [REDACTED] office. (See Attachment: Statements from witnesses taken by (O7) [REDACTED] and (W1) [REDACTED])

At the completion of the investigation (O1) [REDACTED] and (O2) [REDACTED] were terminated for misconduct. (O1) [REDACTED] said he brought his termination to a Skelly Hearing, which occurred on January 30, 2013. The Hearing upheld the termination.

(O1) [REDACTED] said he and (O20) [REDACTED] are friends and after being terminated from Lehigh (O1) [REDACTED] said he lent his vehicle to (O20) [REDACTED] because (O20) [REDACTED] vehicle was in the shop getting repaired. This is why (O20) [REDACTED] was seen driving his car at Lehigh.

(O1) [REDACTED] said he is a friend of (O5) [REDACTED]. He said he was aware I interviewed (O5) [REDACTED] regarding the fire because (O5) [REDACTED] called and told him. (O5) [REDACTED] told him that he did not want to return our call and talk to us because he was scared. (O1) [REDACTED] said (O5) [REDACTED] called his lawyer who advised him not to take the polygraph test or speak to us anymore.

I asked (O1) [REDACTED] if he was the one who set fire to the trucks at Lehigh. He said he did not and he would not benefit in any way by burning the trucks. I asked him if he knew who set the fire or who would want to burn the trucks. (O1) [REDACTED] said he did not have any information as to who set the fire or who might want to burn the trucks.

Reporting Officer	Davis #50195
CJIC #	D7711
Date:	11/22/13

Reviewed By: [Signature] Date: 3/20/14 Processed By: _____ Date: _____

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(O1) [REDACTED] said he thinks it would have to be an "Inside job". He thinks it would have to be someone who knew the employee's schedules and how to get around within the quarry. He said he really did not know anyone who was involved with setting the fire.

(O1) D'Vaz did not have any additional information and the interview was concluded.

CASE DISPOSITION:

To original report.

Reporting Officer	Davis #50195
CJIC #	D7711
Date:	11/22/13

Reviewed By: D. Johnson Date: 3/20/14 Processed By: _____ Date: _____

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SUPPLEMENTAL REPORT:

INVESTIGATION:

On 02/02/13, (W1) [REDACTED] told me he had been contacted by (O6) [REDACTED] (O6) [REDACTED] said he heard an explosion and thinks it was related to the fire at Lehigh. (O6) [REDACTED] lives approximately one mile north of the Lehigh Quarry on Canyon Oak Way in Cupertino.

On 02/02/13, at approximately 1530 hours I contacted (O6) [REDACTED] and interviewed him over the phone. (O6) [REDACTED] provided the following statement:

Statement from (O6) [REDACTED]

(O6) [REDACTED] said he was asleep in his residence. At approximately 0330 hours he woke up to a sound of an explosion. He got up, looked out his bedroom window and did not see anything unusual. (O6) [REDACTED] said he went back to bed.

(O6) [REDACTED] said approximately 20 minutes later he heard a second explosion. He said he got back out of bed and looked outside again, he did not see anything. He came back into the house and turned on his TV to see if there was something about the explosion on the news. (O6) [REDACTED] said when he did not see anything on the news about the explosion; he assumed it was the Lehigh Quarry blasting. (O6) [REDACTED] went back to bed.

Approximately 30 minutes later, (O6) [REDACTED] said he heard another explosion. This time he said he looked out his window towards the Quarry and saw a red glow emitting from the area. (O6) [REDACTED] said while he was watching the glow he heard a fourth explosion. This was the loudest explosion and this explosion produced a large amount of fire which he could see from his window.

(O6) [REDACTED] called 9-1-1 to report the fire, the dispatcher told him they had already received the call and the fire department was responding.

(O6) [REDACTED] did not have any additional information and the interview was concluded.

CASE DISPOSITION:

To original report.

Reporting Officer	Davis #50195
CJIC #	D7711
Date:	02/25/13

Reviewed By: D. Johnson #16337 Date: 12/16/2013 Processed By: _____ Date: _____

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SUPPLEMENTAL REPORT:

INVESTIGATION:

On 02/13/13, I checked the Santa Clara County Fire Department Anonymous Hotline and retrieved a message left by (O8) [REDACTED]. (O8) [REDACTED] said he might have some information that would assist in the investigation surrounding the Lehigh Quarry.

On 02/13/13, at approximately 1540 hours, I contacted (O8) [REDACTED] and interviewed him over the phone. (O8) [REDACTED] provided the following statement:

Statement from (O8) [REDACTED]

(O8) [REDACTED] said he is a supervisor at the Lehigh Quarry. He supervises approximately 13 to 14 employees responsible for hauling material from the pit to the cement plant. (O8) [REDACTED] said both (O20) [REDACTED] and (O1) [REDACTED] worked in the group he supervises.

(O8) [REDACTED] explained, (O1) [REDACTED] and (O20) [REDACTED] had worked together at the cement plant together for a couple of years before they were transferred up to the quarry. Both (O1) [REDACTED] and [REDACTED] are good friends both at and away from work.

(O8) [REDACTED] said the day before the fire, 1/26/13, (O20) [REDACTED] had asked him if he was working overtime the next morning, 1/27/13. (O8) [REDACTED] said this was a very unusual question, (O20) [REDACTED] has never asked this question before. He was not sure why (O20) [REDACTED] would ask this and he never explained why he posed the question.

(O8) [REDACTED] said on 1/29/13 at approximately 0800 hours, (O20) [REDACTED] asked him if he knows who started the fire. (O8) [REDACTED] said he thought it was probability an employee that was upset with the quarry, maybe someone who has been terminated. (O8) [REDACTED] said, (O20) [REDACTED] spontaneously said, "It was not [REDACTED] I am sure it was not [REDACTED] because I was driving his car." (O8) [REDACTED] said this was very weird because (O1) [REDACTED] name was never mentioned as a person of interest. (O8) [REDACTED] also said he did not realize (O20) [REDACTED] was driving [REDACTED] car to work.

(O8) [REDACTED] said on 1/30/13, he watched (O20) [REDACTED] arrive at work and he was driving [REDACTED] vehicle. (O20) [REDACTED] told (O8) [REDACTED] he had bought [REDACTED] car from him because [REDACTED] did not have a job and he needed the money from the sale of his car.

Reporting Officer Davis #50195

CJIC # D7711

Date: 02/25/13

Reviewed By: D. Johnson

Date: 3/20/14

Processed By: _____

Date: _____

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Statement from (O8) [REDACTED] Continued:

(O8) [REDACTED] said on 2/11/13, (O20) [REDACTED] came up to him and randomly said he would not be surprised if it was either (O5) [REDACTED] or (O3) [REDACTED] who started the fire. (O20) [REDACTED] continued to say he was sure it was not (O1) [REDACTED] because he would not do something like that.

(O8) [REDACTED] said he did not think much of the conversations as they were happening, but when he thought about it and put everything together, he thought it was weird. (O8) [REDACTED] said he wanted to report the information hoping it would assist in the investigation.

(O8) [REDACTED] did not have any additional information and the interview was concluded.

CASE DISPOSITION:

To original report.

Reporting Officer	Davis #50195
CJIC #	07711
Date:	02/25/13

Reviewed By: [Signature] Date: 3/20/14 Processed By: _____ Date: _____

BATS Entry By: _____ Date: _____ Copies To: ☐ DA ☐ Court ☐ Other: _____

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Narrative Report

Santa Clara County
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CA-0432000



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SUPPLEMENTAL REPORT:

INVESTIGATION:

On 02/21/13, at approximately 0430 hours, ATF Special Agent Barbara Maxwell and I conducted interviews at Lehigh Quarry with the employees who witnessed the incident on October 9th, 2012.

On October 9th 2012, an argument had taken place in the quarry garage lunchroom before the start of the shift. (O1) [REDACTED] was upset at another employee over his coffee and said, "If anyone touches my coffee I'll shoot you." At the completion of the Human Resources investigation (O1) [REDACTED] and (O2) [REDACTED] were terminated for their misconduct during the incident.

ATF Special Agent Maxwell and I interviewed the following employees to gain any information to assist in the fire investigation.

(O8) [REDACTED], (O9) [REDACTED], (O10) [REDACTED], (O11) [REDACTED], (O12) [REDACTED], (O13) [REDACTED], (O14) [REDACTED], (O15) [REDACTED], (O16) [REDACTED], (O17) [REDACTED], (O18) [REDACTED], (O19) [REDACTED], and (O20) [REDACTED].

The following three employees provided possible information that might assist with our investigation. The other employees did not have any information to assist in our investigation.

Statement from (O15) [REDACTED]

During an interview with (O15) [REDACTED] he provided the following statement.

(O15) [REDACTED] identified himself as a Lehigh employee. He said he has worked for Lehigh for approximately 11 years and is currently assigned as a Hauler. (O15) [REDACTED] used to drive dump truck #77 which was damaged in the fire. He is currently assigned to dump truck #81.

(O15) [REDACTED] said he suspects (O5) [REDACTED] could have been involved with the fire. He explained (O5) [REDACTED] was very upset about his termination and he had a temper that would support this type of act. (O15) [REDACTED] said (O5) [REDACTED] was assigned to help maintain equipment at the Quarry. This included the area of the cement plant and the area where the dump trucks were located. (O15) [REDACTED] said (O5) [REDACTED] had a good knowledge of the quarry and would be able to get past the front gate because he still had the employee vehicle permit allowing the security guard to just wave him through the front gate.

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CJIC #	D7711
Date:	02/22/13

Reviewed By: [Signature] Date: 3/20/14 Processed By: _____ Date: _____

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Statement from (O15) [REDACTED] Continued:

(O15) [REDACTED] said he has not seen (O5) [REDACTED] at the quarry since his termination and has no evidence proving (O5) [REDACTED] started or was involved with the fire.

Statement from (O19) [REDACTED]:

During an interview with (O19) [REDACTED] he provided the following statement.

(O19) [REDACTED] identified himself as a Lehigh employee. He said he has worked for Lehigh for approximately 10 years and is currently assigned as a Crusher Operator.

(O19) [REDACTED] said he suspects either (O1) [REDACTED] or (O5) [REDACTED] could have been involved with the fire. He explained (O1) [REDACTED] and (O5) [REDACTED] were very upset about their termination.

(O19) [REDACTED] said (O1) [REDACTED] was in arbitration hoping to reinstate his employment with Lehigh. He said (O1) [REDACTED] was good friends with (O20) [REDACTED] and thinks (O20) [REDACTED] could have helped (O1) [REDACTED] get on site to start the fire. (O19) [REDACTED] said he did not have any evidence supporting this but thought it was a possibility.

(O19) [REDACTED] said another possibility is (O5) [REDACTED]. He said (O5) [REDACTED] was very angry about his termination and was very outspoken about it. (O19) [REDACTED] said (O5) [REDACTED] was known for losing his temper and an attitude as if the company was out to get him. He said (O5) [REDACTED] could get into the Quarry without any problems by using his employee permit on his vehicle. (O19) [REDACTED] said he did not have any evidence to support (O5) [REDACTED] was involved with the fire but thought it was a possibility.

Statement from (O20) [REDACTED]:

During an interview with (O20) [REDACTED] he provided the following statement.

(O20) [REDACTED] identified himself as a Lehigh employee. He said he has worked for Lehigh for approximately 35 years and is currently assigned as a hauler. (O20) [REDACTED] used to drive dump truck #70 and #71, which were damaged in the fire.

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CJIC #	D7711
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Reviewed By: D. Johnson

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Statement from (O20) [REDACTED] Continued:

(O20) [REDACTED] said he and (O1) [REDACTED] had worked together at the cement plant for a couple of years before they were transferred up to the quarry. Both (O1) [REDACTED] and (O20) [REDACTED] are good friends.

(O20) [REDACTED] said he did not know who started the fire but thinks it may have been an employee that was upset with the quarry, maybe someone who had been terminated. (O20) [REDACTED] said, it was not (O1) [REDACTED] and continued to say (O1) [REDACTED] would not do that type of thing.

(O20) [REDACTED] said the only person he could think of who was responsible for this fire is possibly (O5) [REDACTED]. He said (O5) [REDACTED] was an outspoken employee who thought the company was always out to get him. When he was terminated, (O5) [REDACTED] was very upset and started threatening the company because he thought he was set up so the company could fire him. (O20) [REDACTED] said he does not have any evidence supporting (O5) [REDACTED] started the fire but thinks it is a possibility.

Investigation Continued:

After interviewing the Lehigh employees, I identified both (O1) [REDACTED] and (O5) [REDACTED] had motive to commit the crime of Arson but there is no evidence at this point of my investigation to support their involvement in the crime of arson.

P.L.E.O.

- ATF Special Agent Barbara Maxwell

CASE DISPOSITION:

To original report.

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SUPPLEMENTAL REPORT:

ATTACHMENTS:

- Copy of First Alarm Service Order

INVESTIGATION:

On 02/25/13, I was advised Rural Metro had video surveillance of vehicular traffic traveling on Stevens Creek Blvd. passing in front of the Santa Clara County Fire Station #7. Santa Clara County Fire Station #7 is located at 22620 Stevens Creek Blvd., Cupertino, CA. 95014. The video surveillance is taken from a camera attached to the front of Fire Station #7. The camera is pointed north towards Stevens Creek Blvd.

This surveillance captures traffic traveling east and west on Stevens Creek Blvd. as the traffic passes the front of the fire station. Stevens Creek Blvd. leads up to the Lehigh Quarry entrance.

At approximately 0915 hours, I met Brian Anderson at Station #7. Mr. Anderson identified himself as an employee of First Alarm Security Company. He said, Rural Metro contracts with First Alarm for security needs. Mr. Anderson retrieved the video surveillance from 1/26/13 at 1700 hours to 1/27/13 at 1700 hours.

I secured the video onto a DVD-R and logged it into evidence as JD-3.

Evidence:

- JD-3: DVD containing video of Stevens Creek Traffic from 1700 hours on 1/26/13 to 1700 hours on 1/27/13 with the First Alarm Service Order.

CASE DISPOSITION:

To original report.

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Date:	02/25/13

Reviewed By: [Signature] Date: 3/20/14 Processed By: _____ Date: _____

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SUPPLEMENTAL REPORT:

ATTACHMENTS:

- Deputy Tarazi's report # 13-066-0099W
- Lehigh work order #8692429 and #8693922
- Lehigh Letter of Termination of (O5) [REDACTED]
- U.S Department of Labor Case# WEMD 13-5

INVESTIGATION:

On 03/12/13, Jason Brown who is a Sergeant for the Santa Clara County Sheriffs Department notified me of a threatening fax, which was sent to Lehigh Quarry by (O5) [REDACTED].

Sgt. Brown said Captain Binder provided Deputy Samy Tarazi with a fax he had received from the Mine Safety and Health Administration (MSHA) Vacaville Field Office. The Fax indicated an anonymous message had been sent to MSHA through a hotline, indicating a complaint or threat against the Lehigh Quarry. Deputy Tarazi completed a report. (Sheriff Case # 13-066-0099W.)

Content of Fax:

I would like to know why??????? Can you explain on the safety meeting please [REDACTED] destroyed the work notification or work order #8692429, #8693922 and some other documents Why?????.. These work orders given to [REDACTED] to work on the roller press.. [REDACTED] (works as an electrician) and wrote in his report (Shift Daily Report) the reason why it failed the roller press dates of 10/15/2012 to 10/18/2012 why the corporation Lehigh is protecting the managers of Cupertino? The shooting at the quarry, the company is protecting [REDACTED].. Why???? This company expect someone to commit another gunfire, to start doing something in human resources and managers. If someone starts another shooting, hopefully against managers.

Investigation Continued:

Sgt. Brown notified Sgt. Marc Lehmann, also with the Santa Clara County Sheriff's Department, of the incident because Sgt. Lehmann is assigned to the Westside Substation and the incident is in his jurisdiction.

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Date:	03/26/13

Reviewed By: D. Johnson 16337 Date: 3/20/14 Processed By: _____ Date: _____

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Investigation Continued:

I met with Sgt. Lehmann who provided me with copies of work orders from the Lehigh Quarry outlined in the fax. Both of the work orders outline maintenance issues surrounding the movable gearbox, which failed on October 18th 2012. (See attachment, Lehigh work order #8692429 and #8693922.) I verified with (W1) [REDACTED], this was the same movable gearbox (O5) [REDACTED] was terminated over. (See attachment, Lehigh Letter of Termination of (O5) [REDACTED].)

Sgt. Lehmann provided me a copy of a discrimination complaint (O5) [REDACTED] filed with the U.S. Department of Labor on 12/29/2012. (See attachment, U.S. Department of Labor Case# WEMD 13-5.) This complaint stated he was wrongfully terminated and requested his termination be appealed.

After reviewing the facts contained in the anonymously sent fax, Lehigh work orders #8692429, #8693922, and the complaint filed with the U.S. Department of Labor. I found evidence to support the fax was set anonymously by (O5) [REDACTED] because of his termination.

On 03/25/13, I called and left a message at (O5) [REDACTED] last known phone number. On 04/03/13, I received a return call from a person who identified himself as [REDACTED]. He said in broken English, he was returning my call and wanted to know what my call was about. He said he did not speak English and needed a Spanish translator. I tried to tell (O5) [REDACTED] I wanted to speak to him about his termination from Lehigh, because of the language barrier he did not understand what I was saying.

I contacted Special Agent Gabrielle Solleder who works for Alcohol, Tobacco, Firearm, and Explosives Department, (ATF), and speaks fluent Spanish for her assistance. Special Agent Solleder called (O5) [REDACTED] and left another message requesting him to return her call so we can discuss his termination from Lehigh. (O5) [REDACTED] has not returned our call as of the completion of this report.

CASE DISPOSITION:

To original report.

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Date:	03/26/13

Reviewed By: D. John Date: 3/29/14 Processed By: _____ Date: _____

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SUPPLEMENTAL REPORT:

INVESTIGATION:

On 04/17/13 at approximately 1000 hours, ATF Special Agent Gabrielle Solleder and I interviewed (05) [REDACTED] at the Santa Clara County Sheriffs West Sub-Station. The interview was recorded and copied to a DVD. The DVD was logged into SCCFD evidence as item # JD-4. The following is a summary of statements made by (05) [REDACTED].

Statement from (05) [REDACTED]:

(05) [REDACTED] said he has worked for Lehigh Quarry since October 8, 2001. He said he has worked in several positions and departments while he was employed. He has worked in the Pack House, Maintenance Yard, and Crush Department. He has been responsible for servicing and refueling the heavy equipment located in the quarry. (05) [REDACTED] said over his time at the quarry he has had access and is familiar with all areas within the quarry.

(05) [REDACTED] said his last responsibility in the quarry was maintenance of equipment ensuring the proper lubrication to the moving parts within the "Roller Press". He said he was terminated because a piece within the "Roller Press" failed and the managers of Leigh determined the failure was caused by improper maintenance, which was his responsibility. The Lehigh managers terminated his employment because of this incident.

(05) [REDACTED] said he was very upset over the termination and he did not agree with their decision. He explained how he was not the only employee responsible for maintaining the "Roller Press" but was the only one terminated over the incident.

When asked about the message sent to the Mine Safety and Health Administration (MSHA), (See supplemental report dated 3/12/13). (05) [REDACTED] said he did send an anonymous message to them but could not be 100% sure it was the same message I spoke about. He did confirm his message included facts about his termination and asking why the managers of Lehigh were being protected when they are treating employees unfairly. (05) [REDACTED] said he would go home, check his computer and get back to me to verify the message sent by him. As of today I have not heard back from (05) [REDACTED] or received any verification or clarification on the facts surrounding this message.

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CJIC #	D7711
Date:	10/21/13

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Statement from (05) [REDACTED] Continued:

I asked (05) [REDACTED] if he was involved with the fires at Lehigh. He said he was terminated and not allowed on the property. He continued to say he was not involved with the fires. I asked if I would see him or his vehicle on any security videos the days surrounding the fires. He said no. I asked him if I saw his vehicle in the security videos could it be someone else driving his truck? (05) [REDACTED] said he has never loaned his truck out, he is the only person who drives it.

I asked (05) [REDACTED] if he would be willing to submit to a polygraph examination to help support his statements, he asked if the polygraph was admissible in court. I explained to him it was not admissible in court but it is a tool we can use to verify his story. (05) [REDACTED] agreed to submit to a polygraph examination. I told him we would set up an appointment for the examination.

During the month of July I called (05) [REDACTED] several times and left messages on his cell phone requesting a date to facility the polygraph examination. I did not receive a return call from him. On July 19, 2013, I parked in front of (05) [REDACTED] residence and waited for him to return home so I could speak to him about setting up the appointment for the polygraph examination.

At approximately 1600 hours I watched (05) [REDACTED] enter his house. I requested Special Agent Solleder to meet with me so there were two of us making contact with (05) [REDACTED]. While I was waiting for Special Agent Solleder to arrive I witnessed a female and another male enter the residence.

Special Agent Solleder arrived and we made contact with the female and male who were tenants of the residence. They verified (05) [REDACTED] was a tenant and they directed us to his bedroom. The bedroom door was shut and locked. I knocked on his door and he did not answer. I knocked again and identified myself asking for him to open the door so we can talk. Still no answer, I could hear some movement inside the bedroom so I knew someone was in the room. Special Agent Solleder knocked on the door and identified herself in Spanish and asked him to open the door so we could set up a date for the polygraph examination. (05) [REDACTED] never responded or opened his door.

We left the residence and I located (05) [REDACTED] truck, which was located directly across the street of his residence. A records check verified (05) [REDACTED] was the registered owner. I photographed his truck. I observed a sticker on the rearview mirror, which was provided by Lehigh when he was an employee. This sticker allowed the vehicle by the security front gate without having to sign in using the security log. I later verified with Lehigh the sticker was never given back to Lehigh after (05) [REDACTED] termination.

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REV- 04/2010

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Statement from (05) [REDACTED] Continued:

I was contacted by an attorney representing (05) [REDACTED] with is termination. He told me that (05) [REDACTED] said we were at his house asking him to set up an appointment to submit to a polygraph examination and (05) [REDACTED] has decided not to take the polygraph examination.

On October 21, 2013 I reviewed the Lehigh front gate security video (Evidence item #JD-8) and observed a truck matching (05) [REDACTED] truck entering Lehigh on 1/26/13 at approximately 1841 hours. The security guard did not have the driver sign in because of the employee sticker on the vehicle.

(05) [REDACTED] has the motive to commit arson based on his disagreement surrounding his termination. He had sent an anonymous message to the MSHA with threats pointing toward the Lehigh managers and stated in our interview that he was very upset over his termination. (05) [REDACTED] had the opportunity based on statements he made that he has never loaned his truck to anyone and he was the only person who drives it. While reviewing security video of the front gate of Lehigh, I observed his vehicle entering Lehigh on 1/26/13, the evening of the fire and he knows the layout and the working operations of Lehigh because of his experience with the quarry. (05) [REDACTED] was apprehensive but agreed to submit to a polygraph test during our interview but later refused. When he was first asked to submit to the test his concern was if it was admissible in court.

(05) [REDACTED] has now become a suspect in this case.

CASE DISPOSITION:

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REV- 04/2010

From: Rhoda Fry, Cupertino Resident

To: Board of Supervisors

RE: Agenda Item #29. Under advisement from January 25, 2022 (Item No. 14): Receive report from the Office of the County Counsel and the Department of Planning and Development relating to list of all noticed violations of permits, laws, statutes, regulations, ordinances, consent decrees, or other court actions involving Lehigh Cement Plant and Quarry over the ten year period January 1, 2012 through December 31, 2021. (ID# 111274)

Dear Board of Supervisors,

Thank you for looking at the comprehensive list of Lehigh's noticed violations and other actions. It is troubling that the County has not levied fines. Furthermore, a number of items that should have been violations were never officially noticed. Below please find corrections, additions and comments pertaining to the report.

With respect to Lehigh's illegally-built 40-foot wide road within jurisdictional Cupertino, Lehigh paid the City of Cupertino over \$150,000 in penalties for grading and removing protected trees without a permit. The report mentions only a \$100 administrative fine. Additionally, Lehigh has already planted 49 large replacement trees on site per Cupertino's Protected Tree Ordinance.

What we don't glean from this agenda item is, how bad is it? I will tell you that it is bad. The \$5M settlement for water quality violations with the EPA, DOJ, California AG (under Kamala Harris) was a landmark case. And Lehigh Cupertino has the very worst labor-safety record among California's 8 cement plants. From 2017 to 2019, Lehigh had \$1.4M in proposed federal fines vs Mitsubishi's \$28K, which had about the same number of employee hours – that's a factor of fifty! Attached you'll find a comparative report of Lehigh's egregious record of safety violations. I first raised labor-safety concerns when Liz Kniss represented District 5 and have continued to do so ever since.

AIR QUALITY: On the very night of one of Supervisor Simitian's quarry town halls in Cupertino, there was a massive brown pollution cloud over the cement plant. As was typical, BAAQMD reported that it was a borderline case and there was no violation. My colleagues and I have lodged a variety of complaints over the years and no violation was recorded because BAAQMD staff was not there to observe the incident and refused to install inexpensive recording devices.

Over several years, I had begged BAAQMD to reduce dust from quarry-blasting. Dust was neither modeled nor measured because the Title V Air Permit statement of basis claimed all dust remained in the pit, which photographic evidence refuted. Staff committed to look into less invasive quarry-blasting, but it never happened. The United States Geological Survey (USGS) lists these blasts on their online database. Some blasts shook homes within a 2.5 mile radius of the quarry and measured 2.4 magnitude. Additionally, in a phone call between the State Geologist, the late Bill Almon of Los Altos Hills, and myself, the State would not guarantee that these blasts along the onsite Berrocal Fault would be incapable of causing earthquakes within the San Andreas fault zone.

Within the past year or so BAAQMD staff, management, lead counsel, and head executive have retired.

DELIBERATELY SET FIRES: In 1993, 1999, and 2013 there were significant fires. The 1993 fire burned Kaiser Aluminum buildings which had been used during WWII for research and manufacturing of bombs. Kaiser Aluminum also received fines for the improper storage of hazardous materials. These deliberately set fires were a public nuisance to residents as they could smell the smoke and fire department resources were siphoned from other potential emergencies. Attached is the 2013 fire investigation report which provides insight into Lehigh's corporate culture.

CRIMINAL CASES AGAINST FORMER LEHIGH MANAGERS: So why should we care about criminal cases against former Lehigh managers? Lehigh managers hired an unlicensed contractor for major drainage work and took kickbacks from that contractor. To my knowledge, there has been no verification from the County that this work was conducted in a workmanship-like manner. When valuating the land, the County should take into account that this work might need to be repaired. So far, one person has been sentenced to a year in county jail, while others are awaiting sentencing. The County press release is here: <https://countyda.sccgov.org/news/news-release/former-manager-permanente-cement-plant-convicted-bribery> For criminal cases, see C1922989, B1901033, B1902597, which are against 7 individuals and companies: The People of the State of California vs. SABAWI, ALA SAMIR; RASCOM; INDUSTRIAL WORKFORCE INC.; SEGURA, ROBERT ANTHONY; YANEZ, JUAN PEDRO; Saffari, Mohammed Reza; and DELVALLEFAVELA, RICARDO. The attached court document provides insight into these cases.

EXAMPLES OF VIOLATIONS THAT THE COUNTY HAS NOT RECORDED:

1. Failure to conduct a wildlife survey prior to building the illegal 40-foot wide road that was built during bird-nesting season and destroyed approximately 56 trees (see: <https://www.cupertino.org/home/showdocument?id=23406>)

2. Lehigh made major structural repairs to its cement silos that had been spalling without applying for building permits. Now the County has no visibility as to the structural work that has been done. Spalling is when water gets into a concrete building and starts to rust the structural reinforced steel bars (rebar) which then expand and cause chunks of concrete to fall off of the building, potentially injuring people and damaging vehicles nearby.

3. Lehigh failed to report a 6 million gallon chlorinated water spill into Permanente Creek to the California State Office of Emergency Services (OES). The County is responsible for enforcement. Consequently, there is no record of this spill in the OES database.

CUPERTINO COLLECTS PENALTIES FROM LEHIGH: The report leaves an inaccurate impression of fines paid to The City of Cupertino, “1 violation with 4 counts with an administrative citation fee of \$100.” <https://district5.sccgov.org/press-releases/county-issues-ten-year-compilation-lehigh-violations> Because I was shocked to read that Lehigh had paid Cupertino only \$100, I put in an inquiry into Chad Mosley, Cupertino Assistant Director of Public Works/City Engineer. I have summarized below.

Lehigh has actually paid Cupertino over \$150,000 in penalties and Lehigh has completed its restitution for tree replacement on site.

- Approximately **\$128K penalty fees** paid for retroactive tree permit (tree permit would have been about \$6K; the total permit was \$134,946.)
- Approximately **\$23K penalty fees** paid for retroactive grading permit (grading permit would have been about \$23K; the total permit was \$46,494)

Specifically, Lehigh has already planted 49 replacement trees on site per the Protected Tree Ordinance. (20x 36”-box Coast Live Oak, 1x 36”-box Interior Live Oak, 23x 24”-box Blue Oak, 5x 24”-box California Buckeye). The erosion issues have been repaired; the haul road reversion grading design has yet to be finalized.

HEIDELBERGCEMENT'S CHAIRMAN COMMENTS ON LEHIGH PERMANENTE SITE:

Finally, please consider HeidelbergCement's attitude toward our community as its Chairman Bernd Scheifele, commented on the Permanente quarry and cement plant during a financial analyst call 8/1/2017

"Heidelberg has the luxury to run 3 cement plants in a very nice part of North America in California. But California is not very friendly to heavy industry, meaning operation costs in California are extremely high because I think we spend -- or each year, at least 2 million or 3 million [EURO] for lawyers who fight the Sierra Club which I'm not sure whether you're aware, you know the Sierra Club, this is a kind of ecologist, grass-root movement in U.S. and they are trying to sue us on whatever is happening. So this is not an easy environment. Our cement plant in Permanente is based in Cupertino. We have an excellent view on the new Apple headquarter. So that's a very nice area. The problem is our neighbors are all these Silicon Valley freaks, these multimillionaires and they love if our trucks come and go from the cement plant, so that makes the whole operational environment a little bit difficult, but tells you a little bit about the intrinsic real estate value of that piece of property, I think it is about 2000 hectares or whatever. So it's a huge site.

And we had always problems to run the plant, also to find the right personnel, because it is for us extremely difficult to find a decent plant manager and production manager because living costs in Cupertino are sky high. That's the one part. So we have a little bit of people issue and the other point is we had an extremely wet weather and production problems. And to make a long story short, Heidelberg, we were aggressive. We finally decided to change plant management in a very broad range. We fired the plant manager, the production manager and the maintenance repair manager and brought 3 new guys in. And I'm watching the KPIs now with a lot of attention and our production volumes in May and June have already significantly improved. So we are now on a better trend. Some call it weather-related delays in production. You can word it that way; that is nice. If you say it also, I would say it was a mix of weather and a little bit underperformance on the management side. And on the latter, the tolerance in Heidelberg is relatively low. That's why we moved now on the management side and we're confident that we will have a better run on the second half." (HeidelbergCement Half-Year Financial Report January to June 2017 | Press Conference Call | Analyst Conference Call August 1 2017. Audio starts at 1:01:14 <https://www.heidelbergcement.com/en/half-year-financial-report-january-to-june-2017-press-conference-call-analyst-conference-call>)

REQUESTS OF THE COUNTY:

1. The County should fine Lehigh for noticed violations
2. The County should require remediation for noticed violations
3. The County should notice violations that have not yet been noticed
4. The County should consider all property conditions when valuating the property. The EMSA should have completed reclamation by now, but silt continues to be removed from the EMSA. The reclamation plan does not include the Yeager Yard landslide, which could block the creek and cause a health/safety hazard to downstream homes. Remediation cost of the industrial site and railyard is unknown. The Financial Assurance Cost Estimate (FACE) is still likely too low. One big change came from taking \$2.5M more in credits for recycling metals than previously.
5. The County must not allow the new Rock Plant to operate. Case law shows that it is not vested and it will create a deficit of rock for fill. Note that the only reason it got an air permit was because BAAQMD's legal department asked staff to recalculate to lower the cancer risk.

Sincerely, Rhoda Fry

attached: Comparative labor-safety report, fire report, portion of criminal case

1 LEONIDOU & ROSIN
Professional Corporation
2 A. Robert Rosin (SBN 115245)
Patricia Walsh (SBN 121098)
3 777 Cuesta Drive, Suite 200
Mountain View, CA 94040
4 Telephone: 650-691-2888
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**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 3/16/2021 4:59 PM
Reviewed By: System System
Case #17CV314983
Envelope: 6046755**

6 Attorneys for Plaintiff
7 M. HERNANDEZ CONSTRUCTION, INC., dba
HERNANDEZ ENGINEERING
8

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA
11

12 M. HERNANDEZ CONSTRUCTION, INC.,)
13 dba HERNANDEZ ENGINEERING, a)
14 California corporation,)

15 Plaintiff,

16 vs.

17 LEHIGH SOUTHWEST CEMENT
COMPANY, a purported California
corporation;
18 ROBERT ANTHONY SEGURA, JR.,
individually and dba RASCOM;
19 SURETEC INDEMNITY COMPANY, a
purported California corporation; and
20 DOES 1 through 30, inclusive;

21 Defendants.
22
23
24
25
26
27
28

Case No.: 17CV314983

**M. HERNANDEZ CONSTRUCTION,
INC.'S SETTLEMENT CONFERENCE
STATEMENT**

Unlimited Jurisdiction

Date: March 24, 2021
Time: 9:00 a.m.
Dept: 20

Judge: Honorable Socrates P. Manoukian

TRIAL DATE: APRIL 5, 2021

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M. Hernandez Construction, Inc. dba Hernandez Engineering (“Hernandez Engineering” or “Hernandez”), a subcontractor, is owed **\$363,111.04** by defendant Robert A. Segura dba RASCOM (“Segura”), inclusive of attorney’s fees and interest. Segura admitted his liability for the principal amount of the debt. (Exhibit 1.) Segura’s obligation arises from a written subcontract with Hernandez concerning the improvement of a cement plant at the Permanente Quarry in Cupertino. The project in question is known as the Storm Water Diversion Pipelines A, B, C, and D (the “project”).

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1 RASCOM when the subcontract was signed. RASCOM as a corporation did not become licensed
2 until years later. There is no basis for any contention by Mr. Segura that the subcontract is with
3 RASCOM, a corporation. Hernandez added RASCOM the corporation as a defendant at some
4 point but will dismiss it before trial.

5 Under the original subcontract, Hernandez Engineering agreed to furnish labor, materials,
6 equipment and services for the construction of a sediment basin, outlet box, and storm water
7 diversion pipelines A, B, C and D, at the Lehigh Cement Plant in Cupertino, for a price of
8 \$497,000. The work was performed in accordance with plans prepared by Golder. The subcontract
9 price was increased *in part* by agreement for certain extra work performed by Hernandez that is
10 not the subject of this litigation, without the issuance of formal change orders.¹ Segura paid
11 Hernandez for the original and certain extra work, all of which was completed in early 2016.
12 Except for the work here at issue, Segura paid Hernandez in full.

13 **Directives to Hernandez Engineering to Perform the Unpaid Extra Work**

14 During Hernandez Engineering's performance, there were many active projects ongoing at
15 the Plant. No other projects involved Hernandez Engineering, but many involved Segura.
16 Apparently due to the demands of the other work, Segura often was not available to discuss matters
17 concerning the subject project. With respect to the work at issue that took place in approximately
18 February, March and April 2016, Segura had become so busy with other work at the Lehigh Plant
19 that he told Mariano Hernandez, "just deal with Greg [Fedak]" (Golder's site superintendent).
20 Hernandez Engineering followed Segura's directive and performed the work now at issue as
21 Golder requested.

22 **Segura's Promise to Pay for the Extra Work**

23 Hernandez presented change order requests to Segura. Segura passed them on to Lehigh
24 and then met with Lehigh to negotiate a final amount. On June 15, 2016, Mr. Segura emailed Mr.
25 Hernandez to advise that he had reached a settlement with Lehigh whereby Lehigh agreed to pay
26 Segura \$133,868.00 for Hernandez's work here at issue: **"The good news is that the negotiations**

27 _____
28 ¹The parties never followed and therefore waived the requirements of the change order procedures under the subcontract.

1 are over. On your original extras that totaled \$111k we agreed on 65,868. And on the second extras
2 that totaled \$73k we agreed on \$68k. That is final.” (Exhibit 1.) Therefore, a principal sum owed of at
3 least **\$133,868 is not in dispute**. Segura said he would pay Hernandez once the owner paid Segura, as is
4 customary in many construction projects.

5 **Segura’s Criminal Enterprise at Lehigh Stopped Payments for Work**

6 Segura did not pay as promised. Lehigh refused to pay Segura further after discovering that he had
7 committed numerous acts of fraud upon Lehigh together with others (not Hernandez). That fraud is the
8 subject of an ongoing criminal complaint against Segura. (Exhibit 2.) Hernandez pressed Segura for
9 payment. Segura responded only that he had not been paid yet. (Exhibit 3.)

10 **LEGAL ANALYSIS**

11 **Hernandez Engineering’s Complaint**

12 Hernandez Engineering filed its complaint against Lehigh and Segura in 2017. Against Segura,
13 Hernandez has alleged causes of action for quantum meruit, moneys due, account stated, and breach of
14 contract.

15 **Segura’s Liability to Hernandez**

16 Segura’s refusal to issue change orders to Hernandez for work that Segura authorized is a material
17 breach. *C.G. Byson v. City of Los Angeles* (1957) 149 Cal. App. 2d 469 (failure to pay undisputed amounts
18 unless other work were performed at no charge constituted a material breach); *Smith v. Empire Sanitary*
19 *District* 127 Cal. App. 2d 63 (1954). Segura authorized Hernandez to take direction for his work from
20 Golder because Segura couldn’t spare the time to administer the project as a competent contractor would
21 have done under these circumstances. If the principal clothes his agent with authority, a person dealing
22 with the agent, in the absence of any conduct on the part of either principal or agent warranting inquiry, is
23 entitled to rely upon that apparent authority. *Myers v. Stephens* (1965) 233 Cal. App. 2d 104.

24 The duty of good faith and fair dealing inherent in all contracts requires a party, when exercising
25 its rights under a contract, to act so as not to deprive the other party of the benefit of its bargain. *Carma*
26 *Developers (California), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal. 4th; *Third Story*
27 *Music, Inc. v. Waits* (1995) 41 Cal. App. 4th 798, 808. “The essence of the good faith covenant is
28 objectively reasonable conduct.” *Lazar v. Hertz Corp.* (1983) 143 Cal. App. 3d 128, 141. “A contract will

1 not be construed so as to place one party at the mercy of another.” *Yamanishi v. Bleily & Collishaw, Inc.*
2 (1972) 29 Cal. App. 3d 457, 462-463. Segura allowed Golder to be his agent for the work at issue, and is
3 liable for the work that he authorized through Golder. To hold otherwise is a breach of the duty of good
4 faith and fair dealing.

5 Hernandez relied upon Segura’s instructions and performed the work that Golder directed. Segura
6 is estopped from disavowing a contractual relationship with Hernandez after the fact. “Whenever a party
7 has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing
8 true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct,
9 permitted to contradict it.” Evidence Code § 623; *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Café &*
10 *Takeout III, Ltd.* (1994) 30 Cal. App. 4th 54, 60-61. An estoppel may arise although there was no designed
11 fraud on the part of the person sought to be estopped. To create an equitable estoppel, “it is enough if the
12 party has been induced to refrain from using such means or taking such action as lay in his power, by which
13 he might have retrieved his position and saved himself from loss.” *Lantzy v. Centex Homes* (2003) 31 Cal.
14 4th 363, 384.

15 Estoppel can be used in connection with disputes concerning interpretation of a contract, to bind
16 the party who induced detrimental reliance. *Wilson v. Bailey* (1937) 8 C. 2d 416 (party may be estopped
17 by its conduct to raise interpretation contrary to one held by the other party.) Here, Segura induced
18 Hernandez’s detrimental reliance by authorizing Hernandez to proceed based upon direction from Golder.
19 Hernandez relied to its detriment upon Segura’s direction. Therefore, Segura will be estopped from refusing
20 to pay Hernandez Engineering.

21 Because Segura authorized Hernandez to accept direction for changes from Golder which resulted
22 in extra work, Hernandez is entitled to recover for the costs it incurred. *Angeles Unified School Dist. v.*
23 *Great American Ins. Co.* (2010) 49 Cal. 4th 739, 744; *G. Voskanian Construction, Inc. v. Alhambra Unified*
24 *School Dist.* (2012) 204 Cal. App. 4th 981; *McIsaac & Menke v. Cardox Corp.* (1961) 193 Cal. App. 2d
25 661, 666-68, 672; *1st Olympic Corp. v. Hawryluk* (1960) 185 Cal. App. 2d 832, 841; *C. F. Bolster Co. v.*
26 *J. C. Boespflug etc. Co.* (1959) 167 Cal. App. 2d 143, 150-151; *Punton v. Sapp Bros. Constr. Co.* (1956)
27 143 Cal. App. 2d 696, 701;

28 Civil Code Section 3300 prescribes the measure of damages for Segura’s material breach of contract:

1 the amount which will compensate the party aggrieved [Hernandez Engineering] for
2 all the detriment proximately caused thereby, or which, in the ordinary course of
3 things, would be likely to result therefrom.

4 The "detriment" which Civil Code Section 3300 refers is the "loss or harm" that the
5 plaintiff suffers. Civ. Code § 3282. Hernandez is entitled to all the benefits which it would
6 have obtained if the contract had been fully performed by both parties. Civ. Code § 1512.
7 Segura therefore is entitled to recover for all of the detriment that Segura has caused,
8 including the costs associated with performing extra work.

9 The subcontract permits a prevailing party to recover its attorney's fees.

10 RECAP OF DAMAGES

Damages	Amount
Work Order Total	\$184,644.00
Interest @10% per Annum (C.C.P. § 3287(a).)	83,016.00
Attorney's Fees (Civ. Code §§ 1032 et seq.; 1717.)	90,148.50
Costs	5,302.54
Total Damages	\$363,111.04

15 SETTLEMENT DISCUSSIONS

16 The parties mediated this case over a year ago with Brad Bening, Esq. Segura offered
17 \$20,000 in settlement. More recently, Segura's highest offer was \$15,000. Hernandez's bottom
18 line was \$30,000, had that sum been paid without Hernandez incurring additional fees, such as to
19 prepare for and attend this conference.

20 Dated: March 15, 2021

LEONIDOU & ROSIN
Professional Corporation

21
22 

23
24 By _____

Patricia Walsh
Attorneys for Plaintiff
M. HERNANDEZ CONSTRUCTION, INC., dba
HERNANDEZ ENGINEERING

Exhibit 1

Walsh comment: should be "separate"

Mariano Hernandez

From: Robert Segura <rsj1968@gmail.com>
Sent: Wednesday, June 15, 2016 6:59 PM
To: Mariano Hernandez
Subject: Re: Up date on the Extras

Amin is making me desperate every thing per pipeline. So I will complete and resubmit tomorrow. The good news is that the negotiations are over. On your original extras that totaled 111k we agreed on 65,868. And on the second extras that totaled 73k we agreed on 68k. This is final

Sent from my iPhone

On Jun 15, 2016, at 4:36 PM, Mariano Hernandez <mariano@hernandez-engineering.com> wrote:

Hi Robert,

Would you update me on possible dates to receive payment for the extra work ?

Thanks

Storm water diversion Pipeline A, B, C and D
 Contract No. LEHIGH PERMANENT PLANT
 Cost Proposal EXTRA WORK JOB 156

HERNANDEZ ENGINEERING

February 24, 2016

Item	DESCRIPTION	TOTAL
	Underground 12" HDPE in the way of the excavation delay (slow digging to protect and support Existing line)	\$ 5,845.00
	Extra digging and back fill around sediment box due to the relocation and adjustment for inaccurate info on existing survey points	\$ 7,850.00
	Removal of form and rib bar work, back fill over excavated area to corrected elevation and alignment and (bad survey point info.)	\$ 23,472.00
	Helping/support Golder (Greg) with a crew to demo work (excavator with a Hydraulic breaker at pond close to the main entrance)	\$ 2,897.00
	Spillway channel (demo, grade, pour and caulking)	\$ 24,689.00
	Extra work to dig 4' x 1' trench at sediment box	\$ 3,578.00
	Relocation of 12" for the county inspection one time and second time for the yearly maintenance of the plant	\$ 7,835.00
	Build a VENT across (in front of pipe line B)	\$ 2,495.00
	mobilization and demobilization for outlet box	\$ 4,952.00
10	cost associated with out let box (buy iron for rib bar work, buy wood for forming floor, rent forms for walls)	\$ 8,896.00
11	additional cost to survey for outlet box and to install and remove slope protection and erosion control at the creek	\$ 4,879.00
12	build bridge to anchor down CPP at the cluster of existing Gate valves at station 25+50 approx. pipe line "A"	\$ 2,876.00
13	Dig, grade, install, backfill and regrade for added 24" CPP (40 LF approx)	\$ 2,987.00
14	Re design pipe line D (demo slab, demo around point of connection add a "Y" re dig single head wall to a new location	\$ 7,800.00
	TOTAL	\$ 111,051.00

\$ 65,868

HERNANDEZ ENGINEERING

Storm Water diversion Pipeline ABC and D
Contract No. Lehigh Permanente Plant
Cost Proposal Extra Work Job 156

May 4 2016

ITEM	DESCRIPTION	TOTAL
1	Work to install fence by Tunnel and install anchor straps on each end of the bridge over the Tunnel. (pipeline A)	\$1,993.00
2	Work to install additional restrainers (middle of every pipe going up) from trust block to MESA road. (pipeline A)	\$7,156.00
3	Dig and grade for a swale both sides at head wall pipe line B to drain water to the pipe (pipeline B).	\$9,185.00
4	Build berm around clarifier tank	\$5,602.00
5	Install signs for buried pipeline C and light trucks only signs on the 2 built ramps and reflectors on headwalls (B and C)	\$1,603.00
6	Install 12 inch pipe and build a ramp over pipeline B at Rock plant.	\$16,806.00
7	Re-dig and Re-align and backfill approximately 300 LF of (N) 30 inch CPP at the bottom of the hill (pipeline B)	\$5,602.00
8	install 100 LF of 30 inch CPP from the deleted outlet box downhill toward new location.	\$9,069.00
9	Re-grade and build a berm around new G1 inlet (pipeline A)	\$750.00
10	Removal of broken concrete from the spill way (pipeline A).	\$4,390.00
11	Install 12 inch pipe and build a ramp over pipeline B at sump. (pipeline B).	\$11,412.00
	TOTAL	\$73,583.00

\$ 68,000

Exhibit 2

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
PALO ALTO COURTHOUSE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

RICARDO DELVALLEFAVELA (08/26/1980),
940 HILL MEADOW DRIVE
MIDLOTHIAN TX 76065
ALA SAMIR SABAWI (08/27/1974),
44528 SHADOWCREST DRIVE
LANCASTER CA 93536
MOHAMMED REZA SAFFARI (01/07/1969),
5680 STARBOARD DRIVE
DISCOVERY BAY CA 94505
ROBERT ANTHONY SEGURA (02/29/1968),
9012 LUBEC STREET
DOWNEY CA 90240
INDUSTRIAL WORKFORCE INC
4070 NORTH PALM STREET SUITE 703
FULLERTON CA 92835
RASCOM
4070 NORTH PALM STREET, SUITE 703
FULLERTON, CA 92835
JUAN PEDRO YANEZ (04/16/1980),
17431 MORGAN'S LAKE DR CYPRESS TX 77433

Defendant(s).

DOCKET NOS. B1901033 (LEAD)
B1902597

**CONSOLIDATED SECOND AMENDED
FELONY COMPLAINT**

CASE SUMMARY

DA NO: 190307212

CASE SUMMARY

Count	Charge	Charge Range	Defendant	Allegation	Alleg. Effect
1	PC182(a)(4)	PC694	Ricardo Delvallefavela Ala Samir Sabawi Mohammed Reza Saffari Robert Anthony Segura Industrial Workforce Inc. Rascom		

2	PC487(a)	16m-2y-3y	Ricardo Delvallefavela Ala Samir Sabawi Mohammed Reza Saffari
3	PC641.3(a)	8m	Mohammed Reza Saffari
4	PC487(a)	8m 8m 16m-2y-3y	Ricardo Delvallefavela Ala Samir Sabawi Robert Anthony Segura Industrial Workforce Inc. Rascom
5	PC641.3(a)	8m	Robert Anthony Segura Industrial Workforce Inc.
6	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
7	PC641.3(a)	8m	Robert Anthony Segura Industrial Workforce Inc.
8	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
9	PC641.3(a)	8m	Robert Anthony Segura Industrial Workforce Inc.
10	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
11	PC641.3(a)	8m	Robert Anthony Segura Rascom
12	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
13	PC641.3(a)	8m	Robert Anthony Segura Rascom
14	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
15	PC641.3(a)	8m	Robert Anthony Segura Industrial Workforce Inc.
16	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
17	PC641.3(a)	8m	Robert Anthony Segura

Industrial Workforce Inc.

18	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
19	PC641.3(a)	8m	Robert Anthony Segura Industrial Workforce Inc.
20	PC641.3(a)	8m	Ricardo Delvallefavela Ala Samir Sabawi
21	PC182(a)(4)	PC 694 PC 694	Robert Anthony Segura Juan Pedro Yanez
22	PC641.3(a)	8m	Robert Anthony Segura
23	PC641.3(a)	16m-2y-3y	Juan Pedro Yanez
24	PC641.3(a)	8m	Robert Anthony Segura
25	PC641.3(a)	8m	Juan Pedro Yanez
26	PC641.3(a)	8m	Robert Anthony Segura
27	PC641.3(a)	8m	Juan Pedro Yanez
28	PC641.3(a)	8m	Robert Anthony Segura
29	PC641.3(a)	8m	Juan Pedro Yanez
30	PC641.3(a)	8m	Robert Anthony Segura
31	PC641.3(a)	8m	Juan Pedro Yanez
32	PC641.3(a)	8m	Robert Anthony Segura
33	PC641.3(a)	8m	Juan Pedro Yanez
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35	PC641.3(a)	8m	Juan Pedro Yanez
36	PC641.3(a)	8m	Robert Anthony Segura
37	PC641.3(a)	8m	Juan Pedro Yanez
38	PC641.3(a)	8m	Robert Anthony Segura

39	PC641.3(a)	8m	Juan Pedro Yanez
40	PC641.3(a)	8m	Robert Anthony Segura
41	PC641.3(a)	8m	Juan Pedro Yanez
42	PC641.3(a)	8m	Robert Anthony Segura
43	PC641.3(a)	8m	Juan Pedro Yanez

Alleg:

Ricardo Delvallefavela
 Ala Samir Sabawi
 Robert Anthony Segura
 Industrial Workforce Inc.
 Rascom

PC186:11(a)(3) 1 year
 State Prison

Max

10y/120m SP	Ricardo Delvallefavela
10y/120m SP	Ala Samir Sabawi
16y/192m SP	Robert Anthony Segura
	Industrial Workforce Inc.
	Rascom
10½y/124m	Juan Pedro Yanez

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
PALO ALTO COURTHOUSE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

RICARDO DELVALLEFAVELA (08/26/1980),
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Defendant(s).

DOCKET NOS. B1901033 (LEAD)
B1902597

**CONSOLIDATED SECOND AMENDED
FELONY COMPLAINT**

DA NO: 190307212

FILED

JUL - 8 2019

Clerk of the Court
Superior Court of CA County of Santa Clara
BY DEPUTY
GI REYES

The undersigned is informed and believes that:

COUNT 1

On or about and between June 23, 2015 and April 16, 2016, in the County of Santa Clara, State of California, the crime of CONSPIRACY TO DEFRAUD PERSON OF PROPERTY OR OBTAIN MONEY AND PROPERTY BY FALSE PRETENSES, in violation of PENAL CODE SECTION 182(a)(4), a Felony, was committed by who did conspire together and with ALA SAMIR SABAWI, RICARDO DELVALLEFAVELA, ROBERT ANTHONY SEGURA, JR., INDUSTRIAL WORKFORCE INC. and RASCOM to cheat and defraud a person, LEHIGH HANSON, INC., of

property, and to obtain money and property by false pretenses and false promises with the fraudulent intent to not perform those promises.

OVERT ACT 1

(CJIC-OTH) That thereafter, at and in the County of Santa Clara, State of California and in the furtherance of the conspiracy and to effect its object, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, the cement plant's manager and assistant manager respectively, received kickbacks from ROBERT ANTHONY SEGURA, JR., the owner of RASCOM and INDUSTRIAL WORKFORCE INC ("IWI"), MOHAMMED REZA SAFFARI, the owner of ADIA INDUSTRIAL SERVICES ("ADIA") on or about June 23, 2015 through April 16, 2016, from work that they directed for LEHIGH HANSON, INC.'s the Permanente Cement Plant and Quarry to those three vendor companies.

OVERT ACT 2

(CJIC-OTH) That thereafter, at and in the County of Santa Clara, State of California and in the furtherance of the conspiracy and to effect its object, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA on or about June 23, 2015 through April 16, 2016, provided other vendors' bids to enable RASCOM, IWI, and ADIA to maximize their bids while still being the lowest bid.

OVERT ACT 3

(CJIC-OTH) That thereafter, at and in the County of Santa Clara, State of California and in the furtherance of the conspiracy and to effect its object, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA on or about June 23, 2015 through April 16, 2016, convinced other LEHIGH HANSON, INC. personnel that RASCOM, IWI, or ADIA had specific skill sets so no alternative vendor could be used.

OVERT ACT 4

(CJIC-OTH) That thereafter, at and in the County of Santa Clara, State of California and in the furtherance of the conspiracy and to effect its object, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA on or about June 23, 2015 through April 16, 2016, approved inflated invoices by RASCOM, IWI and ADIA for jobs that were to be billed on a time and materials basis.

OVERT ACT 5

(CJIC-OTH) That thereafter, at and in the County of Santa Clara, State of California and in the furtherance of the conspiracy and to effect its object, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA on or about June 23, 2015 through April 16, 2016, tried to conceal the kickbacks by setting up a consulting company, C3S CONSULTING LLC, that had a separate bank account and email address, and invoiced the amount of the kickback payments to RASCOM, TWI, and ADIA, so that the payments appeared to be for legitimate work by that consulting company.

COUNT 2

On or about and between September 10, 2015 and April 16, 2016, in the County of Santa Clara, State of California, the crime of GRAND THEFT OF PERSONAL PROPERTY OF A VALUE OVER NINE HUNDRED AND FIFTY DOLLARS, in violation of PENAL CODE SECTION 487(a), a Felony, was committed by RICARDO DELVALLEFAVELA, ALA SAMIR SABAWI and MOHAMMED REZA SAFFARI who did unlawfully take personal property, money by way of false and/or inflated invoices, of a value exceeding nine hundred and fifty dollars (\$950.00), the property of LEHIGH HANSON, INC.

COUNT 3

On or about and between September 10, 2015 and April 16, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by MOHAMMED REZA SAFFARI who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of MOHAMMED REZA SAFFARI AND ADIA INDUSTRIAL SERVICES.

COUNT 4

On or about and between June 23, 2015 and January 25, 2016, in the County of Santa Clara, State of California, the crime of GRAND THEFT OF PERSONAL PROPERTY OF A VALUE OVER NINE HUNDRED AND FIFTY DOLLARS, in violation of PENAL CODE SECTION 487(a), a Felony, was committed by ALA SAMIR SABAWI, RICARDO DELVALLEFAVELA, ROBERT ANTHONY SEGURA, JR., INDUSTRIAL WORKFORCE INC. and RASCOM who did unlawfully take personal property, money by way of false and/or inflated invoices, of a value exceeding nine hundred and fifty dollars (\$950.00), the property of LEHIGH HANSON, INC.

COUNT 5

On or about June 23, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC..

COUNT 6

On or about June 23, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 7

On or about July 18, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC., who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 8

On or about July 18, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 9

On or about August 19, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC., who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI AND RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 10

On or about August 19, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 11

On or about September 18, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and RASCOM, who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and RASCOM.

COUNT 12

On or about September 18, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and RASCOM other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and RASCOM.

COUNT 13

On or about November 13, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and RASCOM, who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and RASCOM.

COUNT 14

On or about November 13, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of

PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and RASCOM other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and RASCOM.

COUNT 15

On or about December 9, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC., who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 16

On or about December 9, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 17

On or about December 27, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC., who did, offer and give money by

check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 18

On or about December 27, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 19

On or about January 25, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00; in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC., who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, ALA SAMIR SABAWI and RICARDO DELVALLEFAVELA, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 20

On or about January 25, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by RICARDO DELVALLEFAVELA and ALA SAMIR SABAWI, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC. other than in trust for the employer, corruptly and without the knowledge and

consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR. and INDUSTRIAL WORKFORCE INC.

COUNT 21

On or about and between September 14, 2015 and June 16, 2016, in the County of Santa Clara, State of California, the crime of CONSPIRACY TO DEFRAUD PERSON OF PROPERTY OR OBTAIN MONEY AND PROPERTY BY FALSE PRETENSES, in violation of PENAL CODE SECTION 182(a)(4), a Felony, was committed by ROBERT ANTHONY SEGURA AND JUAN PEDRO YANEZ who did conspire together and with others to cheat and defraud a person, LEHIGH HANSON, INC., of property, and to obtain money and property by false pretenses and false promises with the fraudulent intent to not perform those promises.

OVERT ACT 1

(CJIC-OTH) That thereafter, at and in the County of Santa Clara, State of California and in the furtherance of the conspiracy and to effect its object, JUAN PEDRO YANEZ, the cement plant's maintenance manager, on or about on or about November 6, 2015 through June 16, 2016, received bribes in the form of checks from ROBERT ANTHONY SEGURA, JR. and vendor companies owned by ROBERT ANTHONY SEGURA, JR. for JUAN PEDRO YANEZ's approval of work done by those vendors for LEHIGH HANSON, INC.'s the Permanente Cement Plant and Quarry by vendors ROBERT ANTHONY SEGURA, JR., including the approval of payments for that work..

COUNT 22

On or about September 14, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 23

On or about September 14, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee

of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 24

On or about November 6, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 25

On or about November 6, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 26

On or about December 3, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 27

On or about December 3, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer,

namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 28

On or about December 22, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 29

On or about December 22, 2015, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 30

On or about January 19, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT

ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 31

On or about January 19, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 32

On or about February 10, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 33

On or about February 10, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 34

On or about March 11, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 35

On or about March 11, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 36

On or about April 14, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 37

On or about April 14, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely,

ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 38

On or about April 15, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 39

On or about April 15, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 40

On or about May 5, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 41

On or about May 5, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer,

namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 42

On or about June 16, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY PERSON OFFERING AND GIVING BRIBE - VALUE EXCEEDING \$1000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by ROBERT ANTHONY SEGURA who did, offer and give money by check, with a value exceeding one thousand dollars (\$1,000), to an employee of LEHIGH HANSON, INC., namely, JUAN PEDRO YANEZ, in return for that employee using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

COUNT 43

On or about June 16, 2016, in the County of Santa Clara, State of California, the crime of COMMERCIAL BRIBERY BY EMPLOYEE - VALUE EXCEEDING \$1,000.00, in violation of PENAL CODE SECTION 641.3(a), a Felony, was committed by JUAN PEDRO YANEZ, an employee of LEHIGH HANSON, INC., who did, solicit, accept, and agree to accept money by check, with a value exceeding one thousand dollars (\$1,000), from a person, other than his or her employer, namely, ROBERT ANTHONY SEGURA, JR. other than in trust for the employer, corruptly and without the knowledge and consent of the employer, in return for using and agreeing to use his or her position for the benefit of ROBERT ANTHONY SEGURA, JR..

AGGRAVATED WHITE COLLAR CRIME ENHANCEMENT

It is further alleged that the felony crimes charged in Counts 1-20 are related, that a material element of the crimes is fraud and embezzlement, that the crimes involve a pattern of related felony conduct, and that the pattern of related felony conduct by involves the taking of more than one hundred thousand

dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000) within the meaning of Penal Code sections 186.11(a)(1) and (a)(3).

Any defendant, including a juvenile, who is convicted of and pleads guilty and no contest to any felony offense, including any attempt to commit the offense, charged in this complaint or information is required to provide buccal swab samples, right thumbprints and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to the DNA and Forensic Identification Database and Data Bank Act of 1998 and Penal Code section 296, et seq.

Further, attached and incorporated by reference are official reports and documents of a law enforcement agency which the complainant believes establish probable cause for the arrest and pretrial detention of defendant RICARDO DELVALLEFAVELA, ALA SAMIR SABAWI, ROBERT ANTHONY SEGURA, and JUAN PEDRO YANEZ for the above-listed crimes.

Complainant therefore requests that the defendant(s) be dealt with according to law.

I certify under penalty of perjury that the above is true and correct.

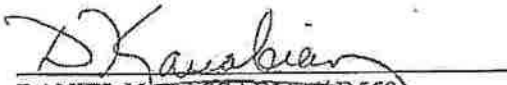

DANIEL N. KASSABIAN/D550
Deputy District Attorney
(Sanford Fisher F1915 | SCCSO 170730153C)

Exhibit 3

I sent them to check on our stuff that we have in the plant. And nothing else.



Me

Dates:6/8/2016 12:02:05 PM

I'll call them to find out what is going on



Me

Dates:6/27/2016 12:30:35 PM

Hi Robert, Any word on pipeline B continuation? Is that going to happen at all?



Me

Dates:6/27/2016 1:02:02 PM



+15626500467

No , unfortunately purchasing gave the job to a totally new contractor, on Friday . I'm here trying to fight it right now but I'm getting nowhere

Dates:7/1/2016 10:13:22 AM

Hi Robert, Can you give me possible (Approximate) dates for payment and information on any thing that I need to do on my end to make it happen? Is there any thing (New projects) developing there? Regards



Me

Dates:7/6/2016 9:49:09 AM

Hi Robert, Did you get my email today, what do you think?



Me

Dates:7/12/2016 9:02:57 AM

Hi Robert, Did you get a chance to consider my request?

Dates:7/12/2016 9:13:28 AM

+15626500467

Yes I did Mariano, right now I'm waiting for Lehigh to release payment on my invoices from the big job I did, which are 95 days old already. I'm hoping that they release them today but there is no guarantee of that. But if and when they release my money I will do something for you. But even then, your going to have to do a LOT better than 1,300 dollars. I did not put any money on top of your extras. So for you to get paid asap and me to wait two months for the money at no profit will not work for me.

Dates:7/12/2016 11:22:56 AM

Can you give me a schedule of payment? I assume that the invoice for 17.5K gotta be close to be paid. Are the other 2 invoices 60 day firm to be paid? How much you want to profit to make the advanced payment?



Me

Dates:7/12/2016 11:26:23 AM

+15626500467

The 17.5 should come within the next 30 days and the rest in about 68 days. Everyone is on net 75 now. There is no more net 55.

Dates:9/7/2016 5:31:10 PM

Hi Robert, I know you are a busy man. I will not take much of your time I just need to know when I can send a guy to pick up the check. Let me know. Thanks



Me

Dates:9/7/2016 5:43:20 PM

+15626500467

I'm having problems collecting money from Lehigh.
They have not paid me since July . I have to give them a extensive package on supporting documentation of billing hours) They are going thru some huge changes that are not friendly to me. So I will give you an update next week

- not relate to the work

Dates:9/12/2016 5:39:27 PM

Hi Robert, What are the good news



Me

Dates:9/13/2016 1:06:07 PM

No, read my last text

+15626500467

Dates:9/13/2016 1:06:23 PM

Hi Robert, Are we going to have our payment ready to be picked up by middle of next week? Let me know Thank you



Me

Dates:9/13/2016 1:06:40 PM

I'm having to sue Lehigh for my money. So I'm going to have to ask you for some patience

+15626500467

Dates:9/15/2016 1:52:26 PM

I need to talk to you, I left you a couple of voice messages. I'm being patient I just need to know what is the situation and a real time frame of when we are going to get paid Please call me



Me

Dates:9/15/2016 5:00:27 PM



I will call you tomorrow so that we can talk

+15626500467

Dates:9/16/2016 6:55:38 PM

Are you still going to call me?



Me

Dates:9/22/2016 4:19:13 PM

Hi Robert, I left you a voice message Looking for status of final payment. last week we agreed to talk this week Regards



Me

Dates:9/22/2016 6:44:01 PM



+15626500467

I spoke with my attorney today, he said that Lehigh has not responded so he sent them an email today around 3 pm. I will talk to him again tomorrow as my bank wants an update as well. Then I will get with you .

Dates:9/22/2016 7:05:01 PM

OK thanks look forward to hearing from you tomorrow



Me

Dates:9/23/2016 6:20:48 PM

What is the good news?



Me

Dates:9/26/2016 9:50:19 AM

+15626500467

All the pressure in the world is not going to make Lehigh move any quicker. I am not holding your money, Lehigh is. So I promise that as soon as they respond, I will update you and as soon as they pay I will pay you. The continuous phone calls are simply stressing you and I out. So please let me notify you when I have some news. Thank you for your continued patience.



Dates:9/28/2016 3:28:36 PM

Any thing yet?



Me

Dates:9/29/2016 5:49:45 PM

Anything yet?



Me

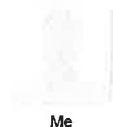
Dates:9/29/2016 5:51:38 PM

+15626500467

I've asked you kindly for patience,,, you don't seem to be doing well with that. So once again, as soon as I get news, I will convey it to you. I am not holding your money. Lehigh is.

Dates:10/5/2016 7:47:19 AM

Robert I need an update at least once a week regarding the status of the situation regardless if something is happening or not, otherwise I get really nervous. And start thinking about legal action. So please do the best you can to inform me like I said regardless if something is moving or not Thank you and good luck



Me

I released final settlement on 07/12/2016 for payment.

Regards,

Amin Ghamsari, PMP
Projects Manager,

Lehigh Southwest Cement Company
Permanente Plant
24001 Stevens Creek Blvd.
Cupertino, CA 95014
Phone : (408) 996-4019
Cell : (408) 202-0080
Amin.Ghamsari-Esfahani@LehighHanson.com

From: Mariano Hernandez [<mailto:mariano@hernandez-engineering.com>]
Sent: Wednesday, October 05, 2016 2:51 PM
To: Ghamsari-Esfahani, Amin (Cupertino) USA
Subject: FW: Payment (Storm Water Diversion Pipelines A, B, C, and D)

Amin,

In middle of June/2016 Mr. Segura and you met to settle in all the (Extra Work) for this particular project. According with the last conversation with Mr. Segura the final agreement for our extra work was \$ 133,868.00 (one for \$ 65,868.00 and the second one for \$ 68,000.00) this is the money that we are looking for. As you can see in the email below from Rebekah (IWI) last payment was made early May 2016. Can you let me know when the extra work was released for payment on your side? Because if you approved it, let's say end of June/2016 plus 75 days per your payment policy, payment should have been done mid-September 2016. Any information about this will be greatly appreciated.

Thank you

From: Mariano Hernandez
Sent: Wednesday, September 28, 2016 10:47 AM
To: 'amin.ghamsari-esfahani@leighhanson.com' <amin.ghamsari-esfahani@leighhanson.com>
Cc: Fedak, Greg <greg_fedak@golder.com>
Subject: Payment (Storm Water Diversion Pipelines A, B, C, and D)

Hi Amin,

I'm Mariano Hernandez CEO of Hernandez Engineering. I'm writing to inform you that our firm built the project Storm Water Diversion Pipelines A, B, C, and D. I assume that the middle man was RASCOM we finished the project but we had not been paid in full. RASCOM still owed us close to 150K. Mr. Segura claims that the reason He has not paid us is because Leigh has not paid RASCOM in full for that particular project. If at all possible I would like to stop by your office any day (you choose) next week to have an informal chat/meeting so you may feed me with the particulars on the situation?.

Please reply at your earliest convenience.

Regards

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Leonidou & Rosin, 777 Cuesta Drive, Suite 200, Mountain View, CA 94040. On March 16, 2021, I served the within documents:

**M. HERNANDEZ CONSTRUCTION, INC.'S SETTLEMENT
CONFERENCE STATEMENT**

☒ by electronically serving the above-referenced document(s) through One Legal, LLC and/or File and ServeXpress, an e-filing provider for Santa Clara County Superior Court. E-service in this action was completed on all parties listed on the service list with the Court. This service complies with the Court's order in this case.

David H. Pierce, Esq.
Charles A. Pressman, Esq.
David H. Pierce & Associates PC
15260 Ventura Boulevard, Suite 730
Sherman Oaks, CA 91403-3501
Tel: (818) 826-5480
Fax: (818) 826-5486
Emails: dpierce@dhpierce.com

cpressman@dhpierce.com

- **Attorneys for Defendant and Cross-Defendant ROBERT ANTHONY SEGURA, JR. individually and dba RASCOM and Defendant RASCOM, a corporation**

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 16, 2021, at Mountain View, California.

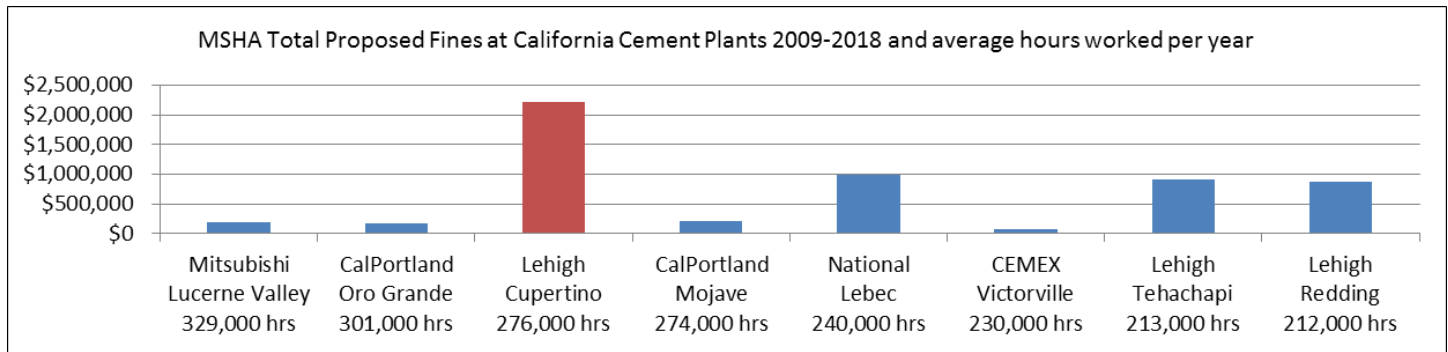


Pernilla Hansson

Cement Plant in Cupertino – Most Hazardous in California

Lehigh Hanson HeidelbergCement Group

The Lehigh Hanson cement plant and quarry in Santa Clara County, Cupertino, owned by HeidelbergCement Group of Germany, have a chronic history of Mining Safety and Health Administration (MSHA) violations.¹ For the past decade, the facility has been fined over \$2.2 million by MSHA, accounting for 39% of all MSHA proposed fines among California's 8 cement plants. Lehigh Cupertino received 26 times more proposed fines than CEMEX Victorville, which had only 16% fewer hours worked.² The table below lists California cement plants in order of the average number of hours worked, demonstrating that when it comes to labor safety, size does not matter. As measured by fines, the three Lehigh cement plants are among the most unsafe in California with **Lehigh Cupertino as California's most hazardous cement plant**.



While MSHA's goal is to prevent death, illness, and injury from mining and promote safe and healthful workplaces for U.S. miners, compliance at Lehigh Cupertino remains elusive. Documented injuries and fatalities among 24 miners and 96 plant workers (per 2018 DOL) include: rash on arms and legs from shoveling cement dust; 2nd and 3rd degree burns on legs from raw meal; burns on 15% of upper extremities from clinker; burns on head and hand from checking plug; inhalation injuries of 5 people; inundation of gases requiring evacuation; people trapped in elevator at least 5 times for over an hour; injury after elevator suddenly dropped 3 to 4 feet; broken and crushed feet requiring surgery; hand injuries requiring stitches; face injuries from flying objects causing lacerations and knocked out teeth; eye injuries; multiple fires; and driver killed in truck on fire after a loader ran into it. Not included in the MSHA database are the 2017 fatality and the 2011 massacre that killed four people and injured seven, including a woman who was not affiliated with Lehigh.

“A mine that considers egregious violation records a cost of doing business” -- MSHA³

Additionally, workers are exposed to hazards including industrial and naturally-occurring contaminants detected at elevated levels in soils and cement kiln dust: arsenic, beryllium, cadmium, chromium, lead, mercury, PCBs, and selenium.⁴ In 2015, the EPA found that Lehigh Cupertino failed to report toxic chemicals, such as 169,000 lbs of chromium compounds manufactured, processed, or released, exposing workers and emergency response teams to unknown safety hazards. The EPA settlement agreement included a donation of emergency response equipment such as 12 hazmat suits to the Santa Clara County Fire Department.⁵ In 2019, MSHA levied Lehigh Cupertino with 167 citations and orders: 3 violations related to inadequate safety-training and 13 violations were “significant and substantial,” meaning that a hazard had a reasonable likelihood of causing serious injury. Fatalities, injuries, hundreds of fines, citations, orders, safeguards, warnings of imminent danger and of placing untrained miners in harm's way, have not made the plant any safer. In fact, MSHA fines have increased by ten times between 2017/2019 and 2014/2016.

“The location in Cupertino is filthy, probably unhealthy, and most certainly dangerous” -- former employee⁶

¹ Mine Data Retrieval System (MDRS): aurlweb.msha.gov/drs/drshome.htm; see also OSHA: www.osha.gov/pls/imis/establishment.html

² Even when not counting the two worst years for each cement plant, Lehigh Cupertino remains at 39% of all MSHA fines. Actual numbers on table from MDRS in thousands are: \$192; \$165; \$2,214; \$211; \$986; \$83, \$920; \$870

³ MSHA News Release, December 2010, submitted to County Board of Supervisors, pdf page 5
www.sccgov.org/sites/dpd/DocsForms/Documents/Lehigh_BOS_20110301_PublicCommentResponses.pdf

⁴ Midpeninsula Regional Open Space District appeal letter to the County 2012 and EPA site assessment. pdf pages 6 and 45
www.sccgov.org/sites/dpd/DocsForms/Documents/Lehigh_BOS_20120626_Appeal_MROSD.pdf

⁵ EPA News Release, “U.S. EPA requires Cupertino cement company to report toxic chemicals, commit to environmental projects” 9/22/15
archive.epa.gov/epa/newsreleases/us-epa-requires-cupertino-cement-company-report-toxic-chemicals-commit-environmental.html

⁶ Quotation from Lehigh Hanson Cupertino employee from indeed.com
www.indeed.com/cmp/Lehigh-Hanson/reviews?fcountry=US&floc=Cupertino%2C+CA

Lehigh Hanson Cupertino Hires Non-Union Out-of-State Labor

Lehigh hired Turner Mining Group, a non-union out-of-state company, to do major projects at Lehigh instead of hiring union local labor at area standard wages.⁷ While working at Lehigh Cupertino, Turner Construction, a company affiliated with Turner Mining Group, landed in court for allegedly failing to pay minimum wages for work performed off-the-clock or overtime wages, failing to provide meal and rest breaks, failing to provide proper wage statements and other counts.⁸

Lehigh Hanson Cupertino Labor-Safety Fines Have Increased by nearly 10X

The Mining Safety and Health Administration (MSHA) has levied nearly 10 times more in proposed labor-safety penalties to Lehigh Hanson Cupertino in the past three years (\$1,433,573) as compared with the previous three years (\$137,583).⁹ OSHA fines are also listed below; there was a \$93,000 fatality fine in 2017.¹⁰

Year/quarter	2019	2018	2017	2016	2015	2014
MSHA Penalty	\$377,969	\$178,522	\$877,082	\$20,822	\$48,406	\$78,355
OSHA Penalty	--	case open	\$94,130	--	\$23,000	\$1,575

Lehigh Hanson Cupertino Arson and Suspicious Fires

- 2013 **Arson Fire** destroyed 4 large dump trucks deliberately set on fire with unknown ignition device. 10 Santa Clara County Fire apparatus dispatched with a total of 32 personnel over an 11 hour time period. \$7M property damage.
- 1999 **Suspicious Fire** burned big rig and spread fire to wildland. 4 Santa Clara County Fire apparatus and California Department of Forestry apparatus.
- 1993 **Arson Fire** destroyed 22,500 sq. ft. of buildings set on fire with an incendiary device. Santa Clara County Fire Department onsite for 7 hours with 10 apparatus and 25 personnel. Apparatus from other fire departments (including helicopters) and the Stevens Creek Volunteer Fire Department.

Lehigh Hanson Cupertino is Out of Compliance with the Federal Clean Air Act and the Clean Water Act¹¹ and is one of California's Largest Air Polluters

In the State of California, Lehigh Hanson Cupertino is #2 for Sulfur Oxides, #3 for Hydrochloric Acid, #6 for VOCs, #7 for Nitrogen Oxides, and more.¹² Lehigh Cupertino pays the California Air Resources Board over \$750,000 every year in fees for non-attainment pollution. Only two refineries, Chevron in Richmond and Shell in Martinez paid more to pollute. Lehigh could choose to emit less pollution, but operates under older, more lenient, cement plant emission rules.¹³

Lehigh Hanson Cupertino emits at least 18 Toxic Air Contaminants (TACs) above Chronic Trigger Levels and is #1 in Santa Clara County for 13 Toxic Air Contaminants (TACs)

Lehigh is the Top Polluter in Santa Clara County of 1,3-butadiene, Acetaldehyde, Ammonia, Arsenic, Benzene, Cadmium, Chlorinated dioxins & furans (TCDD), Hydrogen Chloride (HCl), Manganese, Mercury, Naphthalene, Nickel, PAHs (benzo[a]pyrene equiv), and Polychlorinated biphenyl (PCB). Major Polluter in Santa Clara County of Beryllium, Hexavalent Chromium, Diesel Exhaust Particulate Matter (not including truck traffic), and Formaldehyde.¹⁴

Lehigh Hanson Cupertino Land Use and Water Violations

In 2018, the County issued an NOV for building an illegal 40-foot wide road.¹⁵ In 2019, the County and Water Board issued Notices of Violation (NOV) for sediment in Permanente Creek.^{16,17} Lehigh also failed water quality objectives.

Does Lehigh Hanson Cupertino Offer Respiratory Equipment or Showers for Their Employees?

⁷ Turner Mining Group website shows illegal road being built between the Lehigh Hanson Permanente Quarry and Stevens Creek Quarry turnermining.com/projects/lehigh-cement-ca/

⁸ Reformado, Wadi. Northern California Record, Former employee alleges Turner Contracting Inc. violated state labor codes. June 27, 2017. norcalrecord.com/stories/511130902-former-employee-alleges-turner-contracting-inc-violated-state-labor-codes

⁹ Mining Safety and Health Administration (MSHA) database arlweb.msha.gov/drs/drshome.htm

¹⁰ Occupational Safety and Health Administration (MSHA) database osha.gov/pls/imis/establishment.html

¹¹ EPA Enforcement and Compliance History Online echo.epa.gov

¹² California Air Resources Board Mapping Tool 2016 ww3.arb.ca.gov/ei/tools/pollution_map/#

¹³ Nonvehicular Source Fees 2016/17, Consumer Products and Architectural Coatings Fees ww3.arb.ca.gov/ei/nscpac_fees/nscpac_fees.htm

¹⁴ Bay Area Air Quality Management District. "Toxic Inventory for 2016 Sorted by County by City by Plant Name Emissions above Regulation 2, Rule 5 (version 1/6/2010) Chronic Trigger Levels in Table 2-5-1/" excel file:

www.baaqmd.gov/~media/files/engineering/air-toxics-annual-report/2016/2016_toxic_annual_report-xlsx.xlsx?la=en

¹⁵ County NOV 2018 www.sccgov.org/sites/dpd/DocsForms/Documents/2250_NOV_20180817.pdf

¹⁶ County NOV 2019 www.sccgov.org/sites/dpd/DocsForms/Documents/PLN19_2250_NOV_20190613.pdf

¹⁷ Water Boards NOV 2018 www.losaltosonline.com/news/sections/news/297-news-features/60501-lehigh-faces-water-board-county-violations-for-permanente-creek-pollution

From: [Jin Hui Bai](#)
To: [City Clerk](#)
Subject: Oral Communications
Date: Tuesday, June 7, 2022 7:10:46 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council:

I have watched the Cupertino Planning Commission meetings and the Housing Element Strategic Advisory Committee meetings for the past several months.

I appreciate the transparency of these meetings and the ability for residents to voice their suggestions and concerns on the Housing Element.

I was especially pleased to see the RHNA Site Selection return to the Planning Commission on May 24th for a second round of discussion, only made possible by the delay in the Site Selection being discussed by the City Council.

It was also helpful to have the excellent presentation on transportation by Planning Commission Chair Scharf on May 24th, and the agreement by Luke Connolly, at the June 6th Strategic Advisory Committee meeting, that transportation issues be included in the AFFH survey that the City is preparing. Transportation is a vital concern of low-income residents that cannot remote-work.

Planning Commission Chair Scharf, and Strategic Advisory Committee Chair Moore have run their meetings in an exemplary manner with plenty of opportunity for members of the public to speak. But it is clear that everyone is frustrated by the slow progress.

The delays in Cupertino's sixth cycle Housing Element are inexcusable. These delays are caused by a lack of expeditious work by EMC and Cupertino's Planning Department. In every meeting, when the chairs of the Planning Commission and Strategic Advisory Committee try to expedite the process they are told that further delays are necessary, but without any explanation as to the cause of these delays, only vague excuses. This is upsetting to members of the public, especially those that have agreed to have their properties be included as Housing Element Sites.

The Housing Element process is moving along much too slowly. Other cities in the region already have their draft Housing Elements completed. It will be difficult for the Planning Commission and the City Council to make up for the delays being caused by EMC and the Planning Department.

The Mayor and City Manager need to step in and work with both EMC and the Planning Department to speed things up. These delays are unreasonable,

unacceptable, and inexcusable.

Thank You

Jin Hui Bai
18 year Cupertino Resident

From: [Connie Cunningham](#)
To: [City Clerk](#); [City Council](#)
Subject: Oral Communications, Please read, Connie Cunningham June 7, 2022 City Council
Date: Tuesday, June 7, 2022 4:31:41 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor, Vice-Mayor and Councilmembers:

Below is the email that I sent to the Planning Commission on Tuesday, May 24, 2022 regarding the Study Session that night on the Housing Element. My main point is that expecting City Staff and Consultant EMC to make up the time for the delays caused by the Planning Commission and other Committees, plus the City Council have now passed from being unreasonable to being unacceptable. I can say the same thing for the FY 2022-23 City Work Plan. The Work Plan process and CIP process all impact the budget preparation process.

I repeat: The delays caused by the Planning Commission and other Committees, plus the City Council have now passed from being unreasonable to being unacceptable.

Sincerely,
Connie Cunningham
Resident 34 years
Housing Commission (self only)

Prior May 24 email to Planning Commission

planningcommission@cupertino.org

PC Agenda Item 1, Fourth Study Session on the Housing Element

Dear Chair Scharf and Planning Commissioners:

I am disappointed with the delay in the Housing Element process that is occurring tonight. Why has the Planning Commission decided to discuss the Site Selection again?

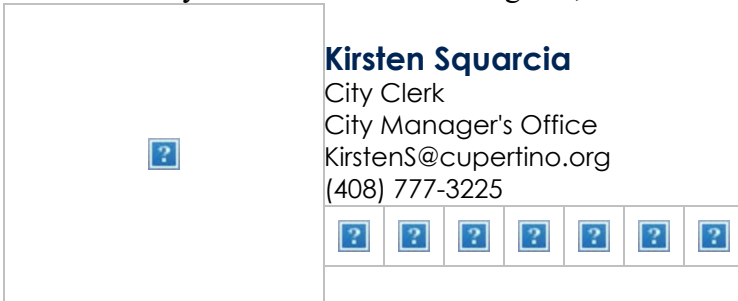
At the April 26, 2022 Planning Commission meeting, there was a robust discussion of the Site Inventory, with many ideas presented by the public as well as the Commissioners. The conclusion was to forward this action to the City Council.

Expecting City Staff and Consultant EMC to make up the time for this delay and other delays has passed from being unreasonable to being unacceptable.

Sincerely,
Connie Cunningham
Housing Commission (self only)

From: [Kirsten Squarcia](#)
To: [Tej Kohli](#)
Cc: [City Clerk](#)
Subject: Re: Resident would like to present this during Oral Communications
Date: Tuesday, June 7, 2022 8:04:14 AM
Attachments: [Lot Split Prelim 21411 Columbus.pdf](#)

Good morning, your presentation has been received. I will have it queued up and ready to present during Oral Communications. Be sure to raise your hand once the Mayor has announced this part of the meeting. You will be placed in the queue and called on to speak in the order that your hand was raised. Regards, Kirsten



On Jun 6, 2022, at 9:49 PM, Tej Kohli <jetkohli@gmail.com> wrote:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi:
The topic is SB9
[Lot SPlit fo 21411 Columbus Ave, Cupertino, CA 95014](#)

[Tej and Nitu Kohli have registered to speak. Some of my neighbors will also join us.](#)

Thanks
Tej

CC 06-07-2022

Study Session Item No. 1

Community Grant Funding Program

Written Communications

From: [Kirsten Squarcia](#)
To: [Kitty Moore](#)
Cc: [City Clerk](#)
Subject: RE: June 7, 2022 Written Communications Agenda Item 1
Date: Tuesday, June 7, 2022 1:42:27 PM
Attachments: [Festival Fee WaiversPRR.pdf](#)
[CommunitySpecialEventsinMe.pdf](#)
[ApplicationFiscalYear20222.pdf](#)
[formatted_using_public_resources_for_gifts_and_charitable_purposeski_0.pdf](#)
[image001.png](#)
[image003.png](#)
[image005.png](#)
[image007.png](#)
[image009.png](#)
[image011.png](#)
[image013.png](#)
[image015.png](#)

Good afternoon Kitty, your comments will be included in the written communications for the June 7, 2022 City Council Study Session Item 1.

Regards, Kirsten



Kirsten Squarcia

City Clerk
City Manager's Office
KirstenS@cupertino.org
[\(408\) 777-3225](tel:(408)777-3225)



From: Kitty Moore <ckittymoore@gmail.com>
Sent: Tuesday, June 7, 2022 1:37 PM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Subject: June 7, 2022 Written Communications Agenda Item 1

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,

Please include the following attachments for Item 1:

- Festival Fee Waivers PRR for 2015-2021
- Festival Application FY 2022, showing Council approval needed for fee waiver and that the fees waived are approved with the Budget.
- Community Special Events at Memorial Park Policy
- ILG *Using Public Resources for Gifts and Charitable Purposes*

Thank you,

Kitty Moore

Kirsten Squarcia

From: Kitty Moore <ckittymoore@gmail.com>
Sent: Tuesday, June 7, 2022 1:37 PM
To: Kirsten Squarcia
Subject: June 7, 2022 Written Communications Agenda Item 1
Attachments: Festival Fee WaiversPRR.pdf; CommunitySpecialEventsinMe.pdf; ApplicationFiscalYear20222.pdf; formatted_using_public_resources_for_gifts_and_charitable_purposeskj_0.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,

Please include the following attachments for Item 1:

- Festival Fee Waivers PRR for 2015-2021
- Festival Application FY 2022, showing Council approval needed for fee waiver and that the fees waived are approved with the Budget.
- Community Special Events at Memorial Park Policy
- *ILG Using Public Resources for Gifts and Charitable Purposes*

Thank you,

Kitty Moore

CITY OF CUPERTINO

Community Festival Information & Application



CUPERTINO

Submit Applications to:
Cupertino Parks and Recreation Department
Attention: Events Coordinator, Recreation Coordinator
10185 N. Stelling Road
Cupertino, CA 95014
Telephone: (408) 777-3120
Email: Sonyal@Cupertino.org
Website: www.cupertino.org/events

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I. FESTIVALS AND CRITERIA FOR CONSIDERATIONS

Thank you for considering Cupertino as a location for your community festival. Cupertino is well known for hosting a variety of cultural and community festivals throughout the year and encourages events that benefit the community. The information requested in this application will be used to determine your eligibility based on applicable policies, resolutions, and ordinances which are set by City Council. City staff will work closely with festival organizers so that events like the one you are proposing are successful.

Community Festivals are events that may:

- Interfere with the normal flow of pedestrian or vehicular traffic
- Require special accommodations, regulations of, or waiver of the usual traffic laws or controls
- Generate a crowd of spectators sufficient in size to obstruct, delay, or interfere with the normal flow of pedestrian or vehicular traffic
- Generate a crowd of sufficient size to restrict access to parks, recreation areas, city facilities, or other public areas
- Result in the need for police regulation, monitoring or control
- Produce debris and wear and tear on City grounds and property

The following minimum criteria must be met for Cupertino support of a Community Festival to be considered:

- The event application is submitted by a local tax exempt or civic organization that provides services to residents of Cupertino.
- The City is able to provide a date and venue that minimizes the impact to City facilities and does not conflict with other events

The following criteria will be considered when reviewing applications:

- The event provides cultural, social, recreational or educational activities for Cupertino residents
- The event demonstrates significant benefit to Cupertino residents
- The event benefits charitable causes in Cupertino and/or Cupertino businesses

Only complete applications will be accepted. Applications are considered a request for authorization only; submission does not mean that the event has been approved. For an event to be authorized, the event must pass the City Council approval process. To be given a final Event Permit, all required permits must be obtained and all fees and deposit(s) must be paid. Any misrepresentation in this application or deviation from the final permit conditions may result in revocation of the permit and the canceling of this or future events and/or of the event deposit.

II. APPLICATION MATERIALS

The Festival Organizer (Organizer) is responsible for submitting a complete Community Festival Application to the City by February for consideration in the following fiscal year July-June. The following items are required to be submitted with the application:

- **City of Cupertino Community Festival Application** – This is included in this packet of information (Attachment A)
- **City Services Request Form** – This is included in this packet of information (Attachment B) – This will include your request for city staff, police, buildings, barricades, etc. Also included is a Community Festival Operation Fee Matrix (Attachment C) which will give you an estimate on the cost.
- **Tax Exempt Status (IRS Form 501c with Tax ID #)**
- **Event Site Diagram(s) and/or Route Map** - Must accompany the application and indicate the proposed layout of all equipment (food and vendor booths, alcoholic beverage sales locations, food and beverage consumption areas, tent and canopy locations, stages, first aid and lost child facilities, information or headquarters area, trash and recycle container locations, portable toilets, vendor and public parking areas, bicycle corral, fencing, etc.), all street closures (including number of lanes to be closed) and parking tow zones, the direction of travel of any parade, race, run or walk, and all other proposed event activities.

- **Event Parking Plan**- Provide a summary of where vendors and participants would park in the surrounding area. This may be submitted as a diagram or map.
- **Event Description** - A brief event description of 50 words or less should be submitted for possible use in City brochures, websites, or other publications. For new festivals only, a detailed event description should also be submitted describing all aspects of the event including logistics, schedule of events, and any other relevant information.
- **Event Financial Report** - This should include a summarized expense and revenue report of the previous year's event. If this is the first year for the event, include a plan with an itemized estimate of expenses and revenue to be generated by the event.
- **Community Letters of Support (New Events Only)** - New events to Cupertino must submit letters of support along with an application.
- **Event Application Fee (New Events Only)** – New events must pay a \$75 application fee at Quinlan Community Center during business hours in person or by phone. (see Contact Reference Guide).

III. FEE WAIVERS/SPONSORSHIP

Organizers may request City sponsorship, waiving a portion of or all the associated fees (with the exception of deposits). City Council approval is required for any fee waiver or sponsorship. The Organizer should be present and available at any requested Parks and Recreation Commission or Council meetings to respond to questions. Approval for fee waiver/sponsorship and Event Authorization are generally finalized in June for the following fiscal year (See Item V. Timeline for Festival Authorization and Fee/Waiver Approval).

IV. FEES AND SECURITY DEPOSIT

Fees

See **Special Event Fee Matrix** for estimated fees and charges for services commonly required for festivals (Attachment C).

Note: Fee schedules are reviewed annually by staff and City Council. Any changes are generally approved in May and effective in July.

Security Deposit

A security deposit is due at a minimum of 30 days prior to the festival date. Receipt of payment is required before the City will issue the Event Permit. Deposit should be paid at the Quinlan Community Center front office (see Contact Reference Guide). The security deposit is fully refundable, as long as an organization adheres to the conditions of use requirements as outlined in this packet.

A portion of the security deposit could be withheld for things such as damage to City property, unauthorized vehicles on grass, fields, or pathways, insufficient trash removal, lack of adherence to hours of permitted use, inadequate parking monitors etc. The amount charged would be based on the cost of City staff time or expenses incurred in addressing an issue and/or repairing property damage.

Forfeiture of the entire security deposit could result if a festival producer (or its vendors) violate park or City ordinances, including the noise ordinance (see Attachment F or <https://codelibrary.amlegal.com/codes/cupertino/latest/overview>); or if a festival producer misrepresents factual information about an event or fails to provide required documentation or secure required permits.

V. EVENT AUTHORIZATION AND EVENT PERMIT

Once a proposed festival plan has been finalized and approved by the Director of Parks and Recreation and/or the Director of Public Works and/or the City Council, the City issues an **Event Authorization** notification to the Organizer. This allows the Organizer to begin planning and obtaining permits. Once all the required permits are obtained and submitted to the City,

an **Event Permit** will be issued.

Note: Neighbors of the event area will be notified and given an opportunity to provide feedback in advance of City Council consideration on any proposed new festival.

VI. TIMELINE FOR FESTIVAL AUTHORIZATION AND FEE WAIVER/SPONSORSHIP APPROVAL

Timeline for Festival Event Authorization and Event Permit is as follows:

February-Applications are due to City for consideration in the following fiscal year (July – June)

March-Applications are reviewed by the Parks and Recreation Commission, clarifying questions may be asked of Organizer

April-Parks and Recreation Commission will consider applications for a recommendation to Council

May-City Council will consider applications and Parks and Recreation recommendations for fee waivers/sponsorship at the Budget Session

June-City Council will finalize approval and fee waiver/sponsorship as part of the Budget Adoption. **Event Authorization** sent to the Organizer

Final City issued **Event Permit** will be issued when all required permits, documentation, and information are submitted to the City

VII. PRE-EVENT AND POST-EVENT MEETINGS

Once the Organizer receives Event Authorization, a **Pre-Event Meeting** with the Organizer and representatives from City departments will be scheduled. For new festivals, the meeting will be scheduled a minimum of 90 days prior to the festival. For established festivals, the meeting will be scheduled 30-45 days prior to the festival. The Organizer must attend this meeting. At this meeting, the Organizer will walk City staff through the proposed event plan in more detail. City staff will advise and approve an event plan that meets public health and safety standards, provides for the delivery of City services, and addresses the concerns of the community. The Organizer will be informed of all needed permits, required fees, conditions of use, and insurance requirements.

Note: Additional pre-event meetings may be held as deemed necessary by City staff.

The City will also conduct a mandatory **Post-Event Meeting** to evaluate and review the festival with the Organizer held within 30 days after the event. Event evaluation notes will be taken into consideration as to whether to approve future events, and/or in setting conditions of use for future event and facility permits. The evaluation will also consider if the Organizer complied with Festival policies and if the festival provided cultural, social, recreational or educational benefits to the community (see Attachment H Community Festival Evaluation).

VIII. PERMIT REQUIREMENTS

The Organizer is responsible for obtaining all necessary permits required but not limited to those outlined below. All contacts are also listed on the CONTACT REFERENCE GUIDE.

- For Facilities: City will issue facilities permits for specific buildings and venues as well as a final Special Event Permit once all information and permits are submitted
- For Tents/Canopies/Food Booths: [Santa Clara County Fire Department activity permit](#)
- For Food Served: [County Environmental Health Department permit](#)
- For Food Trucks:

[Santa Clara County](#) permits from the Santa Clara County Department of Environmental Health

[Cupertino Business License](#) from Cupertino Economic Development Division

- For Sale of Alcohol (Beer and Wine only) [Department of Alcoholic Beverage Control \(ABC\) permit](#)
- For Temporary Seller's Permit [California Department of Tax and Fee Administration](#)

IX. FOOD PERMIT REQUIREMENTS

Temporary food booth operators must comply with **Santa Clara County Fire Department** regulations and **Santa Clara County Environmental Health Services** regulations for operation of food booth(s) and/or food trucks. Santa Clara County Fire Department inspects food booths for compliance with public safety requirements, and Environmental Health Services regulates food preparation and handling as well as food booth construction. The Organizer is responsible for obtaining and submitting permit applications and fees to **Santa Clara County Fire Department** and to **Santa Clara Environmental Health Services** (permit should be obtained and submitted to City no later than 14 days before event).

X. INSURANCE REQUIREMENTS

Event Organization (listed on Community Festival Application) shall procure and maintain for the duration of the event, including any time required for setup or takedown of the event, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the event arising from work or activities performed by the Event Organization, its agents, representatives, employees, or subcontractors.

The Organizer must submit an original copy of the certificate of insurance and endorsement to the City no later than 14 days before the event. **See Attachment E for Insurance Requirements**

XI. NEIGHBORHOOD NOTIFICATION

Organizer will deliver early **notifications** to nearby residents, by distributing a mailer that includes event information: dates, street closures, traffic detours, etc. A draft notification letter should be submitted to City for approval. City will approve the letter and provide the organizers with mailing labels for the residents adjacent to Memorial Park approximately 30 days before the event.

XII. AMPLIFIED SOUND

Amplified sound is any sound that is enhanced by mechanical or electronic means. Noise levels above 70 dBA (decibels) at the neighborhood property line are prohibited. The City may place additional restrictions on the decibel output or on the hours allowed for any amplified sound request. City staff will take periodic decibel readings throughout the event. A decibel readings chart will be available upon request from the Organizer or the public. Event organizers are required to comply with City staff or public safety directions regarding amplified sound during an event. Failure to do so could result in forfeiture of the event deposit and denial of future event proposals.

XIII. PARKING AND ALTERNATIVE TRANSPORTATION PLAN

Parking

An event parking plan must be submitted with the Community Festival Application. Memorial Park events with 500 or more attendees are required to reserve the De Anza College Parking Lot (see Contact Reference Guide). Events at the Civic Center with 500 or more attendees should speak with City representative about parking options.

Event Organizers must have designated parking lot monitors for restricted access parking areas including but not limited to City parking lots, unloading/loading zones, and residential parking areas. Parking monitors are required from the beginning to the end of the event. Monitors must be 18 years and older.

Alternative Transportation

The City encourages the use of alternate transportation to the automobile and has developed and implemented a network of bicycle lanes and bicycle routes throughout the City. The Cupertino Bikeways Map found here: <http://www.cupertino.org/Modules/ShowDocument.aspx?documentid=1177> displays all bike lanes and routes. Event Organizers should encourage event attendees to travel via bicycle or by using alternative transportation methods. Providing bicycle corrals and/or valet bike checks is one way to encourage alternative transportation methods.

XIV. STREET CLOSURES

The Organizer must specify the location and times street closures are desired. Adjacent residents and businesses must be taken into consideration. The final closure schedule and traffic plan will be determined by the City. If the public normally parks vehicles within the closed area, a tow zone must be established.

“No Parking” signs are provided by the City’s Public Works Department. Signs are posted on barricades. “No Parking” signs are posted 72 hours prior to establishing a tow zone. The number and placement of street barriers will be determined by the City. The Public Works Department will supply and distribute the necessary cones and barricades. Applicable fees will be incorporated into the event charges (see Attachment C Community Festival Fee Matrix).

XV. SHERIFF DEPUTIES

Most Festivals will require Sheriff Department Deputies. Any closure of public streets will require Sheriff Deputies on site to ensure public safety. The City will arrange for the appropriate number and location of Sheriff Deputies. The cost of the Deputies will be incorporated into the total event cost and an estimate provided (see Attachment C Community Festival Fee Matrix). The final payment will be invoiced to the festival organizer, if applicable.

XVI. PORTABLE TOILETS

Portable Toilets – Organizer shall be responsible to provide portable toilets and indicate their location on the site diagram. Location/layout shall indicate that all portable toilets are located on level sites with appropriate clear path-of-travel (minimum of 48” wide) to the toilet entrance. Hand washing facilities must be provided. One ADA toilet must be in each grouping of portable restrooms.

- Organizer may be asked to provide copies of rental agreements for commercial portable toilets and their designated location(s).

XVII. GREEN EVENT REQUIREMENTS

To minimize waste going to landfill and maximize material recovery, all events held on City property must offer recycling, composting, and trash collection services. The waste plan must follow the guidelines below. To support successful materials management, Recology provides trash, recycling, and composting bins for rental. All materials generated or provided by vendors and event organizers must meet the following guidelines:

- No polystyrene (Styrofoam) on City property.
- Create a central waste collection area to consolidate materials. Depending on the event size and quantity of vendors, multiple consolidation areas may be ideal.
- If not already arranged, place containers side-by-side in the same order for each station. (Compost>Recycle>Landfill) Ensure signage is visible so that event attendees can identify materials to be placed in trash, recycling, and composting bins.
- Organizer should designate a material monitor to oversee each waste station for the event duration. This individual would educate attendees and vendors on what materials can be placed in each container to

maximize onsite recycling and composting. In addition, they would monitor and replace bags as they become full or heavy.

Note: Contact Cupertino's Environmental Programs Division with any questions (See Contact Reference Guide).

XVIII. CLEANUP

Cleanup – The Organizer must prepare an event cleanup plan and discuss this at the pre-event meeting. The plan must indicate: 1) sufficient staff/volunteers to handle cleanup throughout the day and after the event; and 2) sufficient equipment placed in effective locations (dumpsters, totes, trash receptacles, hot coal barrels, and grease barrels). Insufficient clean-up could result in forfeiture of the event deposit and denial of future proposals.

- Booths, stages, and other equipment must be removed immediately following the event to permit trash and garbage cleanup.
- Cleanup should be completed by 9 a.m. the following day, with private properties given top priority.
- Organizer may be asked to provide copies of rental agreements for commercial dumpsters and their designated location(s).

XIX. VENDOR GUIDELINES

In order to ensure public safety, protect City property, and minimize impacts on adjacent neighbors, festival vendors must adhere to vendor guidelines. It is the Organizers responsibility to not only comply with all vendor guidelines, but also monitor and ensure compliance by the vendors. Failure to do so may warrant a citation and possible fines. Organizers must provide each vendor a copy of Festival Vendor Guidelines (Attachment G) and Park Regulations (Attachment F).

- Vendor set-up shall begin no earlier than 7 a.m. (Ord. 13.04.190A)
- Vendor takedown shall not extend beyond 7 p.m.
- Vehicles in violation of the parking restrictions will be towed away at owner's expense.
- Food vendors must protect all pavements to ensure prevention of grease soiling and spatter. Food grease must be disposed of properly. IMPROPER DISPOSAL OF FOOD GREASE MAY RESULT IN CITATION AND FORFEITURE OF DEPOSIT.
- Tents will be secured using water barrels or concrete blocks. Absolutely no stakes will be driven into the ground. Inflatables may be the only exception to this policy.
- Booth spaces may only be marked with water-soluble material.
- Day of event promotional signs may be displayed in the interior of the event area. Signs may not be placed on the sidewalk or in the public right-of-way. Signs may not be staked into the ground.
- Vending activity will be limited to the event site area approved by the City. Vending activity must not block or impede pedestrian movement, access to business or residential properties, cause congestion, or create any public hazard.
- Each vendor must clean his/her area of operation and remove all goods and equipment at the close of the event.
- Vendors must extinguish all coals before dumping them in a designated receptacle.
- Vendors of taxable goods or services must meet California Board of Equalization permit requirements (p. 9)

Park Specific Guidelines

- Organizer/Vendors are not allowed to drive a vehicle into the park for any purpose, including unloading of supplies and equipment. (Ord. 13.04.150) All unloading must be done curbside.
- Golf carts may be used to transport supplies and equipment through parks. A licensed driver over 18 years of age must drive golf carts.

Memorial Park Guidelines

- Cupertino Senior Center parking lot is by permit only between the hours of 8 a.m. and 5 p.m. Monday through Friday.
- The existing parking restrictions on Christensen Drive and Anton Way will remain in effect.
- Neither vendors nor patrons are allowed to park at the Cupertino Sports Center.

Booth Vendor Unloading Instructions - Vendors will be permitted to unload/load supplies and equipment from designated locations and times. It is imperative that vendors unload their vehicle and immediately move their vehicle before

transporting their supplies to their booth. Vendors are advised to bring a minimum of two people to assist with unloading. Below are possible unloading/loading schedules for Memorial Park. Specific times and locations will be set by City staff for each event based on approved traffic plan, safety, and crowd control considerations.

Memorial Park Vendor Usual Unloading/Loading Schedule:

Morning Unloading Schedule by location

Saturday	7 a.m. to 10 a.m.	Stevens Creek Boulevard and Anton Way
Saturday	7 a.m. to 10 a.m.	Alves Drive
Sunday	7 a.m. to 10 a.m.	Stevens Creek Boulevard and Anton Way

Afternoon Loading Schedule by location

Saturday	4 p.m. to 6:45 p.m.	Stevens Creek Boulevard Only
Saturday	4 p.m. to 6:45 p.m.	Alves Drive
Sunday	4 p.m. to 6:45 p.m.	Stevens Creek Boulevard and Anton Way

Alternate vendor unloading locations may be proposed by Organizer with accompanying traffic plan. Outside of the unloading/loading times, Stevens Creek Boulevard and Anton Way are **NO STOPPING/NO PARKING ZONES**.

XX. MARKETING

In a joint effort to make community festivals in Cupertino successful, the City may promote approved events via social media, brochures, and on the City’s website. Events are encouraged to submit photos and event schedules. Organizers should submit a copy of any marketing materials with City information to City for approval.

City of Cupertino Logo

Organizers must comply with brand guidelines for use of the City of Cupertino logo. City staff can provide Organizer with guidelines upon request.

Sponsorship List

If any fees are waived by the City, festival organizers will list the City of Cupertino as a sponsor in all marketing material, commensurate with the level of financial support in your festival’s sponsorship benefit package.

Banner Locations:

Organizers may request a marketing banner be displayed at City-operated locations. There are three City-operated banner locations:

- 1. Quinlan Community Center (corner of N. Stelling and Alves)
- 2. Memorial Park (Corner of Anton and Stevens Creek Blvd.)
- 3. Across Stevens Creek Blvd. (Between Portal Ave. and Perimeter Rd.)
 - o Banners hung across Stevens Creek Boulevard may be requested through the Public Works Department (see Contact Reference Guide) – *Additional fees associated with this location* (see Attachment C Community Festival Fee Matrix).
 - Approval will be on a case-by-case basis.
 - The maximum time a banner may be hung is fourteen (14) days. This time may be reduced if there are scheduling conflicts.
 - Size guidelines for Quinlan Community Center and Memorial Park locations: Banners must be between 6’ and 12’ in length. Banner height may be a maximum of six feet. **The ideal size is 4’ x 12’ with wind slits.**
 - The City is not responsible for damage done to a banner by wind or weather.

XXI. BILLING

After the event, City departments will finalize the amount owed to the City covering labor, vehicle and equipment use, and any other costs incurred in providing event support, if applicable. The City will prepare and email a final invoice to the Organizer within 14 days after the event. The final invoice will reflect the actual costs of delivering City services for the event, and final billing may be higher or lower than the cost estimates.

City of Cupertino

Parks and Recreation Department Office

10185 North Stelling Road, Cupertino, CA 95014
(408) 777-3120 | www.cupertino.org/recreation
Office Hours: Monday through Friday, 8 a.m. to 5 p.m.

Cupertino Public Works Department

10555 Mary Avenue, Cupertino, CA 95014
(408) 777-3269

Cupertino Environmental Programs Division

10300 Torre Avenue, Cupertino, CA 95014
environmental@Cupertino.org | (408) 777-3354

Cupertino Economic Development Division (Cupertino Business License)

10300 Torre Avenue, Cupertino, CA 95014
econdev@Cupertino.org | (408) 777-7607

Regulatory Agencies

Department of Alcoholic Beverage Control

100 Paseo de San Antonio Room 119, San Jose, CA 95113
(408) 277-1200 | <https://www.abc.ca.gov>

California Board of Equalization

250 S. Second St., San Jose, CA 95113
(408) 277-1231 | www.boe.ca.gov/

County of Santa Clara Department of Environmental Health

155 Berger Drive, Suite 300, San Jose, CA 95112
(408) 918-3400 | www.ehinfo.org

Santa Clara County Fire Department

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

Parking for Memorial Park

Abundant Life Church

10100 North Stelling Rd., Cupertino, CA 95014
(408) 252-2668 | www.alagonline.com

De Anza College

21250 Stevens Creek Blvd., Cupertino, CA 95014
Hinson Campus Center, Lower Level
(408) 864-5555 | www.deanza.edu/parking

Other Vendors

Recology South Bay

650 Martin Avenue, Santa Clara, CA 95050
(408) 725-4020 | www.recology.com

Attachment A**CITY OF CUPERTINO COMMUNITY FESTIVAL APPLICATION- FY 2022/2023** *(To be Returned to City Representative)*

Community Special Events shall be approved only for local tax exempt or civic organizations that provide services to residents of Cupertino. Attach a letter of intent explaining the community benefit to Cupertino, its residents, and/or businesses

ORGANIZATION: _____

NON-PROFIT TAX ID NO.: _____ **WEBSITE:** _____

Request for Fee Waivers? ☐ Yes ☐ No

ADDRESS: _____
Street City State Zip

PROPOSED EVENT TITLE: _____

TYPE OF EVENT (i.e., festival, walkathon, street fair, parade) _____

EVENT ORGANIZER: (This will be the information posted for the public to obtain event information)

Name Phone Email

EVENT ORGANIZER – SECONDARY:

Name Phone Email

PROPOSED EVENT DATE(S): _____ **Event Start Time:** _____ **Event End Time:** _____

Setup date/time: _____ **Clean up date/time:** _____

No earlier than 7 a.m. Friday

No later than 9 a.m Monday

PROPOSED LOCATION(S):

☐ Memorial Park (10185 N Stelling Rd.) ☐ Quinlan Community Center (10185 N Stelling Rd.) ☐ Cupertino Senior Center (21251 Stevens Creek Blvd.) ☐ Civic Center Plaza (10350 Torre Ave.)

☐ Library Field (10350 Torre Ave.) ☐ Community Hall (10350 Torre Ave.) ☐ 5k, walkathon, parade: _____
Start/Finish - Attach course map w/ list of street closures

Alcoholic Beverages Sold? ☐ Yes ☐ No If yes, list the types: _____

Food Sold? ☐ Yes ☐ No If yes, list the types: _____

Estimated Number of Vendor Booths: _____ **Types of Vendor Booths:** _____

Total Estimated Event Attendance: _____

Staff, Volunteers, Vendors, Guests

Amplified sound: _____ **Start time:** _____ **End time:** _____
Description No earlier than 10 a.m. No later than 10 p.m.

Portable Toilet Drop off location: _____ **Delivery Date/Time:** _____ **Pick Up Date/Time:** _____
Attach Map

Recology drop off location: _____ **Delivery Date/Time:** _____ **Pick Up Date/Time:** _____
Attach map

Street Closure location(s): _____ **Time:** _____
Attach map. Street closures may require traffic control officers.

AS AN AUTHORIZED REPRESENTATIVE OF THE ORGANIZATION CONDUCTING THIS EVENT, I HEREBY DECLARE THAT:

I have received the Special Event Application and Information Packet. I have included all mandatory attachments with this application. The information contained in this application and attachment(s) is true and correct to the best of my knowledge.

Applicant Name (print) _____ **Applicant Signature** _____ **Date** _____

Attachment B**CITY SERVICES REQUEST FORM- FY 2022/2023** (To be Returned to City Representative with Application)

City Services Request Form	Please fill in date and time your event is requesting access to city facilities, and equipment.							
	Date	Setup Time	Date	Event Day, Day 1 Time	Date	Event Day, Day 2 Time	Date	Clean Up Time
Quinlan Community Center								
Cupertino Room (280/240 cap.)								
Cupertino Room Kitchen								
Social Room (80 cap.)								
Conference Room (20 cap.)								
Gazebo								
Memorial Park	Date	Setup Time	Date	Event Day, Day 1 Time	Date	Event Day, Day 2 Time	Date	Clean Up Time
Memorial Park- Full Park Access								
Memorial Park- Partial (Stevens Creek side <u>ONLY</u>)								
Memorial Park- Partial (Field behind the Quinlan Community Center <u>ONLY</u>)								
Amphitheater								
Electrical Power Access								
Non-Potable Water Access								
Cupertino Senior Center	Date	Setup Time	Date	Event Day, Day 1 Time	Date	Event Day, Day 2 Time	Date	Clean Up Time
Reception Hall (200/175 cap.)								
Reception Hall Kitchen								
Bay Room (40 cap.)								
Arts and Crafts Room (40 cap.)								
Class Room (26 cap.)								
Conference Room (10 cap.)								
Cupertino Civic Center	Date	Setup Time	Date	Event Day, Day 1 Time	Date	Event Day, Day 2 Time	Date	Clean Up Time
Community Hall (170/152 cap.)								
Library Field								
Civic Center Plaza								
Public Works Equipment List	Amount	Date Needed	Date Returned	Staging Location	Description of Use			
Standard Barricade								
K-Rail Barricade (needed for road closures)								
Traffic Cones								
Temp. Traffic Control Sign & Stand								
Changeable Message Signs								

Attachment C

COMMUNITY FESTIVAL FEE MATRIX 2022

FACILITY USE with COSTS	Cupertino Non-Profit		Non-Resident Non-Profit	
	Setup/Clean Up Before 5 p.m. Fri.	Event Day After 5 p.m. Fri.	Setup/Clean Up Before 5 p.m. Fri.	Event Day After 5 p.m. Fri.
New Event Application Fee	\$ 75			
City Staff Support	Actual Cost (\$15 to \$70/hour/staff)			
Public Safety Officers	Actual Cost (\$121 to \$156/hour/officer)			
Security Deposit (Refundable)	\$ 1000			
Quinlan Community Center	10185 North Stelling Road			
Cupertino Room (280/240 cap.)	\$30/ hour	\$80/ hour	\$48/ hour	\$128/ hour
Social Room (80 cap.)	\$20/ hour	\$60/ hour	\$32/ hour	\$96/ hour
Conference Room (20 cap.)	\$10/ hour	\$25/ hour	\$16/ hour	\$40/ hour
Gazebo	\$55/ 2 hours		\$75/ 2 hours	
Memorial Park	21121 Stevens Creek Boulevard			
Memorial Park Special Event Permit	\$ 2000 full park / \$1000 half park		\$ 2000 full park / \$1000 half park	
Picnic Area	\$113/ day		\$154/ day	
Amphitheater	\$55/ 2 hours		\$75/ 2 hours	
Gazebo	\$55/ 2 hours		\$75/ 2 hours	
Cupertino Senior Center	21251 Stevens Creek Boulevard			
Reception Hall (200/175 cap.)	\$30/ hour	\$80/ hour	\$48/ hour	\$140/ hour
Bay Room (40 cap.)	\$22/ hour	\$36/ hour	\$27/ hour	\$45/ hour
Arts and Crafts Room (40 cap.)	\$22/ hour	\$36/ hour	\$27/ hour	\$45/ hour
Classroom (26 cap.)	\$20/ hour	\$32/ hour	\$24/ hour	\$40/ hour
Conference Room (10 cap.)	\$10/ hour	\$25/ hour	\$16/ hour	\$40/ hour
Cupertino Civic Center	10300 Torre Avenue			
Community Hall (170/152 cap.)	\$30/ hour	\$80/ hour	\$48/ hour	\$128/ hour
Library Field	\$ TBA		\$ TBA	
Civic Center Plaza	\$ TBA		\$ TBA	
Public Works Equipment Rental Fees (for reference—Staff will calculate based on application)				
Banners across Stevens Creek	\$525			
Standard Barricade	\$0.24/ day			
Flashing Barricade	\$0.47/ day			
Traffic Cone	\$22.92/day/ per 100			
Encroachment Permit	\$394 - \$678 (depending on location)			
Temp. Traffic Control Sign & Stand	\$2.73/ day			
Changeable Message Signs	\$11.03/ hour			

These are the common costs associated with special events. Fees may vary depending on the event plan, timeline, building use outside of rooms on the fee scheduled as well as city services requested and required. Organizers will receive a cost estimate of city services based upon agreed event plan.

Attachment D

FESTIVAL PLANNING CHECK LIST & TIMELINE

Due to City in February for Approval in the following fiscal year (July – June)

- Submit Application this includes:
 - Completed City of Cupertino Community Festival Application (See Attachment A)
 - City Services Request Form (See Attachment B)
 - Tax Exempt Status (IRS Letter with Tax ID #)
 - Event Site Diagram and/or Route Map (include Parking Plan)
 - Event Parking Plan
 - Event Description
 - Event Financial Report
 - Community Letters of Support (New Events Only)
 - Event Application Fee (New Events Only)

30 to 60 DAYS PRIOR TO FESTIVAL

- Pre-event meeting(s) scheduled with City
- Secure required permits from appropriate departments or agencies:
 - Santa Clara Department of Environmental Health (Food Booths)
 - Santa Clara County Fire Department (Tents, Canopies, Food Booths)
 - California Board of Equalization (Vendor Booth Sales)
 - Cupertino Economic Development Division (Cupertino Business License)
 - Alcoholic Beverage Control Daily License (Serving Alcoholic Beverages, Beer and Wine Only)
- Banner Request to City
- Send draft notification letter for neighboring residence and organizations (45 days prior to event) and send final notification letter to residences and organizations (30 days prior to event)

30 DAYS PRIOR TO FESTIVAL

- Submit:
 - Finalized off-site parking plan, including parking monitor locations
 - Street closure/ lane closure plan
 - Clean-up plan
- Submit security deposit to the City at Quinlan Community Center front desk
- Submit finalized off-site parking plan, including parking monitor locations
- Submit finalized street closure/lane closure plan

14 DAYS PRIOR TO FESTIVAL

- Submit copies of all applicable permits to the City
- Submit insurance requirements

Attachment D

FESTIVAL PLANNING CHECK LIST & TIMELINE *continued*

14 DAYS PRIOR TO FESTIVAL

- Submit proof of portable toilet and Recology arrangements (14 days prior to event)
- Receive final Event Permit from City once all items are permits, proof of insurance, proof of portable toilets, and proof of Green event requirements are submitted

7 DAYS PRIOR TO FESTIVAL

- Submit final vendor list and locations
- Submit final event entertainment/activities schedule
- Pre-event site walkthrough with City Staff

POST-EVENT

- Receive final invoice for City services (Within 14 days after event)
- Meeting with Organizer and City Staff (Within 30 days after event)
- Submit payment in full for City services (Within 30 days of invoice)

Attachment E INSURANCE REQUIREMENTS

Event Organization shall procure and maintain for the duration of the event, and for any time required for setup or takedown of the event, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the event arising from work or activities performed by the Event Organization, its agents, representatives, employees or subcontractors.

Minimum Scope of Insurance

Coverage shall be *at least as broad as*:

1. Insurance Services Office Form CG 0001 covering Commercial General Liability on an “occurrence” basis.

Minimum Limits of Insurance

Event Organization shall maintain limits no less than:

1. **General Liability:** (Including operations, products and completed operations.)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Event Organization to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. **The City of Cupertino, its City Council, Boards and Commissions, Officers, Officials, Employees, Agents, Servants, Volunteers and Consultants** with respect to liability arising out of work or operations performed by or on behalf of the Event Organization including materials, parts or equipment furnished in connection with such work or operations. Policy language or endorsement must be at least as broad as ISO Form CG 20 10, 11 85 edition or 07 04 revisions).
2. For any claims related to this project, the **Event Organization’s insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Event Organization’s insurance and shall not contribute with it.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Event Organization shall furnish the City with original certificates and amendatory endorsements verifying coverage required by this clause. All certificates and endorsements are to be received and approved by the City before the setup for the event begins. However, failure to obtain the required documents prior to setup or the event shall not waive the Event Organization’s obligation to provide them. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by these specifications at any time.

Waiver of Subrogation

Event Organization hereby grants to City a waiver of any right to subrogation which any insurer of said Event Organization may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Attachment F PARK REGULATIONS – CITY OF CUPERTINO

13.04.120 Use of Park Property.

No person in a park shall do any of the following:

- A. Wilfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railing, paving or paving material, water lines or other public utilities or parts or appurtenances whatsoever, either real or personal;
- B. Litter, soil or defile restrooms. No person over the age of six years shall use restrooms and washrooms designed for the opposite sex;
- C. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency. It is unlawful to gather firewood or to collect within the park any type of plant material for the purpose of building a campfire;
- D. Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across such lands, except on special written permit issued under this chapter;
- E. Go upon any lawn or grass plot, where prohibited by the parks and recreation department, and where such prohibition is indicated by proper and legible signs;
- F. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire, or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;
- G. Climb any tree or walk, stand or sit upon any monuments, vases, fountains, railing, fences, or upon any other property not designated or customarily used for such purposes;
- H. Hunt, molest, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile, or bird; nor shall any person remove or have in his possession the young of any wild animal, or the eggs or nest or young of any reptile or bird. Exception to the foregoing is made in that snakes known to be deadly poisonous, such as rattlesnakes, or other deadly reptiles may be killed on sight;
- I. Use any system for amplifying sounds, whether for speech or music or otherwise, unless an exclusive use permit is first secured.

(Ord. 531, § 12, 1972)

13.04.130 Behavior of Persons in Parks.

No person in a park shall do any of the following:

- A. Bring to a park any alcoholic beverages, and no person may drink alcoholic beverages at any time in a park, except picknickers, who may bring to a park, and drink, beer or wine with their picnic meal, so long as they conduct themselves in an orderly manner;
- B. Enter or remain in a park while under the influence of intoxicating liquor or any drug;
- C. Have brought, or have in his possession, or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets, or other fireworks or explosives of inflammable material, or discharge them or throw them into any such area from land or any highway adjacent thereto. This prohibition includes any substance, compound, mixture or article that, in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints;
- D. No person having the control or care of any dog, shall suffer or permit such dog to enter or remain in a park or sport field, unless posted for such use, and then only if it is led by a leash of suitable strength not more than six feet in length, unless it is permitted to be off-leash by the City as part of a City-authorized event or program; and the owner and the attendant shall be responsible for any damage caused, in any event, by such dog, even if on leash;
- E. Lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind, without a permit to do so from the Director of parks and recreation;
- F. Make or kindle a fire for any purpose, except at places provided for such purpose, unless prior special permission be obtained therefor from the Director;
- G. Enter an area posted as "Closed to the Public," and no person shall use, or abet the use of, any area in violation of posted notices;
- H. Play or bet at or against any game which is played, conducted, dealt, or carried on for money, chips, shell, credit or any other representative of value, or maintain or exhibit any gambling table or other instrument of gambling or gaming, or play any game prohibited by any other ordinance of the City;
- I. Sleep, or protractedly lounge, on the seats, benches, or other areas, or engage in loud, boisterous, threatening, abusive, insulting, or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the public peace;

Attachment F PARK REGULATIONS – CITY OF CUPERTINO continued

J. Use, carry, or possess firearms of any description, or air rifles, spring guns, bow and arrows, slings or any other forms of weapons potentially dangerous to wild life or to human safety. Shooting into park areas from beyond park boundaries is prohibited;

K. Solicit alms or contributions for any purpose, whether public or private, without prior permission from the City Council;

L. Use or allow the use of powered model airplanes except in areas so designated by the department of parks and recreation;

M. Play or practice golf or use golf clubs in any area of the park not designated for such use;

N. Indulge in riotous, boisterous, threatening or indecent conduct.

O. No person shall skate or rollerblade in a manner that causes damage to park amenities or threatens the safety or well being of park patrons. Skating or rollerblading is prohibited on raised surfaces where signed.

P. Feeding Waterfowl Prohibited. No person shall feed or in any manner intentionally provide food to any waterfowl (geese, ducks, or coots) in any City park.

(Ord. 13-2105, § 2, 2013; Ord. 12-2101, § 1 (part), 2013; Ord. 1945, 2004; Ord. 1886, (part), 2001; Ord. 531, § 13, 1972)

13.04.140 Sanitation Requirements.

No person in a park shall do any of the following:

A. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any park or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

B. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and, where such receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.

(Ord. 531, § 14, 1972)

13.04.150 Vehicle Requirements.

No person in the park shall do any of the following:

A. Fail to comply with all applicable provisions of the Vehicle Code of the state in regard to equipment and operation of vehicles, together with such regulations as are contained in this chapter and any other ordinances of the City regulating traffic;

B. Fail to obey all traffic officers and park employees who are hereafter authorized and instructed to direct traffic in the parks in accordance with the provisions of this chapter and such supplementary regulations as may be issued by the Director;

C. Fail to observe carefully all traffic signs indicating speed, direction, caution, stopping or parking and all other signs posted for proper control and to safeguard life and property;

D. Ride or drive a vehicle at a rate of speed exceeding fifteen miles an hour, except upon such roads as the City may designate by posted signs for speedier travel;

E. Drive any vehicle on any area except paved roads or parking areas, or such other areas as may be specifically designated as temporary parking areas by the department of parks and recreation;

F. Park a vehicle in other than an established or designated parking area, and such use shall be in accordance with the posted directions there, and with the instructions of any attendant who may be present;

G. Ride a motorcycle, motor bike, or similar vehicle in any park, except where used to transport invalid persons;

H. Ride a bicycle on other than a paved road or path. Notwithstanding the foregoing, no person may ride a bicycle on a paved road or path where such activity is prohibited by posted signage. A bicyclist may wheel or push a bicycle by hand over any grassy area, wooded trail, or over any other area in which bicycle riding is otherwise prohibited;

I. Ride a bicycle other than on the righthand side of the road paving as close as conditions permit, and bicycles shall be kept in single file when two or more are operating as a group. Bicyclists shall at all times operate their machine with reasonable regard to the safety of others, signal all turns, pass to the left of any vehicle they are overtaking and pass to the right of any vehicles they may be meeting;

J. Ride any other person on a bicycle, except where the bicycle is built for operation by more than one person;

K. Leave a bicycle in a place other than a bicycle rack where a bicycle rack is provided and there is space available;

L. Leave a bicycle lying on the ground or paving, or set against trees, or in any place or position where other persons may trip over or be injured by it. (Ord. 2014, 2008; Ord. 531, § 15, 1972)

Vendor Guidelines to be given to each vendor for the day of Event:

- Vendor set-up shall begin no earlier than 7 a.m. (Ord. 13.04.190A)
- Vendor takedown shall not extend beyond 7 p.m.
- Vehicles in violation of the parking restrictions will be towed away at owner's expense.
- Food vendors must protect all pavements to ensure prevention of grease soiling and spatter. Food grease must be disposed of properly. IMPROPER DISPOSAL OF FOOD GREASE MAY RESULT IN CITATION AND FORFEITURE OF DEPOSIT.
- Tents will be secured using water barrels or concrete blocks. Absolutely no stakes will be driven into the ground. Inflatables may be the only exception to this policy.
- Booth spaces may only be marked with water-soluble material.
- Day of event promotional signs may be displayed in the interior of the event area. Signs may not be placed on the sidewalk or in the public right-of-way. Signs may not be staked into the ground.
- Vending activity will be limited to the event site area approved by the City. Vending activity must not block or impede pedestrian movement, access to business or residential properties, cause congestion, or create any public hazard.
- Each vendor must clean his/her area of operation and remove all goods and equipment at the close of the event.
- Vendors must extinguish all coals before dumping them in a designated receptacle.
- Vendors of taxable goods or services must meet California Board of Equalization permit requirements (p. 9)

Park Specific Guidelines

- Organizer/Vendors are not allowed to drive a vehicle into the park for any purpose, including unloading of supplies and equipment. (Ord. 13.04.150) All unloading must be done curbside.
- Golf carts may be used to transport supplies and equipment through parks. A licensed driver over 18 years of age must drive golf carts.

Memorial Park Guidelines

- Cupertino Senior Center parking lot is by permit only between the hours of 8 a.m. and 5 p.m. Monday through Friday.
- The existing parking restrictions on Christensen Drive and Anton Way will remain in effect.
- Neither vendors nor patrons are allowed to park at the Cupertino Sports Center.

Booth Vendor Unloading Instructions - Vendors will be permitted to unload/load supplies and equipment from designated locations and times. It is imperative that vendors unload their vehicle and immediately move their vehicle before transporting their supplies to their booth. Vendors are advised to bring a minimum of two people to assist with unloading. Below are possible unloading/loading schedules for Memorial Park. Specific times and locations will be set by City staff for each event based on approved traffic plan, safety, and crowd control considerations.

Attachment H COMMUNITY FESTIVAL EVALUATION

Estimated Attendance: _____

Event provided cultural, social, recreational, and/or educational activities that benefited the community:	Yes	No
Comments: _____		

Event organizer complied with the City policies, applicable laws, ordinances, and regulations:	Yes	No
Comments: _____		

Event organizer submitted complete paperwork on time:	Yes	No
Comments: _____		

The traffic plan was effective (including alternative transportation methods):	Yes	No
Comments: _____		

The parking plan for festival participants was effective:	Yes	No
Comments: _____		

Amplified sound at acceptable range: Decibel Range: _____	Yes	No
Comments: _____		

City equipment returned in good working order:	Yes	No
Comments: _____		

Event organizer applied green event practices:	Yes	No
Comments: _____		

Event site clean throughout event:	Yes	No
Comments: _____		

Event site clean post-event: (Clear of debris, litter, food and grease debris was properly disposed)	Yes	No
Comments: _____		

Vendors:

Vendor setup plan and timing was effective:	Yes	No
Comments: _____		

Vendors cleaned up booth area:	Yes	No
Comments: _____		

Vendor parking plan was effective:	Yes	No
Comments: _____		

Equipment Rental Company (tents, tables, chairs): Adhered to Vendor Guidelines:	Yes	No
Comments: _____		

Carnival Rides: Adhered to Vendor Guidelines:	Yes	No
Comments: _____		

Booth Vendors: Adhered to Vendor Guidelines:	Yes	No
Comments: _____		

Food Vendors: Adhered to Vendor Guidelines:	Yes	No
Comments: _____		

The marketing plan was effective:	Yes	No
Comments: _____		

Community engagement was effective:	Yes	No
Comments: _____		

STAFF COMMENTS:

City of Cupertino

Community Special Events in Memorial Park

PURPOSE

To establish policies governing special events held within Memorial Park, City of Cupertino.

DEFINITIONS

Special Events are events that take place within or contiguous to Memorial Park, City of Cupertino, and are likely to:

- Interfere with the normal flow of pedestrian or vehicular traffic
- Require special accommodations, regulation of, or waiver of the usual traffic laws or controls
- Generate a crowd of spectators sufficient in size to obstruct, delay, or interfere with the normal flow of pedestrian or vehicular traffic
- Generate a crowd of sufficient size to restrict access to parks, recreation areas, city facilities, or other public areas
- Result in the need for police regulation, monitoring, or control

POLICY

1. The City encourages special events and activities that benefit the community.
2. The City acknowledges that various groups and organizations plan special events in Cupertino.
3. The sponsor of the event must submit an application for exclusive use of Memorial Park to the Director of Parks and Recreation up to one year before the event and no later than six (6) months prior to the event date.
4. Special event applications shall be awarded only to local tax exempt or civic organizations that provide services to residents of Cupertino. An event producer

may be retained by the tax-exempt organization to coordinate an event; however, the tax-exempt organization will be considered the event applicant and will be responsible for all costs, permits, requirements, regulations, etc. A two-week period between events is preferred to allow turf an opportunity to recover from the impacts of events. A two-week period between events is required.

5. Due to the parking impacts of De Anza College's Flea Market, special events will not be allowed in Memorial Park the first Saturday of every month.
6. When reviewing the applications, the Director of Parks and Recreation, or designee, will approve or deny the request using the following general guidelines, and other factors specific to the event proposal:
 - Is the application complete, and was it filed on time?
 - Will the event provide cultural, social, recreational or educational activities for Cupertino residents? New events (not previously held in Memorial Park) will need to demonstrate that there will be a significant benefit to Cupertino residents before a permit is issued.
 - What benefits and impacts will the event create for businesses and residents in Cupertino?
 - Will the event conflict with other activities planned for Memorial Park, the Quinlan Center or the Senior Center on the same day? Priority will be given to events that have annually been held on the particular date(s).
 - Is there a two-week period in between special events (for the turf to recover from earlier events)? To the extent possible, three weeks should be allowed between events.
 - How will the event benefit charitable causes in Cupertino? For returning events, what do you give to charitable causes in Cupertino?
 - If this is a returning event to Memorial Park, did it
 - i. Comply with the Special Event Policies last year?
 - ii. Provide cultural, social, recreational or educational benefits to the community?

7. Applicants shall comply with all applicable laws, ordinances and regulations. Sound measured at the property line during an event must be within allowable limits stated in the City's noise ordinance.
8. Event Organization shall provide insurance against claims for injuries to persons or damages to property which may arise from or in connection with the event arising from work or activities performed by the Event Organization, its agents, representatives, employees or subcontractors. The minimum limits of insurance are \$1,000,000 general liability with "City of Cupertino, its City Council, boards and commissions, officers, employees and volunteers" listed as additional insured.
9. Upon the director's approval of the special event application, event organizers shall meet with City staff from Public Works and Parks and Recreation Departments to review special conditions for exclusive use of Memorial Park.
10. The Director of Parks and Recreation, or designee, may add special conditions for exclusive use.

SPECIAL CONDITIONS

1. Special event organizers must meet insurance requirements for public liability, automobile liability and workers compensation liability as outlined in the City's special event insurance packet. An applicant must provide evidence of tax-exempt status. The City of Cupertino Exclusive Use Permit Application must be approved by the Director of Parks and Recreation or designee.
2. Event set-up shall begin no earlier than 7:00 a.m. on Friday and all activity must cease no later than 12:00 p.m. on Monday. Vendors will be permitted to unload supplies and equipment from Stevens Creek Boulevard and Anton Way during Saturday and Sunday, 7:00 a.m. to 10:00 a.m. and 4:00 p.m. to 7:00 p.m. At all other times, Stevens Creek Boulevard and Anton Way are a NO STOPPING /NO PARKING ZONE.
3. Event volunteers will monitor the Quinlan Community Center front parking lot, Sports Center parking lot and both entrances to the Commons, Christensen Drive and Oaks Shopping Center during the event's hours of operation to prohibit event parking. The monitors are required to be adults (over the age of 18), and to have a cell phone to communicate with event organizers and Sheriffs' Department.

4. Tents will be secured using water barrels or concrete blocks. Absolutely no stakes will be driven into the ground. Inflatables will be the only exception to this policy and the location must be approved by the Parks & Recreation and the Public Works Department.
5. Day of event promotional signs may be displayed in the interior of Memorial Park. Signs may not be placed on the sidewalk or in the public right of way.
6. Event advertisement in Memorial Park may take place no earlier than two weeks before the event. Tying banners to park trees is not allowed.
7. Clearly marked debris, recycle, and compost containers are required in Memorial Park (must contact Recology). Organizers are responsible for ordering, paying for, and emptying trash receptacles in Memorial Park on event days.
8. An event layout must be submitted to the Parks and Recreation Department in writing fourteen (14) days prior to event.
9. Off-site parking plans must be submitted in writing thirty (30) days prior to event.
10. Golf carts may be used to transport supplies through Memorial Park. No other motorized vehicles (except wheelchairs) will be allowed. Golf carts must be driven by licensed drivers over the age of 18 years old.
11. Organizers are required to have Sheriff's Department Deputies to patrol the park during the event. The schedule for the Deputies will be approved by the Director of Parks and Recreation or designee. The deputies shall enforce city and park ordinances, and in particular, prevent vehicles from driving into the park. The Parks and Recreation Director, or designee, shall determine the number of officers needed to patrol the event.
12. Portable toilets and ADA portable toilets with hand washing facilities will be required.
13. Event organizers shall provide written notification thirty days in advance of the festival to adjacent neighbors on Christensen Drive and the Commons. Mailing labels will be provided. Event organizers are required to notify the Oaks Shopping Center management of expected event impacts.
14. Only water-soluble material for marking booth spaces may be used.

15. The maximum number of booths shall be approved by the Parks and Recreation Department representative. Organizers must obtain a Festival and Fair Permit from County of Santa Clara Department of Environmental Health and an Outdoor Fairs Permit from Santa Clara County Fire Department in advance of festival date. If alcohol is being sold, organizers must obtain a license from the Department of Alcoholic Beverage Control.
16. Festival organizers must provide, in advance of festival date, the “City of Cupertino Regulations for Festival Vendors in Memorial Park” to all festival vendors.
17. Festival organizers must abide by Fire Code requirements.

CRITERIA FOR CUPERTINO SUPPORT OF A SPECIAL EVENT

The City of Cupertino encourages special events and activities that benefit the community. The following criteria must be met for Cupertino support of a special event to be considered. The special event should:

- Provide cultural, social, recreational or educational activities for Cupertino residents.
- Demonstrate significant benefit to Cupertino residents.
- Benefit charitable causes in Cupertino and/or Cupertino businesses
- The City may request a copy of the event budget, volunteer hours, and list of sponsors
- Demonstrate compliance with the Cupertino Special Event Policy as well as applicable laws, ordinances and regulations (returning event only).
- Submit letters of support along with its permit application (new event only). Neighbors of the special event should be notified in advance of a City Council decision on the proposed new special event.

Approved by the City Council 8/15/05; 4/2/13; 7/2/14

[illegible]

[illegible]

Festival	Date	Festival Producer	Recreation	Facility/Park/ Road Permits	Sheriff	Public Works	Materials	Total
Kids 'N Fun Festival	Aug. 12, 2017	Taiwanese Cultural and Sports Association	\$1,441	\$7,336	\$3,966	\$2,803		\$15,546
Fall Festival	Sept. 9, 2017	Cupertino Rotary	\$1,364	\$5,938	\$3,966	\$3,008		\$14,277
Diwali	Sept. 30, 2017	Cupertino Chamber of Commerce	\$1,409	\$5,800	\$3,948	\$3,031		\$14,188
Veteran's Day	Nov. 11, 2017	Cupertino Veteran's Memorial	\$618	\$1,000		\$18	\$1,593	\$3,229
Ikebana Flower Show	March 3-4, 2018	WAFU Ikebana Society	\$258	\$19,065				\$19,323
Egg Hunt	March 24, 2018	Home of Christ Church	\$789	\$1,000	\$0	\$38		\$1,827
Holi	April 8, 2018	Cupertino Chamber of Commerce	\$902	\$1,000	\$871	\$18		\$2,791
Cherry Blossom	April 28-29, 2018	Toyokawa Sister City	\$3,606	\$16,463	\$4,356	\$5,801		\$30,226
World Journal	May 12, 2018	Journal/Cupertino Chinese School	\$1,868	\$2,960	\$4,356	\$3,004		\$12,188
Tournament of Bands	October 15, 2017	Cupertino Tournament of Bands	\$0	\$3,000	\$0	\$176		\$3,176
Heroes Run	August 26, 2017	County of Santa Clara	\$0	\$4,120	\$0	\$74		\$4,194
Costs for FY 17/18 Events			\$12,254	\$67,682	\$21,464	\$17,972	\$1,593	\$120,964

Festival	Date	Festival Producer	Recreation	Facility/Park/ Road Permits	Sheriff	Public Works	Materials	Total
Kids 'N Fun Festival	Aug. 11, 2018	Taiwanese Cultural and Sports Association	\$869	\$6,648	\$5,289	\$2,832		\$15,638
Fall Festival	Sept. 15, 2018	Cupertino Rotary	\$1,364	\$5,938	\$5,289	\$3,008		\$15,599
Diwali	October 13, 2018	Cupertino Chamber of Commerce	\$1,409	\$6,710	\$5,264	\$3,031		\$16,414
Veteran's Day	Nov. 11, 2018	Cupertino Veteran's Memorial	\$618	\$1,000		\$18	\$1,593	\$3,229
Egg Hunt	April 13, 2019	Home of Christ Church	\$789	\$1,000	\$0	\$38		\$1,827
Holi	April 7, 2019	Cupertino Chamber of Commerce	\$902	\$3,000	\$871	\$18		\$4,791
Cherry Blossom	April 27-28, 2019	Toyokawa Sister City	\$3,606	\$17,466	\$4,356	\$5,801		\$31,229
World Journal	May 11, 2019	World Journal/Cupertino Chinese School	\$1,868	\$4,960	\$4,356	\$3,004		\$14,188
Tournament of Bands	October 15, 2017	Cupertino Tournament of Bands	\$0	\$3,000	\$0	\$176		\$3,176
Heroes Run	August 26, 2017	County of Santa Clara	\$0	\$4,120	\$0	\$74		\$4,194
Costs for FY 18/19 Events			\$11,425	\$53,841	\$25,425	\$18,001	\$1,593	\$110,284

Festival	Festival Producer	Waived Fees			City Paid expenses		Total
		Recreation	Facility/Park/ Road Permits	Public Works	Sheriff	Materials	
Kids 'N Fun Festival	Taiwanese Cultural and Sports Association	\$1,331	\$10,040	\$2,871	\$6,008		\$20,251
Fall Festival	Cupertino Rotary	\$1,607	\$7,576	\$3,047	\$4,714		\$16,943
Diwali	Cupertino Chamber of Commerce	\$1,260	\$6,980	\$3,070	\$2,851		\$14,161
Veteran's Day	Memorial	\$612	\$1,000	\$18		\$1,508	\$3,138
Ikebana Flower Show	WAFU Ikebana Society	\$294	\$19,065				\$19,359
Egg Hunt	Home of Christ Church	\$483	\$2,120	\$23	\$0		\$2,626
Holi	Cupertino Chamber of Commerce	\$1,122	\$3,000	\$18	\$965		\$5,106
Cherry Blossom	Toyokawa Sister City	\$3,496	\$17,826	\$5,892	\$4,015		\$31,229
World Journal	Journal/Cupertino Chinese School	\$1,564	\$4,960	\$3,043	\$4,908		\$14,475
Tournament of Bands	Cupertino Tournament of Bands	\$0	\$3,220		\$3,000	\$175	\$6,395
CEEF 5k	CEEF		\$3,220		\$1,461		\$4,681
Heroes Run	County of Santa Clara	\$0	\$3,220	\$74	\$0		\$3,294
Costs for FY 20/21 Events		\$11,770	\$82,227	\$18,058	\$27,922	\$1,683	\$141,658
		TOTAL	\$112,053.73	Total	\$29,604.68		

			Waived Fees			City Paid expenses		Total	CANCELED dueto Pandemic
Festival	Date	Festival Producer	Recreation	Facility/Park/ Road Permits	Public Works	Sheriff	Materials		
Kids 'N Fun Festival	Aug. 8, 2020	Taiwanese Cultural and Sports Association	\$1,331	\$10,000	\$2,871	\$4,702		\$18,904	CANCELED
Night Market	Aug. 22, 2020	Chamber of Commerce	\$1,757	\$4,630	\$3,070	\$5,642		\$15,099	CANCELED
Fall Festival	Sept. 12, 2020	Cupertino Rotary	\$1,607	\$7,576	\$3,047	\$4,702		\$16,931	CANCELED
Diwali	Oct. 17, 2020	Cupertino Chamber of Commerce	\$1,260	\$6,630	\$3,070	\$5,642		\$16,602	CANCELED
Veteran's Day	Nov. 11, 2020	Memorial	\$612	\$1,000	\$18		\$1,508	\$3,138	CANCELED
Holi	March 28, 2021	Cupertino Chamber of Commerce	\$1,122	\$3,000	\$18	\$1,881		\$6,021	CANCELED
Cherry Blossom	April 24-25, 2021	Toyokawa Sister City	\$3,496	\$19,776	\$5,892	\$4,702		\$33,866	CANCELED
World Journal	Date TBD	Journal/Cupertino Chinese School	\$1,564	\$4,960	\$3,043	\$5,662		\$15,229	CANCELED
Konark Dance and Music Festival		Cupertino Bhubaneswar Sister City	\$1,270	\$2,910	\$1,667	\$1,410		\$7,257	CANCELED
Relay for Life	June 19, 2021	American Cancer Society	\$294	\$2,000	\$14			\$2,308	CANCELED
Tournament of Bands		Cupertino Tournament of Bands		\$3,400	\$3,000	\$1,400		\$7,800	CANCELED
CEEF 5K	Sept. 26, 2020	CEEF		\$3,400	\$2,000	\$2,000		\$7,400	CANCELED
Heroes Run	Nov. 7, 2020	VMC Foundation	\$480	\$3,400	\$2,000			\$5,880	CANCELED
Costs for FY 20/21 Events			\$14,793	\$72,682	\$29,711	\$37,741	\$1,508	\$156,435	
			TOTAL	\$117,185.68	Total	\$39,248.86			

Festival	Date	Festival Producer	Waived Fees			City Paid expenses		Total	
			Recreation	Facility/Park/ Road Permits	Public Works	Sheriff	Materials		
<i>Kids 'N Fun Festival</i>	<i>Aug. 14, 2021</i>	<i>Taiwanese Cultural and Sports Association</i>	<i>\$784</i>	<i>\$5,270</i>	<i>\$2,871</i>	<i>\$4,702</i>		<i>\$13,627</i>	<i>Completed</i>
Fall Festival	Sept. 11, 2021	Cupertino Rotary	\$1,515	\$5,360	\$3,081	\$4,800		\$14,757	
<i>Diwali</i>	<i>Oct. 16, 2021</i>	<i>Cupertino Chamber of Commerce</i>	<i>\$1,188</i>	<i>\$6,630</i>	<i>\$3,070</i>	<i>\$5,889</i>		<i>\$16,777</i>	<i>Completed</i>
Veteran's Day	Nov. 11, 2021	Cupertino Veteran's Memorial	\$628	\$1,000	\$18		\$1,508	\$3,154	<i>not taking place in 2021</i>
Ikebana Flower Show	N/A	WAFU Ikebana Society	No show in FY 21/22						<i>not taking place in 2021</i>
<i>Holi</i>	<i>April 3, 2022</i>	<i>Cupertino Chamber of Commerce</i>	<i>\$1,205</i>	<i>\$3,000</i>	<i>\$18</i>	<i>\$1,881</i>		<i>\$6,104</i>	<i>Completed</i>
Cherry Blossom	April 30- May 1, 2022	Toyokawa Sister City	\$3,662	\$19,682	\$5,892	\$4,702		\$33,937	
World Journal	TBD	World Journal/Cupertino Chinese School	\$1,647	\$4,960	\$3,043	\$4,251		\$13,901	
Konark Dance and Music Festival		Cupertino Bhubaneswar Sister City	\$1,352	\$2,910	\$1,667	\$1,410		\$7,339	
Relay for Life	June 18, 2022	American Cancer Society	\$294	\$2,576	\$14			\$2,884	
Tournament of Bands		Cupertino Tournament of Bands		\$3,400	\$3,000	\$1,400		\$7,800	
CEEF 5k	N/A	CEEF	No event in FY 21/22						<i>not taking place in 2021</i>
Heroes Run ESTIMATED		VMC Foundation	\$480	\$3,400	\$2,000			\$5,880	<i>Heroes Run has moved to new venue</i>
Costs for FY 21/22 Events			\$12,756	\$58,188	\$24,676	\$29,035	\$1,508	\$126,161	
			TOTAL	\$95,618.68	Total	\$30,542.30			

Using Public Resources for Gifts and Charitable Purposes

www.ca-ilg.org/PublicResourcesforGifts

August 2013

Related Resources from the Institute

For more information, see the following Everyday Ethics for Local Officials columns at www.ca-ilg.org/everydayethics

Also visit these links to view other documents in this series:

- [Who Gets to Use Agency Seals, Logos, Letterhead and Other Insignia?](#)
- [Use of Public Resources: Special Issues Around Expenses and Expense Reimbursement](#)

Thank You to ILG's Supporter

The preparation and distribution of this resource is made possible through the generous financial support of the Meyers Nave law firm.



Question: *Our agency recently adopted a very austere budget; this resulted in elimination of popular services and programs. Our agency chief executive has been quoted as saying that, in the current economic environment, our agency can fund only essential agency functions.*

A local blogger has argued that the agency “wastes” resources on nonessential and possibly unlawful activities and this “waste” should be addressed before programs are eliminated. To document this assertion, she has requested records relating to:

- *Gifts to individuals;*
- *Gifts and/or contributions to nonprofit organizations;*
- *Travel expenses; and*
- *Credit card usage.*

She also apparently has her eye on other forms of charitable fundraising. Her theory is that, if the staff has time for such activity, they must not have enough “real work” to do. (She already has run a post criticizing firefighters participating in a “Fill the Boot” campaign for a local charity.) She has asked for copies of all emails that refer to charitable fundraising on agency time and/or using agency facilities.

As part of her crusade to restore the cut programs, she has promised to involve our district attorney, who recently announced a greater focus on public integrity issues (including the misuse of public resources). Our agency is pretty careful, but there are a few items in the records that could embarrass the agency.

What’s done is done, of course. But what spending guidelines

might local agencies consider to reduce the likelihood of heartburn when these kinds of records requests come in?

Answer: In these difficult economic times, many agencies are finding their spending decisions under increasing scrutiny. In fact, one study showed that budgetary challenges are driving greater transparency in local agency information and decision-making.¹

Careful stewardship of public dollars is not, however, a new concept. In his first inaugural address, Thomas Jefferson equated “good government” with a “wise and frugal government” that among other things, does not “take from the mouth of labor the bread it has earned.”²

Jefferson’s observation is one of the key reasons decisions on how to use public resources are especially sensitive. Most taxpayers understandably believe that a dollar that goes to the agency is a dollar they don’t get to spend (or, in Jefferson’s metaphor, bread out of taxpayers and their families’ mouths). Public dollars are a quintessential example of “other people’s money.”

This piece will address the gifts and charitable contribution and/or fundraising issue raised by the question above. The next will address travel, expense reimbursement and credit card use.

Gift-Giving Issues for Public Agencies

Public-sector norms can differ significantly from the private sector. It is common for business people to extend hospitality and make gifts and charitable contributions to generate goodwill for the company.

In the public sector, California’s constitution specifically prohibits “gifts” of public resources, often referred to as the ban on “gifts of public funds.”³ It also applies to gifts from either an agency or its officials to private citizens or organizations.

Because this ban is in California’s constitution, it applies to all public agencies except charter cities. However, the charters of many charter cities prohibit gifts.

How does one know if a goodwill activity or gesture that might be perceived as a gift is okay? The test is whether a valid public purpose justifies the use of public resources in the manner proposed.⁴

Note that special districts have an additional burden when it comes to expenditures. Not only must they demonstrate the contribution serves a valid public purpose, but they must also demonstrate that the expenditure falls within the specifically enumerated powers of that particular type of district.⁵

Other Resources from the Institute

For more information, see the following Everyday Ethics for Local Officials columns at www.ca-ilg.org/everydayethics:

- “Raising Funds for Favorite Causes”
- “Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder”
- “For Whom the Whistle Blows”

Another legal requirement to be aware of is the prohibition against using public resources for personal or political purposes.⁶ Public resources include public money, of course. Public resources also include anything paid for with public money, including equipment, supplies, staff time and public agency facilities.⁷

Use of Public Resources in General

A wise public servant makes sure any use of public agency money, supplies, facilities, equipment or staff time occur in accordance with adopted agency policies, including requirements relating to disposition of surplus agency property. Such policies can include findings on the benefits of the allowed uses of public resources (for example, the benefits being a member of certain civic organizations or picking up the tab at meals if that is the best way to get face time with certain individuals to discuss agency business).⁸

Charitable Donations

The prohibition against gifts of public funds has implications for charitable giving by public agencies.⁹ As Scrooge-like as it may seem, a public official should not assume it is appropriate for public agencies to contribute to charitable organizations.

When might public agency support for charitable organizations be appropriate? The following examples illustrate some circumstances:

- When the charity provides a service that complements or enhances one the public agency provides itself;
- When there is an identifiable secondary benefit to the public agency; or
- When the charity provides a service the public agency could provide but chooses not to.

Making findings in the minutes about the benefits to the agency associated with providing resources to the charity is a good practice. See chart below for example analyses.

As always, concluding that expenditure may be legal is just the first step of the analysis — just because something is “legal” does not mean that it is the best use of resources in light of all competing demands on the agency’s treasury.

Examples of Ways to Document Benefits Associated with Charitable Support		
Relationship To Public Agency Programs	Example	Nature of Benefit(s)
1. Complementary service	Donation to Tree Foundation in return for agreement to replace street trees agency removes because of disease or old age	<p>Foundation has specialized knowledge about trees suitable for area</p> <p>Organization shares goal of populating area with more trees, thereby saving energy and enhancing property values for residents</p> <p>Other grants received by the Tree Foundation mean the agency and those it serves save money on replacement of trees</p>
2. Demonstrable benefit	Boys and Girls Club's after school programs	Such programs reduce the need for law enforcement activities in area. Programs promote public safety and law abiding youth in a positive, cost effective manner
3. Service agency could provide but does not	Homeless shelter and associated placement programs	Such programs help end cycle of homelessness. Reducing homelessness is one of the agency's housing element goals

Making donations to charitable causes that are far away from the jurisdiction (for example, the victims of a hurricane) also present special challenges. Because of the distance, it can be more difficult to justify the contribution as creating benefits to the jurisdiction's residents.¹⁰ Some agencies cite promoting a culture of mutual aid and reciprocity as the anticipated benefit.

Individual decisions (for example, by elected officials or staff) to use public money to support a particular charitable or civic organization can also be subject to question. The least risky approach is to have such be made by an agency governing body, so the requisite findings on the benefit to the agency and the community it serves can be made.

Such a process can also be more transparent in terms of notice that such support is under consideration, and it provides an opportunity for the community to weigh in on the wisdom of using public resources for such purposes. This type of approach also reduces the possible perception that decisions are made to curry political favor.¹¹

Of course, just because something is allowed under legal standards doesn't mean that it is the best use of scarce public resources. This is where the front page test is a good guide — particularly with the understanding that bloggers and members of the media usually put themselves in the role of questioning public agency actions. The key question for any use of public money is whether the use is the best use. This is particularly so when an agency is finding it necessary to discontinue programs and services that the public values that perhaps are more central to the agency's mission.

Fundraising on Agency Time

As already mentioned, staff time is a public resource. Accordingly, it can be wise for local agencies to have policies governing under what circumstances staff may fundraise for charitable purposes while at work. Such policies can minimize criticism and legal questions relating to whether employees are using public agency time and other resources for personal purposes (in other words, using their time on the job to raise funds for their personal causes).

Such policies can also avoid tensions between employees who fundraise and those who are the objects of those fundraising solicitations. The latter may feel their relations with colleagues will be damaged if they don't open their wallets.¹² Fundraising ethics suggests that no one should ever be pressured to give (for example, supervisors should avoid soliciting those they supervise because of the power differential) and that such efforts should not occur during working hours.

Fundraising solicitations to those *outside* the agency present other issues. Those who do business with the agency (or want to do business with the agency) may feel pressured to contribute to maintain positive relations.

These solicitations also can look like pay to play to the public and media.¹³

Solicitations for fundraisers connected with religious organizations can present separation of church and state issues.¹⁴ Using public resources to support such fundraisers can subject an agency to criticism that it is endorsing a particular religion.¹⁵

Finally, if such fundraising is allowed under specified circumstances, safeguards and controls must be in place to assure that any funds raised through such efforts go to the cause identified in the solicitation.

Seek Professional Advice

Although the Institute for Local Government endeavors to help local officials understand laws that apply to public service, its informational materials are not legal advice. In addition, attorneys can and do disagree on the best application of those rules to public meeting practices.

Officials are encouraged to consult an attorney for advice on specific situations.

In a similar vein, some agencies prohibit groups from engaging in charitable fundraising during governing body meetings. Groups are allowed to speak during public comments at the meetings, but are not allowed to sell goods or collect donations in the meeting chambers.

Conclusion

Missteps, criticism and embarrassment can be minimized when everyone participating in a public agency's process of allocating resources and making spending decisions is sensitive to the reality that every public dollar is the community's money. Orientations of newly elected officials and new employees provide one opportunity to sensitize and acquaint public officials and employees to relevant agency policies on what is and is not allowed. Emphasizing the special stewardship of the agency over public resources as a part of internal communications and the overall agency culture is another helpful strategy.

The Institute for Local Government (ILG) thanks attorney John Bakker, with the law firm of Meyers Nave, for providing peer review of this resource.

About the Institute for Local Government

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties.

For more information and to access the Institute's resources on ethics visit www.ca-ilg.org/analyzing-public-service-dilemmas.

The Institute welcomes feedback on this resource:

- Email: ethicsmailbox@ca-ilg.org Subject: *Using Public Resources for Gifts and Charitable Purposes*
- Mail: 1400 K Street, Suite 205 • Sacramento, CA • 95814

References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

¹ Emily Jarvis, Transparency Report Card - Did your state make the grade? April 9, 2013, available at www.govloop.com/profiles/blogs/report-cards-are-in-did-you-state-s-transparency-make-the-grade?elq=41580263bf4f4745991fe0b09631d2aa&elqCampaignId=2920 (quoting Phineas Baxandall, senior analyst for tax and budget at the US Public Interest Group that annually grades each state on transparency: "Tight budgets are actually a spur towards greater transparency in that public officials want to show that they are taking these tradeoffs seriously. They want to show the money is accounted for. One of the things we asked states was how much does this really cost them and we continue to be surprised how little it costs," said Baxandall.

² Thomas Jefferson, First Inaugural Address, 1801 available at www.bartleby.com/124/pres16.html. The full quote is:

Let us, then, with courage and confidence pursue our own Federal and Republican principles, our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high-minded to endure the degradations of the others; possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation; entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow-citizens, resulting not from birth, but from our actions and their sense of them; enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence, which by all its dispensations proves that it delights in the happiness of man here and his greater happiness hereafter—with all these blessings, *what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow-citizens—a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.* (emphasis added)

- ³ See Cal. Const. art. XVI, § 6 (“nor shall it [the Legislature] have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individuals, municipal or other corporation whatever;...”). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 870, 118 Cal. Rptr. 901, 902 (1975) (making the connection between council member expenses and the prohibitions against a gift of public funds). Although the prohibition is directed to the Legislature, the courts’ theory is that, since general law cities, counties and special districts derive much of their authority from the Legislature, such local agencies also do not have the power to make gifts of public funds.
- ⁴ *City and County of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 103-04, 248 Cal. Rptr. 290, 295 (1988). See also McQuillin, *Municipal Corporations*, § 39.25 (3d ed.) (all expenditures must be for a public purpose).
- ⁵ See for example, California State Auditor, “Metropolitan Water District of Southern California: Its Administrative Controls Need to Be Improved to Ensure an Appropriate Level of Checks and Balances Over Public Resources,” (Report #2003-136, June 2004), at 15-18, available at www.bsa.ca.gov/pdfs/reports/2003-136.pdf.
- ⁶ Cal. Gov’t Code § 8314. See Cal. Penal Code § 424.
- ⁷ Cal. Gov’t Code § 8314(b)(3).
- ⁸ David Fonseca, West Hollywood Patch, No Charges Filed Against Duran for Meals Expenses, April 15, 2013 available at <http://westhollywood.patch.com/articles/no-charges-filed-against-duran-for-meals-expenses>.
- ⁹ See generally McQuillin, *Municipal Corporations*, § 39.32 (3d ed.) (“Appropriations to charitable or nonprofit associations, without consideration [something in return], cannot be made.”)
- ¹⁰ See 64 Cal. Op. Att’y Gen. 478 (1981) (noting that grants to other agencies must serve the interests or purposes of the residents of the granting agency).
- ¹¹ “Here’s \$50,000 – Spend it Well,” *Sacramento Bee*, November 23, 2003, page B1, B6 (The president of the local taxpayers’ association suggested that when donations are made to groups from individual discretionary accounts there is “a thin line” and observed that it is “almost like they’re buying votes”).
- ¹² See for example, What’s the etiquette for sharing kids’ fundraiser appeals at work? Linda Ann Nickerson Oct 6, 2011 12:08 PM EDT <http://shine.yahoo.com/etiquette-sharing-kids-fundraiser-appeals-160800552.html>
- ¹³ “Mayor Works Around the Rules,” *San Jose Mercury News* Editorial, March 21, 2004.
- ¹⁴ City Attorneys’ Dep’t League of California Cities, *The California Municipal Law Handbook* § 1.63 (Ann H. Davis ed., Cal CEB 2012).
- ¹⁵ Ed Fletcher, Chili Cook-off Lands City Officials in Hot Water, March 12, available at www.sacbee.com/2013/03/12/5254712/roseville-chili-cook-off-lands.html (a national organization took a city to task when an employee sent an email to neighborhood organizations promoting attendance at a fundraiser for a religiously affiliated organization in which city officials were participating, but was not sponsored by the city. A local law professor noted a problem arises when employees are picking which event to endorse or support, noting that it’s advisable to avoid speaking as the government endorsing a religion).

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CC 06-07-2022

Item No. 14

FY 2022-23 City Work
Program

Written Communications

From: [Connie Cunningham](#)
To: [City Clerk](#); [City Council](#)
Subject: Resend: Consent Item FY2022-23 , Please read, Connie Cunningham June 7, 2022 City Council
Date: Tuesday, June 7, 2022 4:35:44 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To All,
I am not pulling this item. I am asking for this email to be read if it is pulled.
Thank you,
Connie Cunningham

Begin forwarded message:

From: Connie Cunningham <CunninghamConnieL@gmail.com>
Subject: Consent Item FY2022-23 , Please read, Connie Cunningham
June 7, 2022 City Council
Date: June 7, 2022 at 4:29:13 PM PDT
To: City Clerk Cupertino <cityclerk@cupertino.org>,
"citycouncil@cupertino.org" <citycouncil@cupertino.org>

Dear Mayor, Vice-Mayor and Councilmembers:

Below is the email that I sent to the Planning Commission on Tuesday, May 24, 2022 regarding the Study Session that night on the Housing Element. My main point is that expecting City Staff and Consultant EMC to make up the time for the delays caused by the Planning Commission and other Committees, plus the City Council have now passed from being unreasonable to being unacceptable. I can say the same thing for the FY 2022-23 City Work Plan. The City Work Plan process and CIP process all impact the budget preparation process.

I repeat: The delays caused by the Planning Commission and other Committees, plus the City Council have now passed from being unreasonable to being unacceptable.

Sincerely,
Connie Cunningham
Resident 34 years
Housing Commission (self only)

Prior May 24 email to Planning Commission

planningcommission@cupertino.org
PC Agenda Item 1, Fourth Study Session on the Housing Element

Dear Chair Scharf and Planning Commissioners:

I am disappointed with the delay in the Housing Element process that is occurring tonight. Why has the Planning Commission decided to discuss the Site Selection again?

At the April 26, 2022 Planning Commission meeting, there was a robust discussion of the Site Inventory, with many ideas presented by the public as well as the Commissioners. The conclusion was to forward this action to the City Council.

Expecting City Staff and Consultant EMC to make up the time for this delay and other delays has passed from being unreasonable to being unacceptable.

Sincerely,
Connie Cunningham
Housing Commission (self only)

CC 06-07-2022

Study Session Item No.1

Community Grant Funding
Program

Updated Attachment C
Evaluation Totals and Parks
and Recreation Commission
Recommendation

Desk Item

Kirsten Squarcia

Subject: FW: information about Omniware Networks to address your questions last night
Attachments: CA registration approved.pdf

From: Omniware Networks <omniwarenetworks@gmail.com>
Sent: Wednesday, June 8, 2022 3:49 PM
To: City Council <CityCouncil@cupertino.org>; Kitty Moore <Kmoore@cupertino.org>; Hung Wei <HWei@cupertino.org>; Jon Robert Willey <JWilley@cupertino.org>; Liang Chao <LiangChao@cupertino.org>; Darcy Paul <DPaul@cupertino.org>
Cc: Rachelle Sander <RachelleS@cupertino.org>
Subject: information about Omniware Networks to address your questions last night

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Cupertino City Council members,

I was not able to attend last night's meeting and appreciate everyone's attention and time to review and discuss our applications for the community fund.

I watched the YouTube video today and noticed that people have some questions about our organization. I'd like to provide the accurate information of our organization for you to consider / review.

1) I include the [IRS link here](#), which verifies our 501c(3) nonprofit status and our tax report is complete/compliant through 2021. The quick snapshots of our tax records published by IRS are below:

Form 990-N (e-Postcard)

Organizations who have filed a 990-N (e-Postcard) annual el

> Tax Year 2021 Form 990-N (e-Postcard)
> Tax Year 2020 Form 990-N (e-Postcard)
> Tax Year 2019 Form 990-N (e-Postcard)
> Tax Year 2018 Form 990-N (e-Postcard)
> Tax Year 2017 Form 990-N (e-Postcard)
> Tax Year 2016 Form 990-N (e-Postcard)
> Tax Year 2015 Form 990-N (e-Postcard)
> Tax Year 2014 Form 990-N (e-Postcard)
> Tax Year 2013 Form 990-N (e-Postcard)

2) We are a registered nonprofit organization in California, a copy of the CA registration is attached.

3) We have been partnering with and received grants from the County of Santa Clara. County had an official press release highlighting our organization (click [here](#))

4) Our activities: on our websites and our application form, we only publish select activities that we organized but not an exhaustive list, since many of our volunteers do small and grassroots activities. We believe it is a good way to contribute to and engage with communities, and should be aligned with Cupertino's community fund vision and mission - which was also stated by the vice mayor last night.

5) Our size: One key personnel retired in recent year and we are in the process of backfilling.

Anything else that I can provide in order to enable the you to review our application based on the accurate information? If a live presence at the meeting is helpful, I'd be glad to attend if someone can let me know the time/date in advance.

Thanks

Judy

S&DC-S/N **Statement and Designation by Foreign Corporation**

To qualify a corporation from another state or country to transact intrastate business in California, fill out this form, and submit for filing along with:

- A **\$100** filing fee (for a foreign stock corporation) or **\$30** filing fee (for a foreign nonprofit corporation), and
- A certificate of good standing, issued within the last six (6) months by the agency where the corporation was formed. **Note:** If the corporation is a nonprofit, the certificate of good standing also must indicate the corporation is a nonprofit or nonstock corporation.
- A separate, non-refundable **\$15** service fee also must be included, if you **drop off** the completed form.

Important! Corporations in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

FILED

Secretary of State
State of California

4855568

Filing Number

02/28/2022

Filing Date

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

Corporate Name (List the exact name of the corporation, as shown in the certificate of good standing. If the name of the corporation is not available for use in the State of California, the corporation must qualify under an assumed name. E.g., "[list the exact name] which will do business in California as [list the proposed assumed name]." For general corporate name requirements and restrictions in California, go to www.sos.ca.gov/business/be/name-availability.htm.)

① Omniware Networks

Corporate History

② State or foreign country where this corporation was formed: Washington State

Service of Process (List a California resident or an active 1505 corporation in California that agrees to be your agent to accept service of process in case your corporation is sued. You may list any adult who lives in California. You may **not** list your own corporation as the agent. Do not list an address if the agent is a 1505 corporation as the address for service of process is already on file.)

③ a. Fengdi Xu

Agent's Name

b. 656 Lytton Ave Apt G207

Palo Alto

CA 94301

Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box City (no abbreviations) State Zip

The corporation named in Item 1 above irrevocably consents to service of process directed to it upon the agent designated above, and to service of process on the California Secretary of State if that agent or that agent's successor is no longer authorized to act or cannot be found at the address given.

Corporate Addresses

④ a. 24 211th PI NE

Sammamish

WA 98074

Street Address of Principal Executive Office - Do not list a P.O. Box City (no abbreviations) State Zip

b. 656 Lytton Ave Apt G207

Palo Alto

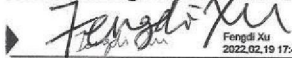
CA 94301

Street Address of Principal Office in California, if any - Do not list a P.O. Box City (no abbreviations) State Zip

c.

Mailing Address of Principal Executive Office, if different from 4a or 4b City (no abbreviations) State Zip

Read and sign below: This form must be signed by an officer of the foreign corporation.


Fengdi Xu
2022.02.19 17:48:39 -0800
Sign here

Fengdi Xu

Print your name here

president

Your business title

Make check/money order payable to: **Secretary of State**

Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail

Secretary of State
Business Entities, P.O. Box 944260
Sacramento, CA 94244-2600

Drop-Off

Secretary of State
1500 11th Street, 3rd Floor
Sacramento, CA 95814

UNITED STATES OF AMERICA

The State of Washington



Secretary of State

I, **STEVE R. HOBBS**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF EXISTENCE

OF

OMNIWARE NETWORKS

I CERTIFY that the records on file in this office show that the above named entity was formed under the laws of the State of Washington and that its public organic record was filed in Washington and became effective on 02/07/2007.

I FURTHER CERTIFY that the entity's duration is Perpetual, and that as of the date of this certificate, the records of the Secretary of State do not reflect that this entity has been dissolved.

I FURTHER CERTIFY that all fees, interest, and penalties owed and collected through the Secretary of State have been paid.

I FURTHER CERTIFY that the most recent annual report has been delivered to the Secretary of State for filing and that proceedings for administrative dissolution are not pending.

Issued Date: 02/28/2022
UBI Number: 602 693 803



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

Steve R. Hobbs, Secretary of State

Date Issued: 02/28/2022

State of California
Secretary of State
Certificate of Qualification

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify:

Entity Name: OMNIWARE NETWORKS

File Number: 4855568

Registration Date: 02/28/2022

Entity Type: FOREIGN CORPORATION

Jurisdiction: WASHINGTON

The above referenced entity complied with the requirements of California law in effect on the Registration Date for the purpose of qualifying to transact intrastate business in the State of California, and that as of the Registration Date, said entity became and now is qualified and authorized to transact intrastate business in the State of California, subject however, to any licensing requirements otherwise imposed by the laws of this State and that the entity shall transact all intrastate business within California under the Entity Name as set forth above.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of March 8, 2022.

A handwritten signature in black ink, appearing to read "Shirley N. Weber", followed by a horizontal line.

SHIRLEY N. WEBER, Ph.D.
Secretary of State

Community Funding FY 22-23
Ranking Summary

New Applicants													
Status	Applicant	Minna	Sashi	Carol	Gopal	Seema	Commission Average	Commission Ranking	Amount Requested	Tier	Project Name	Cupertino Residents Served	Eligibility
New	Omniware Networks	80	76	87	75	60	75.6	6	\$2,000.00	Tier 2	Peace Love Unity Youth Art Contest Exhibition	1,000	Eligible
New	Palisadoes Foundation	50	57	39	50	70	53.2	16	\$3,750.00	Tier 2	Calico Challenge SF	1	Eligible
New	STEMBoost Corporation						0	18	\$4,000.00	Tier 2	STEMBoost Summer Workshop	4,588	Not Eligible
New	American Cancer Society - Relay for Life	77	90	73	80	80	80	5	\$6,000.00	Tier 3	Relay for Life of Silicon Valley North	180	Eligible
New	Youngzine	61	82	66	64	77	70	10	\$6,000.00	Tier 3	Summer Youth Climate Steward Program	12	Eligible
New	Able 2 Shine						0	18	\$20,000.00	Tier 4	Teens Club Events in 2022	2,000	Not Eligible
New	Cupertino Educational Endowment Foundation	52	20	56	55	47	46	17	\$20,000.00	Tier 4	Expansion of Teacher Grant Program	6,217	Eligible
New	Cupertino Union School District	51	65	91	65	82	70.8	9	\$20,000.00	Tier 4	CUSD Summer Bridge	240	Eligible
New	Fremont Union High Schools Foundation	64	87	93	74	88	81.2	3	\$20,000.00	Tier 4	Care Solace Partnership for Mental Health Services	7,000	Eligible
New	Women SV	72	88	75	95	97	85.4	2	\$20,000.00	Tier 4	Technical Support for Domestic Abuse Survivors	10	Eligible

Returning Applicants																
Status	Applicant	Minna	Sashi	Carol	Gopal	Seema	Commission Average	Commission Ranking	Amount Requested	Tier	Project Name	Cupertino Residents Served	Eligibility	Last Funded	Amount Funded	Project
Returning	Breathe California of the Bay Area	78	80	69	89	55	74.2	7	\$4,000.00	Tier 2	Seniors Breathe Easy	2,500	Eligible	FY 2020-2021	\$4,000	FY20-21 extended to FY21-22 due to COVID
Returning	Tian Hong Foundation	65	70	58	78	65	67.2	11	\$4,500.00	Tier 2	2022 Tian Hong Cross Cultural Youth Art Contest (Love in my life)	100	Eligible	FY 2021-2022	\$3,000	2021 Youth Art Contest (Nature and Me)
Returning	Buddhist Tzu Chi Medical Foundation	71	72	89	73	66	74.2	7	\$8,300.00	Tier 3	Healthy Cupertino Health Fair	50	Eligible	FY 2021-2022	\$7,400	Healthy Cupertino Health Fair
Returning	Senior Services - Heart of the Valley	75	75	88	79	89	81.2	3	\$6,160.46	Tier 3	COVID Car Kit	50	Eligible	FY 2019-2020	\$7,000	FY19-20 extended to FY 20-21 due to COVID
Returning	Chinese American Coalition for Compassionate Ca	62	60	76	77	56	66.2	12	\$13,000.00	Tier 4	Mindfully Facing Grief and Loss and Starting the Conversation	1,000	Eligible	FY 2021-2022	\$12,000	Starting the Conversation and Mindful Self-Care
Returning	Cupertino Bhubaneswar Sister City Initiative	41	55	63	54	62	55	14	\$15,000.00	Tier 4	Bhubaneswar Sister City Event/Festival for Exchange & Immersion	2,000	Eligible	FY 2020-2021	\$7,500	Festival and Exchanges
Returning	Euphrat Museum of Art - De Anza College	48	35	85	63	42	54.6	15	\$15,000.00	Tier 4	Euphrat Museum of Art exhibitions and events	11,500	Eligible	FY 2021-2022	\$15,000	Euphrat Museum exhibitions and events 2021-2022
Returning	Monta Vista High School Speech Boosters Inc						0	18	\$10,000.00	Tier 4	Monta Vista Speech Program	4,464	Not Eligible	FY 2021-2022	\$3,000	Monta Vista Speech Program
Returning	Rotary Club of Cupertino	45	48	90	70	58	62.2	13	\$12,000.00	Tier 4	Silicon Valley Fall Festival	500	Eligible	FY 2021-2022	\$12,000	Cupertino Fall Festival
Returning	West Valley Community Services	74	95	92	90	85	87.2	1	\$10,000.00	Tier 4	Gift of Hope 2022	300	Eligible	FY 2021-2022	\$10,000	Gift of Holiday Hope Program
Returning	Silicon Valley Jewish Film Festival						0	18	\$10,000.00	Tier 4	Silicon Valley Jewish Film Festival	5,000	Not Eligible	FY 2020-2021	\$5,000	SV Jewish Film Festival

Tiers	
Tier 1	<\$999.99
Tier 2	\$1,000.00 - \$4,999.99
Tier 3	\$5,000.00 - \$9,999.99
Tier 4	\$10,000.00 - \$20,000.00

TOTAL Community Funding Grants Requested \$229,710.46

Community Funding Approved Funding Range - \$70,000 to \$90,000

Community Funding FY 22-23
Eligible Applicants

Sorted by Ranking																	
Status	Applicant	Minna	Minna Rank	Sashi	Sashi Rank	Carol	Carol Rank	Gopal	Gopal Rank	Seema	Seema Rank	Commission Average	Commission Ranking	Ranking Average	Amount Requested	Funding Tier	Cumulative Total
Returning	West Valley Community Services	74	5	95	1	92	2	90	2	85	4	87	1	2.8	\$ 10,000.00	Tier 4	\$ 10,000.00
New	Women SV	72	6	88	3	75	10	95	1	97	1	85	2	4.2	\$ 20,000.00	Tier 4	\$ 30,000.00
Returning	Senior Services - Heart of the Valley	75	4	75	8	88	6	79	5	89	2	81	3	5	\$ 6,160.46	Tier 3	\$ 36,160.46
New	Fremont Union High Schools Foundation	64	9	87	4	93	1	74	9	88	3	81	3	5.2	\$ 20,000.00	Tier 4	\$ 56,160.46
New	American Cancer Society - Relay for Life	77	3	90	2	73	11	80	4	80	6	80	5	5.2	\$ 6,000.00	Tier 3	\$ 62,160.46
New	Omniware Networks	80	1	76	7	87	7	75	8	60	12	76	6	7	\$ 2,000.00	Tier 2	\$ 64,160.46
Returning	Buddhist Tzu Chi Medical Foundation	71	7	72	9	89	5	73	10	66	9	74	7	8	\$ 8,300.00	Tier 3	\$ 72,460.46
Returning	Breathe California of the Bay Area	78	2	80	6	69	12	89	3	55	15	74	7	7.6	\$ 4,000.00	Tier 2	\$ 76,460.46
New	Cupertino Union School District	51	13	65	11	91	3	65	12	82	5	71	9	8.8	\$ 20,000.00	Tier 4	\$ 96,460.46
New	Youngzine	61	11	82	5	66	13	64	13	77	7	70	10	9.8	\$ 6,000.00	Tier 3	\$ 102,460.46
Returning	Tian Hong Foundation	65	8	70	10	58	15	78	6	65	10	67	11	9.8	\$ 4,500.00	Tier 2	\$ 106,960.46
Returning	Chinese American Coalition for Compassionate Care	62	10	60	12	76	9	77	7	56	14	66	12	10.4	\$ 13,000.00	Tier 4	\$ 119,960.46
Returning	Rotary Club of Cupertino	45	16	48	15	90	4	70	11	58	13	62	13	11.8	\$ 12,000.00	Tier 4	\$ 131,960.46
Returning	Cupertino Bhubaneswar Sister City Initiative	41	17	55	14	63	14	54	16	62	11	55	14	14.4	\$ 15,000.00	Tier 4	\$ 146,960.46
Returning	Euphrat Museum of Art - DeAnza College	48	15	35	16	85	8	63	14	42	17	55	15	14	\$ 15,000.00	Tier 4	\$ 161,960.46
New	Palisadoes Foundation	50	14	57	13	39	17	50	17	70	8	53	16	13.8	\$ 3,750.00	Tier 2	\$ 165,710.46
New	Cupertino Education Endowment Foundation	52	12	20	17	56	16	55	15	47	16	46	17	15.2	\$ 20,000.00	Tier 4	\$ 185,710.46

Sorted by Average Score			
Applicant	Commission Average	Amount Requested	Cumulative Total
West Valley Community Services	87	\$ 10,000.00	\$ 10,000.00
Women SV	85	\$ 20,000.00	\$ 30,000.00
Fremont Union School District	81	\$ 20,000.00	\$ 50,000.00
Senior Services - Heart of the Valley	81	\$ 6,160.46	\$ 56,160.46
American Cancer Society - Relay for Life	80	\$ 6,000.00	\$ 62,160.46
Omniware Networks	76	\$ 2,000.00	\$ 64,160.46
Buddhist Tzu Chi Medical Foundation	74	\$ 8,300.00	\$ 72,460.46
Breathe California of the Bay Area	74	\$ 4,000.00	\$ 76,460.46
Cupertino Union School District	71	\$ 20,000.00	\$ 96,460.46
Youngzine	70	\$ 6,000.00	\$ 102,460.46
Tian Hong Foundation	67	\$ 4,500.00	\$ 106,960.46
Chinese American Coalition for Compassionate Care	66	\$ 13,000.00	\$ 119,960.46
Rotary Club of Cupertino	62	\$ 12,000.00	\$ 131,960.46
Cupertino Bhubaneswar Sister City Initiative	55	\$ 15,000.00	\$ 146,960.46
Euphrat Museum of Art - DeAnza College	55	\$ 15,000.00	\$ 161,960.46
Palisadoes Foundation	53	\$ 3,750.00	\$ 165,710.46
Cupertino Education Endowment Foundation	46	\$ 20,000.00	\$ 185,710.46

Community Funding FY 22-23

Not Eliaible Applicants

Status	Applicant	Not Eligible Reason	Amount Requested	Tiers
New	STEMBoost	Commission voted not eligible based on fees being charged for the workshop	\$ 4,000.00	Tier 2
Returning	Monta Vista High School Speech Boosters Inc	Commission voted not eligible based on fees being charged for the program	\$ 10,000.00	Tier 4
Returning	Silicon Valley Jewish Film Festival	Commission voted not eligible based on fees being charged for movie tickets and passes	\$ 10,000.00	Tier 4
New	Able 2 Shine	Commission voted not eligible based on more than 75% of the requested funds allocated for direct service costs versus administrative costs. Also, request was for operational costs.	\$ 20,000.00	Tier 4

CC 06-07-2022

Item No. 37

FY 2022-23 Budget
Adoption

Attachment K
Proposed Budget
Questions and Responses

Desk Item

Proposed Budget Questions	1
Notable Accomplishments Questions	1
New Initiatives Questions	2
Budget Overview Questions	3
Budget Terminology Questions	4
Senior Center Questions	5
Special Projects Questions	6
Vehicles	9
Development Impact Fees and Construction Taxes	10

Proposed Budget Questions

1. What were the (historical) impacts of previous CDTFA audits?
 - a. The City was previously audited in FY 2012-13. When the City was informed of the potential impact of the audit, it set aside funding to cover the losses in assigned fund balance. The results of the audit were that taxes received by the City were allocated appropriately, and the City did not need to return any sales tax previously received. The assigned fund balance was released to unassigned fund balance.
2. What has the impact of the approximately \$9M Covid-19 relief funding?
 - a. On September 7, 2021, City Council approved the use of the American Rescue Plan Act of 2021 funding allocation. Staff recommended and City Council approved using the funding for Revenue Loss. Staff identified specific line items within each department to be funded by the American Rescue Plan Act revenues. They primarily included City Work Plan, special project items, and core services such as law enforcement, library services, and street pavement maintenance.

The City's allocation of the American Rescue Plan Act of 2021 and the action to direct the funding toward Revenue Loss are projected to increase the General Fund's fund balance by \$9.7 million.

Notable Accomplishments Questions

3. Page 22 - What are the results/recommendations derived from the "multimodal count sensors"?
 - a. Public Works and Innovation Technology are currently collecting data and will begin analysis later this month. Multimodal devices are installed at four intersections along De Anza Blvd (Homestead Rd, 280N, 280S, & Mariani Ave).

These devices distinguish and count various traffic types, e.g., pedestrian, car, and bicycle.

4. Page 25 - What's "backflow device testing"?
 - a. Backflow devices are part of the water system and belong to the individual property owners, including the City. They are typically located near the water meter and prevent water from flowing backward into the water system. These are regulated devices that require routine testing and reporting to document that they are functioning properly. These devices keep water from flowing back into the potable water system.

New Initiatives Questions

5. Page 26 - Adopt environmental protection standard conditions of approval (adopt objective standards): Has this happened or is under way?
 - a. It was adopted and completed with the City Attorney's Office's (CAO) assistance in October of 2021.
6. Page 27 - Video Capture Camera Expansion: Is the completed?
 - a. Video Capture Camera Expansion is a multi-year project. Cameras installed thus far include:
 - i. Cameras at all locations where cash drawers are located.
 - ii. Cameras at all locations where safes are located
 - iii. Cameras at Service Center that cover all high-risk areas
 - iv. Future projects include City facilities, entry/exit points, public spaces (not conference rooms) and high-risk areas.
7. Page 27 - Proactive Managed Risk and Security Monitoring: Where are the proactive monitoring and management tools that scan and resolve security vulnerabilities?
 - a. These tools run 24/7. They are utilized on the City's computer network and assist in preventing cybersecurity threats by defining potential vulnerabilities and taking corrective action.
8. Page 29 - The current landfill agreement, established in 1989, expires in November 2023. What is a new Landfill Agreement?
 - a. The City needs an agreement with a landfill to take the City's unrecyclable trash. The City could create a new agreement with the existing landfill location or explore other options, but the City always needs a place to take the trash. This new agreement process will aim to consider all the available possibilities, including the possibility of routing trash through a material recovery facility that could "rescue" recyclables from the trash before the trash goes to the landfill. It could also involve more than one service provider, so it is a complex process that will have to take many factors into consideration

Budget Overview Questions

9. I hope to understand a bit about how each department create their Budget. Let's take Parks and Rec as an example.
 - a. The process for budget creation is similar for each department. The FY 2019-20 Adopted Budget was zero-based. Each department developed zero-based budgets for all programs based on three years of prior year actual expenditures. Every December, staff reviews and updates the base budget. Staff removes any expenses that are no longer needed and adds any ongoing expenses approved by City Council since the last fiscal year. Salaries and benefits are budgeted based on employee pay rates and benefit rates. The City budgets the costs for all positions, including vacant positions. Materials are increased by the consumer price index (CPI), and contracts are increased by CPI, or the negotiated contract increase if that information is available. After the base is updated, departments may request additional one-time or ongoing funding by submitting budget requests. The City Manager has final approval for all requests included in the Proposed Budget for Council consideration.
10. Page 34 - The Special Revenue Funds will increase from \$28.4 million to \$33.1 million: Why does the Special Revenue Funds not spent? Does the City have a plan to spend the Special Revenue Funds?
 - a. The increase from \$28.4 million to \$33.1 million represents fund balance. The increase in fund balance is primarily due to revenue in the BMR Housing Fund of \$8 million but appropriation estimates of \$1.2 million. This increase is offset by the planned use of fund balance of \$1.7 million in the Transportation Fund.
11. Also, some of the actuals have consistently been much lower than the budgeted amounts. Is there some policy for the increases? Some look like they could be lowered.
 - a. The actuals in this expense category have fluctuated over the last five years, most recently due to the pandemic. They have ranged from a high of \$5 million (FY 2017-18) to a low of \$3.2 million (FY 2013-14). FY 2019-20, affected by the onset of the pandemic, had expenses of \$4.9 million despite the shelter in place order that when into effect mid-March, which likely impacted actual expenses that year. As provided in the Proposed Budget briefing handout, the difference between FY 2020-21 actual and FY 2021-22 budgeted material costs is due primarily to software, utility, fuel, irrigation replacement, and printing and general supplies in Parks and Recreation.

The City does not have a policy on materials. However, it has instructions and procedures describing how to budget for base budget materials. The FY 2019-20 Adopted Budget was zero-based; staff analyzed all functions for their needs and costs and justified all expenses. Every December, staff reviews and updates the base budget. Staff removes any expenses that are no longer needed and adds any

ongoing expenses approved by City Council since the last fiscal year. Staff updates materials costs by a CPI escalator. After the base budget is updated, departments may request additional one-time or ongoing funding by submitting budget requests. The Director of Administrative Services reviews those requests for funding availability. The City Manager has final approval for all proposals included in the Proposed Budget for Council consideration. Given the anomaly of the last couple of years, staff will be reviewing the materials budget in the next couple of years to see if an adjustment is necessary.

12. What is the unassigned fund balance in the General Fund, currently?

- a. As of the FY 2021-22 Mid-Year Financial Report, unassigned fund balance in the General Fund was \$37.2 million. In the FY 2021-22 Third Quarter Financial Report, which will be before Council on May 19, unassigned fund balance in the General Fund is projected to be \$46.1 million. The increase is due to projected increases in sales tax revenue.

Budget Terminology Questions

13. Could you please more specifically define what falls under the budget category of Materials.

- a. The definition of materials can be found on page 46 in greater detail and page 54 of the Proposed Budget in summary but with the addition of conference and training costs. Text from both those pages is included below:
 - i. Page 46: Materials and supplies represent items purchased for repair and maintenance, operational activities such as books, uniforms and recreation supplies, and office supplies.
 - ii. Page 54: All materials, conference, and training costs
 - iii. In addition, the detailed account name will provide greater transparency to expenses being charged under materials. The detailed account name can be found in Appendix B or the City's interactive financial transparency portal, OpenGov.

14. What is Cost Allocation?

- a. Beginning in FY 2013-14, the City allocated indirect and overhead costs based on a Cost Allocation Plan (CAP). In FY 2015-16, Matrix Consulting Group developed a full Cost Allocation Plan for the City. Matrix Consulting Group developed the plan based on Generally Accepted Accounting Principles (GAAP) and indirect cost allocation methods defined by the federal Office of Management and Budget's (OMB) Circular A-87.

Indirect costs are costs for services provided to multiple departments and programs. Central service providers (e.g., City Manager's Office, City Attorney's Office, Finance, Human Resources, Innovation Technology (IT), and City Hall

building maintenance) provide services to multiple departments and programs. For example, the full cost of the Quinlan Community Center includes its direct costs (e.g., salaries, benefits, materials, and contracts) plus the indirect costs of services received from central service providers (e.g., finance, human resources, and IT). The Cost Allocation Plan allows the City to understand the full cost of providing specific services to the community more accurately. For example, the Cost Allocation Plan helps the City analyze the full cost of the Quinlan Community Center as if it were a stand-alone business; a stand-alone business would typically have costs for services such as finance, Human Resources, and IT.

The Cost Allocation Plan follows the double step-down method, which uses two steps to allocate costs fully. In the first step, the costs of central service programs are allocated to other central service programs and receiving programs. In the second step, the total costs (including costs allocated in the first step) of central service programs are allocated to the receiving programs only.

The model allocates costs to receiving programs based on an allocation base, which quantifies the use of each service. For example

- Human Resources benefits costs are allocated based on each program's number of FTE.
- Accounting costs are allocated based on each program's number of financial transactions.
- IT costs are allocated based on the number of computer and mobile devices assigned to each program.

Revenues are allocated directly to the program providing the service.

The FY 2022-23 Cost Allocation Plan was prepared using data from the last fiscal year (FY 2020-21).

Senior Center Questions

15. I wish to find out more about our Budget on senior center, including all the staffing.

That page has a row called "Cost Allocation", I wonder what that is.

- a. Pages 343 and 347 of the FY 2022-23 Proposed Budget shows the staffing in the Senior Center.

Staffing

The following table lists full-time equivalents (FTE) by position. It includes actuals for two prior fiscal years, the Adopted Budget for the prior fiscal year, and the Proposed Budget for the current fiscal year.

Position Title	2020 Actual	2021 Actual	2022 Adopted Budget	2023 Proposed Budget
CASE MANAGER	0.10	0	0	0
FACILITY ATTENDANT	1.00	1.00	1.00	1.00
RECREATION COORDINATOR	0.30	0.30	0.30	0.30
RECREATION SUPERVISOR	0.95	0.75	0.75	0.75
SR OFFICE ASSISTANT	1.00	1.00	1.00	1.00
Total	3.35	3.05	3.05	3.05

Staffing

The following table lists full-time equivalents (FTE) by position. It includes actuals for two prior fiscal years, the Adopted Budget for the prior fiscal year, and the Proposed Budget for the current fiscal year.

Position Title	2020 Actual	2021 Actual	2022 Adopted Budget	2023 Proposed Budget
CASE MANAGER	1.90	0	0	0
RECREATION COORDINATOR	2.70	2.70	2.70	2.70
RECREATION SUPERVISOR	0.05	0.25	0.25	0.25
Total	4.65	2.95	2.95	2.95

Each program budget includes a staffing table showing all the full-time benefitted staff in the program. Each department budget also presents a staffing table in the Department Summary of each department budget.

Cost Allocation is described above under Glossary of Budget Terminology.

Special Projects Questions

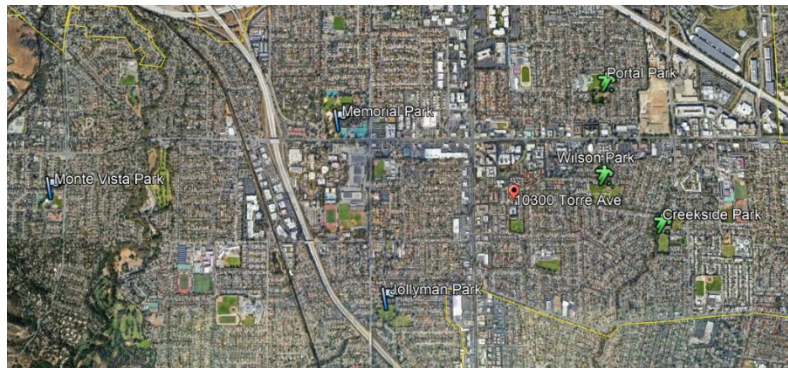
16. Provide the status of (dollar amount spent) for each of the FY 21-22 Special Projects.

Please remove the duplicative drone item.

- a. Two items are mentioned for Drone: Skydio Drone and Drone Deploy. The actual drone (Skydio Drone) is procured out of Infrastructure hardware funds (310), while the software (Drone Deploy) is procured out of GIS applications funds (986). Drone deploy automates drone flights and allows for the capture, analysis, and storage of drone data.

17. Why are Sidewalk Curb and Gutter and asphalt items showing up as Special Projects when they are already in the Public Works Department Budget?

- a. Sidewalk curb and gutter are annual requests. They are shown as a special project for enhanced transparency to show the cost of pavement maintenance.
- 18. There is some confusion as to what is a CIP item and what is a regular budget item. Don Burnett Bridge LED lighting shows up on both.
 - a. Don Burnett Bridge LED lighting is a request for Streets Maintenance, not CIP. There are City Bridge Maintenance Repairs and City Lighting LED Transition Assessment projects in CIP, which are different projects.
- 19. Lawson Middle School Bikeway is showing up as a Special Project for FY 22-23 when it is not approved by Council, please remove. I believe it should be a CIP item as well. Planned Transportation Project, FY 22-23 has \$80k allocated to it and no description, please remove.
 - a. The two requests in Transportation are for work plan items: Lawson Middle School Bikeway Feasibility Study (\$40K) and Vision Zero WP22-015 (\$80K). They are not CIP projects. The projects will be removed if Council does not approve them as part of the City Work Program. The Final Budget will incorporate any changes approved by City Council as part of the City Work Program.
- 20. Infrastructure 610-34-310 has Special Projects related to parks: Internet Service to 3 parks, and Pilot digital signage to 1 park. This needs to be evaluated in terms of Park equity. What parks are having these upgrades?
 - a. This project continues the FY 2021-22 project to add internet to Portal Park, Wilson Park, and Creekside Park. These parks were selected due to their proximity to City Hall – allowing staff easy access during implementation and testing. For FY 2022-23, the project moves west to Memorial Park, Jollyman Park, and finally Monte Vista. The below map may be helpful.



- 21. Fuse Fellow, under Economic Development should not be listed as a Special Project, in my opinion, because it is hiring someone for an unknown purpose. Please remove.
 - a. As part of the FY 2022-23 budget proposal process, staff requested funding for a Fuse Corps fellow to assist with the implementation of various economic development initiatives. At the time, examples of these initiatives included business outreach, small business support, and anticipated future work items for

the Division. Having access to a seasoned private-sector executive without a long-term financial commitment appeared to benefit the City.

Additionally, since the post-pandemic business recovery has not been uniform, there is an interest in further enhancing economic prosperity by leveling the playing field and implementing solutions to lower barriers for women and minority-owned small businesses. The Fuse Corps organization is especially interested in supporting equitable economic development approaches.

Subsequent to submitting this proposal, a key factor emerged that has led staff to reassess this budget proposal, which was the updated cost-sharing model parameters. Until recently, Fuse Corps supported a 50/50 cost-sharing model over a two-year period. However, staff recently learned that Fuse Corps does not guarantee this model and that the City may have to bear the full cost. This has led staff to reconsider how best to move forward with Council prioritized work items.

Alternatively, the same goal of adding bandwidth could be accomplished with a two-year limited-term analyst to support the work of the Division for the same Budget. If approved, this would expand staff's bandwidth, allowing for a broader portfolio of Council priority items to be implemented during the next fiscal year.

City Manager response – CC member Moore, please remember that individual Council members may not give direction, or influence, staff. We would need the full Council to decide on this item and any other items you have requested to be removed.

22. What is the policy around adding these Special Projects to each department? Why are these not part of the Work Program? There should be some policy regarding dollar value, or ranked necessity, just as Council has to prioritize. Shouldn't there be a Study Session just addressing the Special Projects, since many of us do not know what they are, for instance the Fuse Fellow? If that cannot be done, then we really should not be approving them at all and take them as an appropriations request after the Budget is approved.

- a. City Manager response – Special projects are essentially operational in nature, rather than policy. These projects would be considered by the City Manager for approval for the normal operations of the City. To bring such a list to Council goes against the Council-Manager form of government. The City Manager is

given the authority for the operations of the City, which these types of items/projects fall under.

Departments, on an annual basis, as part of the budget process are asked to evaluate operational needs, both one-time (special projects) and ongoing. If there is a need for additional funds above their existing base budget the department makes a proposed budget request. The Director of Administrative Services reviews that request for funding availability. The City Manager has final approval for all requests included in the Proposed Budget for Council consideration. Council work program items are also added to the special project list once approved.

Departments begin preparing the following year's base budgets in December and their special project requests in February for the fiscal year starting July 1. Sometimes requests come up between July and June that departments didn't know about the previous February, so there may be special project requests at Q1, Mid-year, or Q3.

If departments budget a special project in any given fiscal year and do not complete the project, they are allowed to carry over the funds for one fiscal year. Since the Budget has already been approved by Council, staff does not request it again, but carryover requests are included in the First Quarter Financial Report of the following year.

Attachment B shows FY 2021-22 special projects and their current status. The list of FY 2022-23 special projects can be found on pages 36-37 of the Proposed Budget document.

Vehicles

23. Provide a listing of all of the vehicles owned by the City and the year. Provide the vehicle replacements/purchases for the past 5 years.
 - a. See Attachment C for a list of vehicles owned by the City. The vehicles purchased within the past five years are noted.
24. When our vehicles fully depreciate on the books, what happens to them? I would like to see all records of sales or disposition of former City vehicles for the past seven years.
 - a. Nothing happens to the vehicles from a depreciation standpoint, assuming they are still in good condition and usable. They would stay on the list of fixed assets as the City would still own them. Once they are deemed past their useful life,

they would be sold/auctioned and removed from the fixed assets. See Attachment C for a list of depreciated, disposed/sold, and current vehicles.

Development Impact Fees and Construction Taxes

25. What would the future anticipated development impact be? Aren't the impact fees from Vallco only for the actual impacts and that money cannot be reassigned, for example wouldn't a park impact fee be only for parks, a BMR fee for BMR? And if this is true, how in the Budget, or where is this money assigned? What other anticipated development funds would there be?

- a. Yes, revenues from impact fees cannot be reassigned. Revenues from Park Dedication fees and BMR Housing Mitigation fees fund expenditures in the Park Dedication Fund and BMR Housing Fund, respectively.

Park Dedication fee revenues are in Other Taxes (Accounts 406-409, 406-410, and 406-411) in the Park Dedication Fund (Fund 280). OpenGov views showing Park Dedication fee revenues are now available in the Annual Actuals and Annual Budget reports:

- [Park Dedication Actual Revenues](#)
- [Park Dedication Budgeted Revenues](#)

These views can also be created by filtering Funds to "Park Dedication" and filtering Revenue Type to "Other Taxes."

BMR Housing Mitigation fee revenues are in Other Taxes (Account 406-404) in the BMR Housing Fund (Fund 265). OpenGov views showing BMR Housing Mitigation fee revenues are now available in the Annual Actuals and Annual Budget reports:

- [BMR Housing Mitigation Actual Revenues](#)
- [BMR Housing Mitigation Budgeted Revenues](#)

When new development projects are approved and permitted, staff will update Council on any additional revenues. In addition to impact fees, if a property is redeveloped, the City will receive additional property tax revenues based on the new assessed value. Sales, Property, and Transient Occupancy taxes may all be impacted depending on the businesses included in the development.

26. What would the one-time construction tax be for Westport and Vallco? Where would these funds be assigned?

- a. The construction tax would be \$304,810.57 for Westport and \$10,273,731.40 for Vallco. The actual construction tax will depend on the construction tax rates

effective at the time of the submittal of the building permit application. The current construction tax rates are attached (Attachment A) and are available under Fees > Construction Tax at <https://www.cupertino.org/our-city/departments/community-development/building/building-forms-fees>.

Westport Project

Project Description from Planning Website:

Development proposal to demolish a 71,250 square foot retail center (The Oaks), remove and replace 74 protected trees, and construct a mixed-used development consisting of 267 housing units (88 Rowhouse/Townhomes, 179 senior apartments of which 48 are senior affordable apartments) 27 memory care rooms, and 20,000 square feet of commercial space.

267 Units X \$863.71 = \$230,610.57

20,000 SF Commercial Space X \$3.71 per SF = \$74,200

Total Westport Construction Tax = \$304,810.57

Vallco Project

Project Description from Planning Website:

Sand Hill Property Company filed an application with the City of Cupertino on March 27, 2018 entitled "Vallco Town Center Project Application pursuant to SB 35." The project is a mixed use development with 2,402 units of housing, approximately 1.81 million square feet of office space and 400,000 square feet of retail uses.

2,402 Units X \$863.71 = 2,074,631.40

2.21 Million SF Commercial/Office Space X \$3.71 per SF = \$8,199,100.00

Total Vallco Construction Tax = \$10,273,731.40

Revenues from construction taxes are in Other Taxes (Account 406-401) in the General Fund (Fund 100). The revenues are in the General Fund.

OpenGov views showing Other Tax revenues are now available in the Annual Actuals and Annual Budget reports:

- [General Fund Other Taxes Actual Revenues](#)
- [General Fund Other Taxes Budgeted Revenues](#)

27. Who updates the Construction Tax rates? How often are they updated?

- a. Construction Tax rates are updated quarterly by the Community Development Department.



CONSTRUCTION TAX NOTICE

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
(408) 777-3228 • FAX (408) 777-3333 • building@cupertino.org

Date: **03/24/2022**

Adopted per Ordinance #1224, Municipal Code Section 3.32.030 imposes an excise tax for any building, or portion thereof, or any mobile home lot, in the City.

Municipal Code Section 3.32.045 requires a quarterly adjustment per the latest publication of the “All Urban Consumers All Items” index published by the United States Department of Labor, Bureau of Labor Statistics.

The adjusted fees as of 03/24/2022 are based on the latest publication of the 02/2022 index.

The new CPI is 175.890 the previous CPI was 172.214.

TAX RATE TABLE

Use	Previous Tax Rate	New Tax Rate
Residential, Mobile Homes, Mobile Home Lots	\$ 845.66 per unit	\$ 863.71 per unit
Industrial, Office, Commercial, and Quasi-Public	\$ 3.63 per s.f.	\$ 3.71 per s.f.
Civil and religious activities in the BQ zone: The tax rate shall be fifty percent (50%) of the rate charged for Industrial, office, commercial, & Quasi-Public:	\$ 1.82 per s.f.	\$ 1.86 per s.f.
Hotel and Motel	\$ 284.73 per room	\$ 290.81 per room

Department	Program	Special Project	Amended Budget	CWP	Status (Completed, Completed by Fiscal Year-End, Completed next fiscal year (carryover))
Innovation and Technology	300 Administration	750.079 - Adaptive Traffic Signaling	2,149	Yes	Project Completed
Innovation and Technology	300 Administration	750.085 - Multimodal Traffic Count	7,167	Yes	Project Completed
Innovation and Technology	300 Administration	750.087 - Pollution Monitoring	25,000	Yes	Funds Encumbered
Innovation and Technology	300 Administration	750.107 - Security Framework and Audit	60,000		Schedule to Begin in June - Bill PM
Innovation and Technology	308 Applications	750.110 - Accela Business License	25,000		Project Completed
Innovation and Technology	308 Applications	750.111 - Campaign Docs	3,500		Project Completed
Innovation and Technology	308 Applications	750.112 - City Data Services	1,500		Project Completed
Innovation and Technology	308 Applications	750.113 - Community Climate Solutions	4,000		Project Completed
Innovation and Technology	308 Applications	750.114 - Customer Svc Solution for CDD	65,000		Project Completed
Innovation and Technology	308 Applications	750.115 - ERP Exploration	50,000		Vendor selected, Waiting on New Finance Mgr to begin implementation, slated for August 2022 - Nidhi PM
Innovation and Technology	308 Applications	750.116 - Esports	1,700		Project Completed
Innovation and Technology	308 Applications	750.117 - Green Halo	7,860		Implemented - Monthly billing
Innovation and Technology	308 Applications	750.118 - Intranet Hub Consulting Svcs	20,000		Project Completed
Innovation and Technology	308 Applications	750.119 - Lobbyist Reg System in Netfile	15,000		Work complete, currently in user acceptance testing. Billed upon user acceptance
Innovation and Technology	308 Applications	750.120 - Performance Management App	32,000		Delayed per request of Department - Staff availability major issue
Innovation and Technology	308 Applications	750.121 - Pre-Employment Assessment/Tests	5,000		Delayed per request of Department - Staff availability major issue
Innovation and Technology	308 Applications	750.122 - Public Engagement	20,000		Project Completed
Innovation and Technology	308 Applications	750.123 - Redesign of City Website	45,000		Project began in April. Billing will not occur until implementation begin - Nidhi PM
Innovation and Technology	310 Infrastructure	750.124 - ActiveNet Additional Readers	9,000		Delayed - Vendor has new model card readers out this summer - will procure then
Innovation and Technology	310 Infrastructure	750.125 - Council Voting System and Timer	32,000		Project began, put on hold until vendor has a web based solution. Current solution too cumbersome.
Innovation and Technology	310 Infrastructure	750.126 - DUO MFA	19,500		Project Completed
Innovation and Technology	310 Infrastructure	750.127 - Interactive Projector Sys/Games	7,000		Project in Process - Toan PM
Innovation and Technology	310 Infrastructure	750.128 - Line Locator with GPS	15,000		Funds Encumbered
Innovation and Technology	310 Infrastructure	750.129 - Redundant Satellite Network	10,000		Deposit made with vendor - waiting on equipment - Benny PM
Innovation and Technology	310 Infrastructure	750.130 - Senior Center Access Controls	16,000		Project not started - Rescheduled for FY22-23
Innovation and Technology	310 Infrastructure	750.131 - Wireless Bridge	12,400		Project started this month - Benny PM
Innovation and Technology	310 Infrastructure	750.132 - Wireless Netwk/Internet Park Exp	20,500		Project 1/3 complete. Expenses are being corrected to be charged to this Special Project.
Innovation and Technology	986 GIS	750.166 - AR McClellan Ranch	40,000		Project started this month - Adam PM
Innovation and Technology	986 GIS	750.167 - Data Governance & Data Warehouse	75,000		Project started this month - Teri PM
Innovation and Technology	986 GIS	750.168 - Drone Deploy	18,000		Project Completed
Innovation and Technology	986 GIS	750.169 - ESRI Web Editor Licenses	10,000		Project Completed
Innovation and Technology	986 GIS	750.170 - Online Svcs Subscription Fees	2,200		Monthly Billing
Innovation and Technology	986 GIS	750.171 - Quinlan Touch Screen	40,000		Project slated to start in June - Benny PM
Innovation and Technology	986 GIS	750.172 - Rapid Plan	4,000		Project Completed
Innovation and Technology	300 Administration	750.173 - CWP Lehigh & SC Quarry	17,500	Yes	Sensors installed in April. Monthly billing begins this month.
Innovation and Technology	310 Infrastructure	900.945 - Fixed Asset Acquisition	58,000		Skydio Drone purchased, and remaining Balance is a carryover for Power Wall
Public works	820 Sidewalk Curb and Gutter	750.020 - Annual Sidewalk Curb & Gutter	1,675,300		Complete this fiscal year
Public works	848 Street Lighting	750.025 - Special Maintenance	94,000		Complete
Public works	804 Plan Review	750.038 - Trash Capture	36,060		Complete this fiscal year
Public works	804 Plan Review	750.039 - PW Scanning Project	64,009		Complete this fiscal year
Public works	801 Resources Recovery	750.041 - HHW and PaintCare	25,200		In Progress ongoing. Funds set aside for annual billing.
Public works	807 Service Center Administ	750.043 - Office Reconfiguration	132,481		In progress ongoing. Funds set aside to meet reconfigure requests as they arise due to space needs.
Public works	844 Traffic Engineering	750.061 - Community Shuttle Pilot Program	1,198,264	Yes	In progress ongoing
Public works	853 Storm Drain Fee	750.062 - Permeable Pavement	12,500		In progress ongoing. Funds expended as residents apply for City rebate program.
Public works	750.063 - Rainwater Capture	750.063 - Rainwater Capture	12,500		In progress ongoing. Funds expended as residents apply for City rebate program.
Public works	854 General Fund Subsidy	750.064 - Low Income Cost Share	13,144		In progress ongoing. Funds expended as residents apply for City rebate program.
Public works	854 General Fund Subsidy	750.065 - CUSD Joint Use Cost Share	8,706		Complete this fiscal year.
Public works	804 Plan Review	750.067 - VTC	2,000,146		On going - The Rise Development
Public works	800 Public Works Admin	750.071 - Municipal Water System	160,432	Yes	On going - agreement for operator
Public works	804 Plan Review	750.072 - Alternatives to City Hall	25,000		Ongoing - discussion with CIP
Public works	813 Neighborhood Parks	750.074 - Tot Lot Rubber Resurfacing	80,000		Complete this fiscal year.
Public works	813 Neighborhood Parks	750.075 - Environmental Consulting Svcs	14,000		Cancelled
Public works	849 Equipment Maintenance	750.078 - Mechanic Shop Hose Reels	17,925		Complete
Public works	844 Traffic Engineering	750.079 - Adaptive Traffic Signaling	160,000	Yes	Complete
Public works	845 Traffic Signal Maintenance	750.079 - Adaptive Traffic Signaling	13,156	Yes	Complete
Public works	846 Safe Routes 2 School	750.080 - Pedestrian Education	44,240		Ongoing - Safe Routes working with School Districts
Public works	801 Resources Recovery	750.081 - Trash Enclosure SWMP	2,500		cancelled
Public works	802 Non Point Source	750.081 - Trash Enclosure SWMP	2,500		cancelled
Public works	855 Storm Drain Maintenance	750.082 - SVC CTR IND Inspection	2,600		complete

FY 2021-22 Special Projects Update

Attachment B

Public works	801 Resources Recovery	750.084 - Single Use Plastics Ordinance	100,000	Yes	In progress
Public works	804 Plan Review	750.105 - CWP Revisit 5G	250,000	Yes	Completion next fiscal year.
Public works	801 Resources Recovery	750.137 - SB1383 Procurement Requirements	50,000		Completion next fiscal year.
Public works	808 McClellan Ranch Park	750.138 - 4H Perimeter Fence Replacement	30,000		Completion this fiscal year.
Public works	811 BBF Ground Maintenance	750.139 - Refinish Arbors	15,000		Complete this fiscal year.
Public works	812 School Site Maintenance	750.140 - Backflow Prevention Device Repl	6,000		Complete
Public works	813 Neighborhood Parks	750.140 - Backflow Prevention Device Repl	15,000		Complete
Public works	814 Sport Fields Jollyman Cl	750.140 - Backflow Prevention Device Repl	4,000		Complete
Public works	813 Neighborhood Parks	750.141 - Basketball Court Resurfacing	20,000		Complete next fiscal year.
Public works	814 Sport Fields Jollyman Cl	750.141 - Basketball Court Resurfacing	10,000		Complete next fiscal year.
Public works	825 Street Tree Maintenance	750.142 - Cage conversion to Rope Shop	10,000		Complete
Public works	824 Overpasses and Median	750.143 - Foothill Blvd Median Tree Work	30,000		Complete
Public works	825 Street Tree Maintenance	750.143 - Foothill Blvd Median Tree Work	0		Complete
Public works	827 Bldg Maint City Hall	750.144 - Electrical Preventive Maint	25,000		Complete this fiscal year.
Public works	827 Bldg Maint City Hall	750.145 - Fascia Repair and Painting	60,000		Complete next fiscal year, pending City Hall discussion.
Public works	827 Bldg Maint City Hall	750.146 - Lower Floor Recarpeting	70,000		Complete this fiscal year, pending City Hall discussion.
Public works	827 Bldg Maint City Hall	750.147 - Boiler Preventive Maintenance	5,000		Complete
Public works	828 Bldg Maint Library	750.147 - Boiler Preventive Maintenance	5,000		Complete
Public works	830 Bldg Maint Quinlan Cen	750.147 - Boiler Preventive Maintenance	5,000		Complete
Public works	828 Bldg Maint Library	750.148 - Exterior Door Painting	6,000		Complete
Public works	838 Comm Hall Bldg Maint	750.148 - Exterior Door Painting	4,000		Complete
Public works	829 Bldg Maint Service Cent	750.149 - Emergency Power Upgrades	28,000		Complete
Public works	829 Bldg Maint Service Cent	750.150 - Shop Building Roof Recoating	50,000		Complete
Public works	829 Bldg Maint Service Cent	750.151 - Storage Shed Replacement	7,000		Complete
Public works	829 Bldg Maint Service Cent	750.152 - Locksmith Training	4,000		Completion next fiscal year.
Public works	832 Bldg Maint McClellan R	750.153 - Gift Shop Exterior Painting	20,000		Complete
Public works	836 Bldg Maint Sports Cente	750.154 - Exterior Lighting Improvements	24,000		Complete
Public works	836 Bldg Maint Sports Cente	750.155 - Exterior Painting	45,000		Completion next fiscal year.
Public works	836 Bldg Maint Sports Cente	750.156 - Multipurpose Rm Hardwd Fl Refin	20,000		Complete
Public works	836 Bldg Maint Sports Cente	750.157 - Door Refinishing	15,000		Complete
Public works	836 Bldg Maint Sports Cente	750.158 - Locker Rm Bench Refinishing	5,000		Complete
Public works	838 Comm Hall Bldg Maint	750.159 - Water Bottle Filling Station	13,000		Completion this fiscal year.
Public works	841 BBF Facilities Maintenan	750.160 - Pool Water Bottle Fill Station	13,000		Completion this fiscal year.
Public works	841 BBF Facilities Maintenan	750.161 - Pool Cover Replacement	11,000		Complete
Public works	841 BBF Facilities Maintenan	750.162 - Uninterrupted Power Supply	5,000		Complete
Public works	844 Traffic Engineering	750.163 - VMT to LOS Standards	130,000		Completion next fiscal year.
Public works	846 Safe Routes 2 School	750.165 - Riding for Focus Program	49,000		Completion next fiscal year.
Public works	801 Resources Recovery	750.174 - New Lndfill Agrmnt/Solid Wst con	350,000		In progress, ongoing.
Public works	825 Street Tree Maintenance	900.911 - Trees and Badges	0		Complete
Public works	821 Street Pavement Mainte	900.921 - Annual Asphalt Project	4,437,666		Award this fiscal year.
Public works	844 Traffic Engineering	900.923 - Apple Campus 2	71,100		Complete
Public works	845 Traffic Signal Maintenan	900.937 - T/S Intersc Modif	47,707		Completion this fiscal year.
Public works	828 Bldg Maint Library	900.945 - Fixed Asset Acquisition	22,362		Complete
Public works	829 Bldg Maint Service Cent	900.945 - Fixed Asset Acquisition	0		Complete
Public works	836 Bldg Maint Sports Cente	900.945 - Fixed Asset Acquisition	0		Complete
Public works	841 BBF Facilities Maintenan	900.945 - Fixed Asset Acquisition	0		Complete
Public works	985 Fixed Assets Acquisition	900.945 - Fixed Asset Acquisition	1,075,996		Complete
Public works	812 School Site Maintenance	900.990 - Special Projects - PW	25,000		Completion this fiscal year.
Public works	813 Neighborhood Parks	900.990 - Special Projects - PW	25,000		Completion this fiscal year.
Public works	821 Street Pavement Mainte	900.990 - Special Projects - PW	105,235		Completion this fiscal year.
Public works	833 Bldg Maint Monta Vista	900.990 - Special Projects - PW	25,000		Completion this fiscal year.
Public works	848 Street Lighting	900.990 - Special Projects - PW	208,000		Completion this fiscal year.
Parks and Recreation	601 Rec & Comm Svcs Admi	750.096 - CWP Mental Health Support	10,000	Yes	Carryforward to next fiscal year.
Parks and Recreation	601 Rec & Comm Svcs Admi	750.098 - CWP Senior Strategy	34,000	Yes	Ongoing. Need to carryforward to next fiscal year.
Parks and Recreation	601 Rec & Comm Svcs Admi	750.133 - #CupertinoCares	75,000		Completed (due to conclusion of shut down order)
Parks and Recreation	612 Park Facilities	750.134 - Environ Edu Ctr Animal Displays	1,000		Completed by fiscal year end.
Parks and Recreation	601 Rec & Comm Svcs Admi	750.164 - CWP Dogs Off Leash Area	5,000	Yes	Ongoing. Need to carryforward to next fiscal year.
Parks and Recreation	616 BBF Golf Course	900.945 - Fixed Asset Acquisition	64,900		Ongoing. Need to carryforward to next fiscal year.

FY 2021-22 Special Projects Update

Attachment B

Community development	701 Current Planning	750.007 - The Hamptons	108,640	Completed
Community development	701 Current Planning	750.009 - Marina Plaza	80,145	Ongoing. Need to carryforward to next fiscal year.
Community development	701 Current Planning	750.029 - Valco Town Center	516,748	Ongoing. Need to carryforward to next fiscal year.
Community development	701 Current Planning	750.031 - Westport	337,276	Ongoing. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.032 - General Plan	262,504	Ongoing. Need to carryforward to next fiscal year.
Community development	713 General Building	750.036 - Ongoing Bldg Recrd scan/conversn	14,387	Ongoing. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.048 - Urban Village	250,000	Awaiting direction from City Council.
Community development	702 Mid Long Term Plannin	750.049 - MuniCode Updates	25,000	Ongoing. Need to carryforward to next fiscal year.
Community development	711 BMR Affordable Housin	750.050 - Housing Strategies	5,044	Completed
Community development	711 BMR Affordable Housin	750.051 - City Plan to End Homelessness	300,000	Yes Ongoing. Need to carryforward to fiscal year.
Community development	711 BMR Affordable Housin	750.052 - Build ELI for Developmentally Disabled	250,000	Yes Ongoing. Need to carryforward to fiscal year.
Community development	702 Mid Long Term Plannin	750.055 - Dark Sky	10,000	Yes Ongoing. Need to carryforward to next fiscal year.
Community development	714 Construction Plan Check	750.067 - VTC	20,043,334	Ongoing Building plan review and inspections. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.090 - Residential/Mixed Use Design	258,322	Yes Ongoing. Need to carryforward to next fiscal year.
Community development	701 Current Planning	750.091 - Banning Gas Powered Leaf Blowers	1,158	FY18/19 Ongoing. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.092 - General Plan Auth Process	6,500	Yes Completed by fiscal year end.
Community development	711 BMR Affordable Housin	750.094 - Housing Survey	15,293	Completed
Community development	702 Mid Long Term Plannin	750.100 - CWP Development Accountability	10,000	Yes Ongoing. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.101 - CWP RHNA and Gen Plan Update	1,069,248	Yes Ongoing. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.102 - CWP Sign Ordinance Update	25,000	Yes Ongoing. Need to carryforward to next fiscal year.
Community development	700 Community Developme	750.104 - CWP Homeless Jobs Program	200,000	Yes Ongoing. Need to carryforward to next fiscal year.
Community development	702 Mid Long Term Plannin	750.135 - Laserfiche planning map scanning	30,000	Ongoing. Need to carryforward to next fiscal year.
Community development	714 Construction Plan Check	900.923 - Apple Campus 2	404,280	Completed
Administration	122 Sustainability Division	750.018 - Climate Action Plan	351,651	Yes Completed by fiscal year end (or very shortly after depending on Council agenda)
Administration	122 Sustainability Division	750.019 - Employee Commute Program	26,500	Prior Continue to next fiscal year, pilot continuing due to pause from pandemic
Administration	122 Sustainability Division	750.069 - Sustainable Infrastructure Audit	10,000	Supporting CIP project. Completed by next fiscal year. Need to carryforward to next fiscal year.
Administration	632 Comm Outreach & Neig	750.097 - CWP Revamp Block Leader/NW prgrm	1,500	Yes Scheduled to complete this FY but delays in recruitment may cause it to extend slightly past year-end.
Administration	633 Disaster Preparedness	750.099 - CWP Personal Prepared Campaign	10,000	Yes Completed by fiscal year end.
Administration	705 Economic Development	750.103 - CWP Regulate Diversified Retail	5,000	Yes Completed by fiscal year end.
Administration	122 Sustainability Division	750.106 - Electric Cooking Workshop Series	6,400	Completed by next fiscal year. Need to carryforward to next fiscal year.
Administration	305 Video	750.108 - EOC Control System Upgrade	15,000	Completed by fiscal year end.
Administration	305 Video	750.109 - Radio Windows 10 Replacement	10,000	Completed by next fiscal year. Need to carryforward to next fiscal year.
Administration	705 Economic Development	750.136 - Targeted Mktng Prg Ass Sm Bus	9,100	Prior Completed by fiscal year end.
Administration	305 Video	900.945 - Fixed Asset Acquisition	6,825	Completed
Administration	305 Video	900.995 - Special Projects - CDD/I&T	36,572	Completion by next fiscal year. Need to carryforward to next fiscal year.
Total			39,044,032	

Vehicles List

Attachment C

Master Asset ID	Year	Make	Model	Asset Description	Purchased in Last 5 Years	Count
Depreciated Assets Still In Use						
4838	2007	HONDA	CIVIC HYBRID	#46 2007 HONDA CIVIC HYBRID		
4854	2006	FORD	F550SD	#38 FORD ALTEC BOOM		
4919	2008	GMC	5500	#D6 2008 GMC 12" DUMP		
4943	2008	FORD	F350SD	#31 2008 FORD F350 PICK-UP		
5111	2009	FORD	F550	#57 TRUCK REPLACEMENT-AERIAL		
5207	2011	FORD	ESCAPE	#452 2012 FORD ESCAPE HYBRID		
5218	2012	FORD	F550	#429 2012 FORD F550		
5218	2017	FORD	F550	#429 TRUCK BODY TSF		
5219	2012	FORD	E350	#424 2012 FORD E350		
5232	2012	FORD	F350	#413 2012 FORD F350		
5233	2012	FORD	F350	#425 2012 FORD F350 TRUCK		
5234	2012	FORD	F350	#449 2012 FORD F350 TRUCK		
5235	2012	FORD	F350	#498 2012 FORD F350 TRUCK		
5236	2012	FORD	F350	#478 2012 FORD F350 TRUCK		
5236				BED FOR TRUCK #478		
5237	2012	FORD	F350	#489 2012 FORD F350 TRUCK		
5363	2014	FORD	CMAX	#411 2014 FORD C-MAX		
5350	2014	FORD	F350	#420 2014 FORD F350		
5264	2012	FORD	F350	#455 2012 FORD F350 TREES/ROW		
5265	2012	FORD	F150	#448 2012 FORD F150 4X4		
5268	2013	FORD	F550	#459 2013 FORD F550		
5282	2013	FORD	F150	#495 2013 FORD F150		
5296	2013	FORD	F350	#409 2013 FORD F350		
5314	2013	FORD	F350	#417 2013 FORD F350		
5315	2013	FORD	F350	#418 2013 FORD F350		
5332	2014	FORD	F250	#416 2014 FORD F250		
5333	2014	FORD	F350	#428 2014 FORD F350		
5349	2014	FORD	F350	#470 2014 FORD F350 UTILITYBED		
5912	2015	FORD	TRANSIT 350	New Facilities Van #400		
5913	2015	FORD	TRANSIT 350	Replace#14 - New#414		
Total Depreciated Assets Still In Use						30
Disposed/Sold Vehicles						
3971	1999	FORD	CROWN VICTORIA	#D37 CROWN VICTORIA '99		
4100	2000	FORD	RANGER	#65 FORD RANGER '2000'		
4355		FORD	F650	#D66 F650 CHIPPER TRUCK		
4767	2005	FORD	CROWN VICTORIA	#43 FORD POLICE INTERCEPTOR 05		

Vehicles List

Attachment C

Master Asset ID	Year	Make	Model	Asset Description	Purchased in Last 5 Years	Count
4865	2008	FORD	F350	#44 2008 FORD F350 PICK-UP		
4875	2008	FORD	F350	#27 2008 FORD F350 PICK-UP		
4920	2008	FORD	CROWN VICTORIA	#92 2008 FORD CROWN VICTORIA		
4980	2008	FORD	F150	#1 2008 FORD F150 TRUCK		
4847	1983	FORD	GRUMMAN	FORD 1983 GRUMMAN		
Total Disposed/Sold Vehicles						9
Vehicles With Current Value						
5605	2016	FREIGHTLINER M2	GDTN2VOCV04C	2016 M2-106 Aerial Truck		
5612	2016	FORD	FUSION ENERGI SE	2016 Ford Fusion Old #51, New # 410		
5613	2016	FORD	FUSION ENERGI SE	2016 Ford Fusion Old # 85, New # 485		
5614	2016	FORD	FUSION ENERGI SE	2016 Ford Fusion Old #87, New # 421		
5616	2016	FORD	FUSION ENERGI SE	2016 Ford Fusion Old # 53, New #453		
5617	2016	FORD	FUSION ENERGI SE	2016 Ford Fusion Old # 26, New # 426		
5618	2016	FORD	C MAX ENERGI	2016 Ford Cmax #415		
5619	2016	FORD	FOCUS ELECTRIC	2016 Ford Focus # 454		
5637	2015	FORD	FOCUS ELECTRIC	2015 Ford Focus Electric, Old #88, New #488		
5641	2016	FORD	F150	2016 Ford F150		
5410	2014	FORD	C MAX HYBRID	#412 2014 FORD CMAX		
5443	2015	FORD	TRANSIT 350	#15 2015 FORD TRANSIT		
72	2015	FORD	F350	REPLACE#81 NEW #481 CHARGE BACK 8503/2015 FORD F350		
73	2015	FORD	F350	REPLACE#63 NEW #463 CHARGE BACK 8312/2015 FORD F350		
74	2015	FORD	F350	REPLACE #94 NEW #494 CHARGE BACK8315 /2015 FORD F350		
75	2015	FORD	F550	REPLACE #7 NEW #407 CHARGE BACK 8408/2015 FORD F350		
5842	2016	FORD	F350	2016 Ford F350 #474		
5843	2016	FORD	F350	2016 Ford F350 #422		
5844	2016	FORD	F350	2015 Ford F350 #475		
5845	2015	FORD	F550	Accessories Addtions to F/A #462		
5846	2016	FORD	F350	New #461 2016 Ford F350		
5847	2015	FORD	F550	2015 Ford F550		
5849	2016	FORD	F150	2016 F150 replacing #82 with #482		
5853	2016	FORD	F550	2016 F550 Aerial Lift Truck #D421		
5851	2017	FORD	F350	Replacing #19 w/ #496 2017 F350		
5850	2017	FORD	F350	New vehicle #497 grounds/median share		
5854	2016	FORD	F350	2016 F350 #467		
5856	2017	FORD	F550	2017 Ford Truck F-59		
5860	2017	FORD	F350	Replacing #47 w/ #447		
5861	2017	FORD	TRANSIT CONNECT	Replace #5 with #405		

Vehicles List

Attachment C

Master Asset ID	Year	Make	Model	Asset Description	Purchased in Last 5 Years	Count
5862	2017	FORD	F150	2017 Ford Truck F150 Brian New 436		
5863	2017	FORD	F350	Replace Truck #32 w/ #432 2017 Ford F350		
5864	2017	FORD	F350	New Truck #483		
5866	2017	FORD	F350	2017 Ford F350 replacing #73 with #473	Yes	
5867	2017	FORD	F550	2017 F550 replacing #30 with #430	Yes	
5872	2016	FORD	F550	2016 F550 Aerial Truck	Yes	
5874	2017	FORD	F550	New #433 2017 Ford Truck F550	Yes	
5217	2017	FORD	F550	New vehicle body for #479	Yes	
5892	2017	FORD	E450	ARES Communication Van, Asset ID 469 (Qty = 2)	Yes	
5893	2012	FORD	F550	Dump Truck #10 Replacement, Asset ID 491	Yes	
5895	2017	FORD	F-350 SD	2017 F350 Super Duty Truck with Liftgate, Asset ID 486	Yes	
5896	2018	FORD	F150	2018 Ford 150 Truck , Asset ID 465 (Ranger replacement)	Yes	
5897	2017	FORD	F-350 SD	2017 Ford 350 Super Duty (Rock Wall) Truck, Asset ID 490	Yes	
5898	2017	FORD	F350	2017 F350 Super Duty Truck without Liftgate, Asset ID 440	Yes	
5899	2017	FORD	F350	2017 F350 Super Duty Truck without Liftgate, Asset ID 435	Yes	
5900	2018	FORD	Escape	2018 Ford Escape, Asset IE 451	Yes	
5901	2017	FORD	EXPLORER	2017 4-Door Ford Explorer, Asset ID 402 (Pool vehicle)	Yes	
5908	2017	FORD	F550 SD	2017 F-550 Altec Model , Asset ID 403	Yes	
5910	2018	FORD	F350	2018 Ford Truck Transit Wagon, Asset ID 493	Yes	
5911	2018	FORD TRUCK	XL WAGON LMB	2018 Transit Connect Pool Van Asset ID 460	Yes	
6006	2019	FORD	FUSION ENERGI	2019 Fusion , replacing Veh37	Yes	
6007	2019	FORD	POLICE RESPONDER	Police Responder Hybrid Sedan, Veh443	Yes	
6008	2019	FORD	POLICE RESPONDER	Police Responder Hybrid Sedan, Veh492	Yes	
6009	2019	FORD	FUSION ENERGI	Ford Fusion, replacing Veh65	Yes	
6010	2018	FORD	F-750	Fleet: 2018 F-750 Diesel Base Crew Cab	Yes	
6011	2019	FORD	F-250 XL HYBRID	Fleet:VEH401 2019 Ford F-250 (Replacement for VEH1) Trees&Row	Yes	
6219	2019	FORD	F-350	Replacement for VEH39 (Trees&Row) Scelzi Quote 147297	Yes	
6220	2019	FORD	F-350	Replacement for VEH23 (Grounds) Scelzi Quote 147286 (vehicle)	Yes	
6221	2019	FORD	F-350	Replacement for VEH44 (Grounds) Scelzi Quote 147286	Yes	
6231	2019	FORD	F-550	Replacement for VEH84 (Trees&Row) Scelzi Quote147258	Yes	
6243	2020	FORD	F-350	2020 Ford F350 Cab for Trees/ROW (Schmitt)	Yes	
8003	2020	FORD	F-650	Fleet - 2021 Ford F650SD Diesel V8	Yes	
8009	2020	FORD	F-350	2020 Ford Truck VIN 1FDRF3E62LED86881	Yes	
8015	2020	FORD	F-250	Fleet - 2020 Ford Truck S-DTY F-250	Yes	
8016	2020	FORD	F-250	Fleet - 2020 Ford Truck S-DTY F-250	Yes	
8012	2020	FORD	RESPONDER HYBRID	FY19-20 VIN 3FA6P0AU7LR194835	Yes	
8001	2020	FORD	RANGER	FY19-20 VIN 1FDER1AH9LLA36452	Yes	
8022	2021	FORD	F-150	TOWNE FORD	Yes	

Vehicles List

Attachment C

Master Asset ID	Year	Make	Model	Asset Description	Purchased in Last 5 Years	Count
Total Vehicles with Current Value						68
Total All Vehicles						107

Additional Proposed Budget Questions and Responses

1. May we have a code listing for all of the departments along with the codes when expenditures are assigned? I believe this would be 5 sets of numbers starting with the three sets of budget unit numbers. This will help follow Budget items more easily if we had a table.
 - a. Staff will provide the complete GL account codes for the Final Budget hearing.

FY 2021-2022 Special Projects Update Questions/Comments:

2. Under Special Projects FY 2021-2022 Update attachment, when did the Council approve the VTC \$2,000,146 for The Rise Development? This was not on the FY 2021-2022 Adopted Budget Special Projects list. Likewise, the \$71k for Apple Campus 2.
 - a. The Rise development special project was approved on March 3, 2020 as part of the FY 2019-20 Mid-Year Financial Report. The Special Projects FY 2021-22 Update shows the FY 2021-22 Amended Budget, so it includes projects that were carried over from prior fiscal years. The FY 2021-22 Adopted Budget only includes new appropriations approved in FY 2021-22.
3. In the FY 2021-2022 Adopted Budget, the CWP items are included with a total of approximately \$1.8M, below those items are the Staff Department Special Projects items. The listings are more complete from last year such that the building being worked on is clearly noted. These items were able to fit portrait style on the page in last year's Adopted Budget pages 49-50. May we have the descriptions following last year's style.
 - a. An updated special projects report with the program code and program name is attached.
4. What happens to the unspent/incomplete jobs' funding, as in how is it accounted for, and how do we know it is there?
 - a. If a project is complete, the unspent dollars become expenditure savings. If a project is not complete, the unspent funding may be carried over into the following fiscal year via year-end or encumbrance carryovers. Carryover appropriations are shown in the Amended Budget.

Vehicles List

5. The list of vehicles is interesting, please clarify what the vehicles are, Make, Model, Year. Several are missing. Some listings indicated that the new vehicle replaced a vehicle, but the disposing of the previous vehicle is not mentioned.
 - a. An updated Vehicles List with the make, model, and year is attached.
 - b. The list of disposals shows all vehicle disposals in the City's Fixed Assets ERP module. The City implemented the Fixed Assets ERP module in 2018, so vehicles disposed before then were not listed. Staff will work on providing a list of vehicles disposed before implementation of the module.
6. The vehicle listing includes what looks like Sheriff patrol cars, is this correct, because I would assume they provide their own vehicles per their contract?
 - a. The police responder vehicles are assigned to the City's Code Enforcement team. The Santa Clara County Sheriff's Office would provide their own vehicles.

5/18/2022 Proposed Budget Meeting Questions

1. Enterprise funds – Why isn't Blackberry farm pool/picnic an enterprise fund? Who are we serving/not serving along with profit and loss statement?
 - a. All expenses related to Blackberry Farm pool and picnic area can be found in budget unit 100-63-612 on pages 352-354 of the FY 2022-23 proposed budget. The revenue and expenditure table shows revenues and expenditures along with any use of fund balance or General fund subsidy (General fund costs) for 2 years of actuals along with last years adopted budget and this year's proposed budget. This budget currently operates in a deficit as fee revenues are set up to only costs recover about 60% of actual costs per City Council direction as part of the last citywide fee study. Staff is requesting additional funds to conduct a new fee study in FY 22-23 for City Council consideration in this year's budget. Based on research conducted, the FY 2007-08 budget document appears to recommend the movement of this operation from an Enterprise Fund to the General Fund because it was not self-sustaining at that time. Given that currently you can view the profit and loss easily in the budget we have not transitioned this back to an enterprise fund. Also, it still requires a subsidy.
 - b. Information regarding resident/non-resident use will be brought back at the June 7, 2022 Council meeting
2. Pg 37. Number 844 traffic engineering is a special project that hasn't been decided. What is that \$80k item?
 - a. As described on Page 7 of Attachment S (FY 22-23 Proposed Budget Questions and Responses) of Agenda Item 15 on May 19, 2022, the Final Budget will incorporate any changes approved by City Council as part of the City Work Program. The \$80,000 project is for Vision Zero (WP22-015). It was approved as part of the City Work Program on May 17, 2022 and will remain in the budget.
3. The Monthly Treasurer report which you presented to the Audit Committee showed the various fund balances for January, February, and March 2022, however they did not seem to match with the fund balances in the Proposed Budget. For example, there is a great discrepancy for the Park fund in the Proposed Budget and in the March 2022 report (off by about \$20M). Please show a table of each and explain what has happened to change the totals, such as the infusion of funds from the Westport Project for parks, and for this particular item it would really help if the public is shown what zone it is intended for, and what the zones mean (because this is all new information for the public and will help).
 - a. The proposed budget presents year-end projections, whereas the monthly treasurer's reports present year-to-date actuals.
 - b. Year-end projected fund balance for FY 2021-22 is calculated as the beginning fund balance as of July 1, 2021, plus projected FY 2021-22 revenues minus projected FY 2021-22 expenditures.
 - c. Year-end projected revenues and expenditures estimate the revenues the City expects to receive and the expenditures the City expects to spend. Projections are based on the amended budget, year-to-date actuals, and historical trends.
 - d. The year-to-date actual fund balance as of March 31, 2022, is calculated as the beginning fund balance as of July 1, 2021, plus year-to-date actual revenues minus year-to-date actual expenditures.

5/18/2022 Proposed Budget Meeting Questions

4. Missing in budget is certain policies, City of Chico's budget includes BP-9 and BP-10 related to expenditure control. Would like this guidance and policy include in our budget.
 - a. It appears Chico lists administrative, financial, and human resources policies. The City's current budget policies can be found in the City's financial policies sections. This includes the City's budget transfer and amendments, Capital Funding, Fund Balance, Community Funding and IT equipment replacement policy.
 - b. Staff can work to include additional policies and revision dates in the FY 2023-24 Proposed Budget.
5. Slide 28 –shows a decrease due to historical society? What is historical society? Is there a subcommittee and when will a report be brought forward?
 - a. The Cupertino Historical Society has been collecting and archiving items that document the community's past since 1966. The Cupertino Historical Society has been awarded funding through the Community Funding Grant Program since 2015. As part of the FY 2019-20 budget approval process at the June 18, 2019, City Council meeting, Council unanimously approved to designate an annual amount of \$20,000 as a base (or line) item for the Cupertino Historical Society.
 - b. Staff Report from FY 2021-2022 Community Funding Item with Historical Society background (Attachment A).
 - c. A Council Subcommittee was formed at the June 4, 2021, City Council meeting. The Historical Society information is currently planned for the June 7 City Council meeting.
6. Council and commission expenditures – not an accurate reflection of salaries and benefits
 - a. Council allocations has personnel costs
Staff costs include all staff that may assist the City Council on a day-to-day basis. We can create a new budget program called City Council Support and move all salary and benefits associated with support staff to the new program. Then, the City Council budget would only show City Council's costs. The overall department budget would remain unchanged.

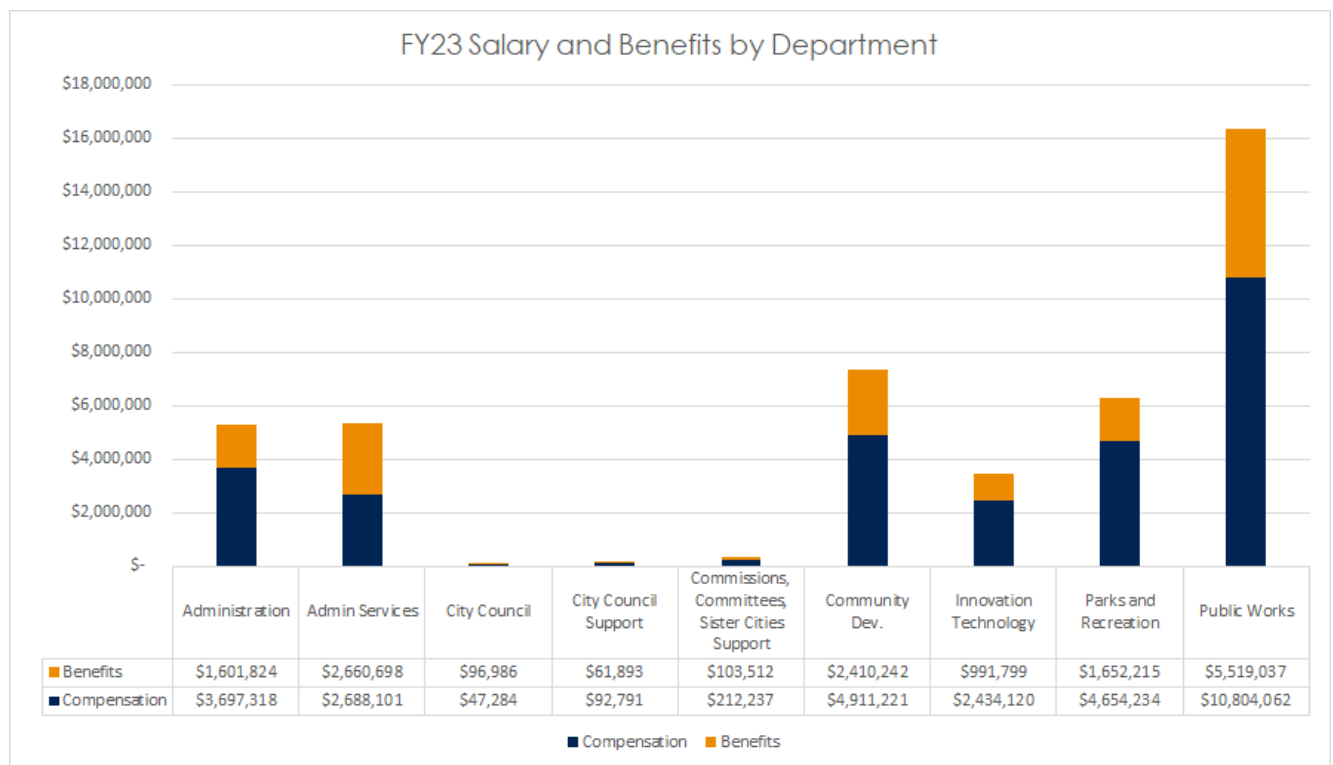
As requested, the table below shows the City Council & Commissions budget broken down into three sections:

- City Council (salary and benefits for City Council members)
- City Council Support (all salary and benefits for staff supporting City Council)
- Commission Support (all salary and benefits for staff supporting commissions, committees, and sister cities)

5/18/2022 Proposed Budget Meeting Questions

	Benefitted Positions	Compensation	Benefits	Total Compensation and Benefits
City Council	5	\$47,284	\$96,986	\$144,270
City Council Support	0.85	\$92,791	\$61,893	\$154,684
Commissions, Committees, and Sister Cities Support	1.43	\$212,237	\$103,512	\$315,749
Total Council and Commissions	7.28	\$352,312	\$262,391	\$614,703

b. Request to reflect how much is going into each of the depts by comp and benefits



7. Community Funding policy – What is the source of the policy? What is the revision date, year it was approved and who approved it?
 - a. The Community Funding Policy was originally adopted in FY 2012-2013
 - b. Most recent amendments: City Council Minutes from December 1, 2020 Meeting (Attachment C)
8. Where do we sit in the market compared to other jurisdictions in turnover since 2018 to the present?

5/18/2022 Proposed Budget Meeting Questions

- a. Staff is pulling data from other Santa Clara County cities. Staff expects to have these comparisons as part of the June 7, 2022, Final Budget hearing.

Vallco Town Center/Funds

9. In 2019, there are more Vallco expenses and revenues which we **need to see a complete tally**. It shows \$14.7 mil in expenses for Vallco construction plan check and \$22.5 mil revenue. There are building inspection expenses of \$5.4 mil, but revenue is \$7.2 mil. We were only shown one item of \$2M for rise development but no further details around it and would like to see a more complete detail of ongoing Vallco expenses. How are these special projects being accounted for in the long term? There are some ongoing projects, but for other one-time projects, what happened to them in 2019, as it's not included in the book but showed up in special projects update which is confusing.
 - a. Contracts for the Vallco SB35 project were approved at the February 18, 2020, City Council meeting. (Refer to attachment B)
 - b. On March 3, 2020, funding for the budget related to these contracts was approved as part of the mid-year financial report.
 - c. No other adjustments have been made to these contracts/budget to date.
 - d. The costs related to these contracts are carried over at year-end into the new fiscal year. The detail related to which project this revenue gets allocated to is held in the City's permitting system and kept in summary in the City's financial system. The detail is still held in the permitting system, but staff is working on translating it into isolated Vallco revenue accounts (as shown below) in the financial system.
 - e. Expense account 750-067 Special Projects VTC includes Community Development and Public Works and will be accounted for in the following revenue accounts 410-440 Licenses and Permits VTC Plan Check, 410-441 Licenses and Permits VTC Inspections, and 450-407 Charges for Services VTC Engineering. Community Development and Public Works have expended and received the following:

Budget Unit	Expenses* as of 4/30/22	Revenues* as of 4/30/22
100-73-714 (CDD)	\$42,835.63	\$141,250.24
100-73-715 (CDD)	\$0	\$83,902.69
100-82-804 (PW)	\$25,820	\$0

*Timing of revenue and offsetting expenditures may lag due to when fees are collected and when inspections can begin.

- f. The Special Projects FY 2021-22 Update shows the FY 2021-22 Amended Budget, so it includes projects that were carried over from prior fiscal years. The FY 2021-22 Adopted Budget only includes new appropriations approved. Carryovers are not requested in the Proposed Budget, since the appropriations were already approved.
10. I would like an update regarding the Vallco items shown here because it appears there have been a significant amount of revenues and much lesser expenses which the update on the agenda yesterday did not reflect (I mentioned them during the meeting and am pasting the table from the meeting information you referenced from March 3, 2020 or possibly 2019, for Council, pardon the formatting issues):
 - a. Answered above

Account Totals/Balances

5/18/2022 Proposed Budget Meeting Questions

11. There was an update to the Audit Committee which showed most of the City's various account balances for December, 2021, however there may be some checking accounts which were not included. During the Monthly Treasurer's Report Subcommittee meeting it was indicated by Kristina that there are 3 checking accounts, which I was unaware of. I would like to know the names, types, and totals of **all** the City's accounts, in case we are missing some old accounts or overlooked anything.
- a. Starting April 2022, the Monthly Treasurer's Investment Report will include account statements for the City's checking accounts. The City has the following checking accounts:
- Wells Fargo Operating Account
 - Wells Fargo Workers' Compensation Account
 - Wells Fargo Payroll Account
 - Wells Fargo Flexible Spending Employee Benefits Account (employee contributions to Flexible Spending Accounts)

Fund Totals

12. I am concerned that we have a considerable amount of funds already accounted for (Park, Capital Improvements, etc.) and perhaps I am missing an account, but it does seem that there is no available funding for many proposed projects in the CIP. I think the funding sources need to be better explained because, between the potential reduction in sales tax and the funds already designated to various categories (e.g. parks), I am not sure that several projects can or should be entertained for discussion. The CIP, in particular, must identify funding sources and I would assume this would be utilizing the variously already earmarked amounts (which I see at least potentially 3 distinct funds the City has), but beyond these amounts, there does not appear to be a source of funding, and items will need to be judiciously removed? My concern is that we cannot afford many things.
- a. Please refer to the Fiscal Impact Section of the CIP report. As described in the CIP report, \$13.6 million in fund balance (\$4.0 million in Capital Improvement Fund and \$9.5 million in Capital Reserve) is expected to be available as of 7/1/2022.
- b. The Proposed Budget shows Projected Fund Balance, which is a year-end projection that takes into account how much is expected to be spent by the end of the fiscal year. It projects year-end revenues and expenditures based on actuals to date.
- c. The Amended Budget Fund Balance assumes all Amended Revenues will be received and all Amended Budget expenditures will be spent.

Fund	Projected Fund Balance as of 7/1/2022	Amended Budget Fund Balance as of 7/1/2022
280 Park Dedication	\$2,175,440	\$2,175,440
420 Capital Improvement Fund	\$30,841,037	\$4,033,422
429 Capital Reserve*	\$9,546,568	\$9,546,568

*For reporting purposes, this fund rolls up/combines with Fund 420.



PARKS AND RECREATION DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: June 1, 2021

Subject

Recommendation from the Parks and Recreation Commission to approve funds in the amount of \$92,900 for the Fiscal Year (FY) 2021-22 Community Funding Grant Program; annual funding for the Cupertino Historical Society in the amount of \$20,000; and approval of final funding amounts for the Community Funding Program, to be included in the Recommended Budget for FY 2021-22. (Continued from May 18).

Recommended Action

Consider the recommendation from the Parks and Recreation Commission to approve funds in the amount of \$92,900 for the FY 2021-22 Community Funding Grant Program and consider annual funding for the Cupertino Historical Society in the amount of \$20,000. Determine and approve final funding amounts for the Community Funding Program, to be included in the Recommended Final Budget for FY 2021-22; and provide direction to staff.

The item was initially included in the May 18, 2021 City Council meeting agenda and was continued to the June 1, 2021 meeting. Written communications for the item from the May 18 meeting have been included in the staff report (Attachment A)

Discussion

Background

The Community Funding Grant application process opened in January and closed on February 1, 2021. The City received 17 applications for the FY 2021-22 Community Funding Grant Program application cycle. Staff reviewed all submitted applications for completeness and preliminary eligibility (Attachment A). The 17 applicants had the opportunity to attend the March 4 Parks and Recreation Commission meeting, provide additional information on their request, and answer any clarifying questions from the Commission.

Evaluation Process

At the April 1 regular meeting, the Parks and Recreation Commission facilitated the evaluation process and provided a funding recommendation to City Council. After receiving public comment on the item, the Commissioners each completed an evaluation form (Attachment B) before providing their total out of 100 for each application. Staff received the totals from each Commissioner and compiled them into the evaluation totals form (Attachment C), which the Commission used to discuss and determine their recommendation to Council.

Eligibility

After initial review of the 17 submitted applications, seven applications fully met eligibility requirements and ten applications were pending eligibility, requiring further consideration by the Commission. This is reflected in the Community Funding Applications Summary (Attachment D). Final eligibility was determined by the Commission during the evaluation process. The Commission agreed to provide rankings for all organizations, and deemed all eligible, except for the Silicon Valley Jewish Film Festival and Diwani Academy of Percussion Music in the United States. This decision was based on the Community Funding Grant Policy (Attachment E) restrictions/guidelines that note admission to or participation in the organization's event must be "free of charge" to Cupertino residents, unless stated in the application and approved by the Parks and Recreation Commission.

Parks and Recreation Commission Funding Recommendation to City Council

The Commission carried a motion with 4 votes yes and one recusal to recommend to City Council funding for the following organizations at a total of \$92,900:

West Valley Community Services of Santa Clara County, Inc. - \$10,000

Cupertino Library Foundation - \$15,000

Buddhist Tzu Chi Medical Foundation - \$7,400

Santa Clara Valley Audubon Society - \$8,500

Friends of Deer Hollow Farm - \$7,000

Chinese American Coalition for Compassionate Care - \$12,000

Valkyrie Robotics - \$3,000

Tian Hong Foundation - \$3,000

Rotary Club of Cupertino - \$12,000

Euphrat Museum of Art - \$15,000

The Commission considered the suggested funding range of \$70,000 to \$90,000 when providing their recommendation. The suggested funding range was included in the

most recent version of the Community Funding Grant Policy, which was adopted by City Council at their December 1, 2020 meeting.

The Commission noted that following procedures from past years, it is anticipated that City Council will consider funding for the Cupertino Historical Society as a separate line item within the Community Funding Program budget, in addition to the Commission's funding recommendation.

Cupertino Historical Society

Background

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

2015 - \$10,000
2016 - \$15,000
2017 - \$15,000
2018 - \$15,000
2019 - \$20,000 (individual budget line item)
2020 - \$20,000 (individual budget line item)

Current Considerations

The Historical Society is required to submit a grant application each year outlining how they anticipate utilizing funds (Attachment F), as well as a financial report at the end of each fiscal year, detailing how funds were used (Attachment G). At their December 1, 2020 meeting, City Council reviewed the Community Funding Grant Policy and requested to add funding of the Historical Society as a future agenda item for discussion. The policy is currently being reviewed and will be brought to Council for their consideration prior to the FY 2022-23 Community Funding Program cycle.

The \$20,000 funding towards the Cupertino Historical Society, in addition to the Commission's recommended funding amount of \$92,900 would result in a total Community Funding Program budget of \$112,900 for Fiscal Year 2021-22.

Sustainability Impact

No sustainability impact.

Fiscal Impact

If Council approves the Parks and Recreation Commission's recommended funding amount of \$92,900, the total Community Funding Program budget for Fiscal Year 2021-22 would total \$112,900, including \$20,000 allocated to the Cupertino Historical Society. Final funding amounts for the Community Funding Program will be included in the Recommended Final Budget for FY 2021-22.

Prepared by: Rachelle Sander, Assistant Director of Parks and Recreation
Whitney Zeller, Administrative Assistant

Reviewed by: Joanne Magrini, Director of Parks and Recreation

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

- A – Written Communications 5.18.21 City Council Meeting Item 18
- B – Community Funding Applications and Preliminary Eligibility Evaluations
- C – Commissioner Community Funding Evaluation Form
- D – Evaluation Totals and Parks and Recreation Commission Recommendation
- E – Community Funding Applications Summary
- F – Community Funding Grant Policy
- G – Historical Society Grant Application FY 2021-22
- H – Historical Society Financial Report (FY 2019-20)



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: February 18, 2020

Subject

Award of Construction Inspection Services, Plan Review Services, and Public Works Inspection Services contracts for the Vallco SB35 project.

Recommended Action:

1. Authorize the City Manager to award a 3-year contract to 4LEAF, Inc. (4LEAF) to provide Construction Inspection Services and Public Works Inspection Services for a not to exceed contract price of \$7,407,710 for the Vallco SB35 project.
2. Authorize the City Manager to award a 3-year contract to CSG Consultants, Inc. (CSG), for a not to exceed contract price of \$1,149,983 for plan review services for the Vallco SB35 project.
3. Authorize the City Manager to award a 3-year contract to Independent Code Consulting, Inc. (ICCI) for a not to exceed contract price of \$13,500,000 for plan review services for the Vallco SB35 project.

Discussion:

On February 4, 2020, City Council reviewed the recommendation to award contracts for three consulting firms to provide Professional Plan Review and Inspection Services for the Vallco S35 project. The February 4th staff report is included as attachment A.

Councilmembers made several recommendations to amend specific language in the contracts to ensure transparency in the construction and inspection phase of the project. Councilmembers also requested changes to the contract attachments, including the project description, to provide consistency.

As a result of the comments made by Councilmembers at the public hearing, staff revised contract provisions for Time of Performance, Invoices and Payments, Property Rights, and Records. Staff also worked with each of the consultants to provide a consistent Project Description and Scope of Services terms, attached as

Exhibit A to each of the contracts, as well as consistent Compensation terms, included as Exhibit B to each of the contracts. The updated contracts are included as Attachments B, C, and D to this report.

GREEN ROOF DESIGN

A discussion related to the design, review and approval of the Vallco SB35 project green roof was brought up at the meeting.

The green roof is being designed as a seismically isolated structure by the integrated architecture, civil, geotechnical, and engineering firms to ensure that the green roof systems maintain structural stability, are structurally isolated in an earthquake, have a reinforced soil stabilization design to prohibit sliding of landscaping, proper drainage, recycled water irrigation with good soil percolation, and robust waterproofing.

Along with Rafael Vinoly Architects, the developer's design team is comprised of two structural engineers, Nabih Yousef Associates and DCI Engineers, Olin Landscape, Sandis Civil Engineering, ME Engineers, Allana Buick & Bers Engineering, Langan Geotechnical Engineering, and a third-party seismic peer review panel.

A selected list of large-scale projects that feature landscape over structure in the portfolio of the design team include:

- Apple Park, Cupertino
- New Stanford Hospital, Palo Alto
- UCSF Ray and Dagmar Dolby Regeneration Medicine Building, San Francisco
- Pershing Square, Los Angeles
- Rockefeller University, New York
- Howard Hughes Medical Institute, Virginia
- The Getty Center, Los Angeles
- Battery Park City, New York
- Canary Wharf, London
- Bryant Park, New York
- The Church of Jesus Christ of Latter-Day Saints Conference Center, Salt Lake City
- Columbus Circle, New York
- Philadelphia Museum of Art Sculpture Garden, Philadelphia
- Dilworth Park, Philadelphia
- Carnegie Hall Roof Terrace, New York

The City's proposed building plan review firm, CSG Consultants Inc., has extensive experience in plan review of projects with systems and components similar to those on the Vallco SB35 project. For example, CSG has performed structural plan review on the elevated landscape system successfully implemented at Apple Park in Cupertino. In addition to the plan review of green roofs and elevated landscape systems, their licensed engineers have experience designing these types of systems and are well qualified to perform careful and detailed review of the design.

The City's proposed building and public works plan review firm, Independent Code Consultants, Inc., also has the expertise to ensure rainwater does not pond by verifying there is an inlet within each drainage shed, landscape areas are designed with the acceptable slope and flow toward inlets, and that there is an appropriate overland release for large storm events. Inlets depicted on the roof plans are represented on the mechanical, electrical and plumbing plans. Walking pathways on the green roof are designed and reviewed to meet ADA and T24 California accessibility requirements.

FEE REVENUES

At the February 4th meeting, Councilmembers also asked for information about City costs that the pass through fees pay for. Each year the City adopts a Fee Schedule that lists fees for numerous services and permits provided by City departments. The Engineering and Building fee schedules for building and public works permits is available here: <https://www.cupertino.org/our-city/departments/community-development/building/building-forms-fees>. These fees apply to all projects seeking these permits, including the Vallco SB35 project.

A user fee study was completed by the Matrix Consulting group in April 2016 to determine the full cost of various permitting services provided by the City. The fee study is attached to the April 5, 2016 City Council agenda packet. Based upon this study, Engineering, Building, and Planning fees were approved by Council to fully recover costs, thus fees charged are estimated to cover costs to provide the services and no more. Costs included in the fee study's calculation include:

Cost Component	Description
Direct	Salaries, benefits and allowable departmental expenditures for staff processing the permits.

Departmental Overhead	Division or Departmental administration / management and clerical support.
Citywide Overhead	City costs associated with central service costs such as payroll, human resources, budgeting, City management, etc.
Cross-Departmental Support	Costs associated with review or assistance by other departments in permit review.

In subsequent years these fee rates have been increased by the Consumer Price Index (CPI), Construction Cost Index (CCI), or by actual increases in salary and benefit changes as appropriate. The next user fee study is scheduled to occur in 2023 per the April 5, 2016 staff report.

Of the fees collected for the Vallco SB35 building and public work permit applications, the Plan Review consultants will receive 65% of the calculated plan review fee while the City will collect the remaining 35%. The Inspection firm will receive 75% of the calculated building permit fees while the City will collect the remaining 25%. Public Works inspections will be performed on a time and materials basis and the developer will provide a deposit account for the City to draw from to pay for these services.

As indicated in the fee study, the City's portion of the plan review and inspection fees will be used to fund associated City staff time and overhead. This includes building and public works staff time (including salaries and benefits) and expenses to administer review of the permit applications, coordinate with consultants and the applicant, and perform the final review of all reviews and checks performed by the City's consultants. Collected fees will also fund additional permit review by staff from other departments, such as planning, and support services provided by the Department of Administrative Services, City Manager's office, and City Attorney's office. Finally, fees will fund a portion of the City's departmental and citywide overhead.

PROCESSING VALLCO SB35 PROJECT PERMIT APPLICATIONS

At the February 4th Council meeting, there were also questions about the timing of the City's processing of permits for the Vallco SB 35 Project. Since October 2018, the developer has submitted applications for 8 separate demolition permits and 5 separate construction permits for the Project. The City has prioritized its review of these permit applications to accommodate the developer's planned demolition and construction sequencing. Accordingly, the City's work in 2019 focused on the

demolition phase of the project. To date, the City has issued 7 out of the 8 demolition permit applications it has received. The last remaining demolition permit is for the demolition of the Wolfe Road Bridge Structure, which is in the review process and is currently with the applicant to respond to comments.

For the construction permit applications, the City has been prioritizing review of permits for other site ready work. The City is currently prepared to issue permits for Make-Ready Utility work pending final submittals by Vallco. This work includes the relocation and demolition of existing utilities to prepare the site for the proposed development.

At the same time, the City has been preparing for the third-party building and public works plan review and inspection services that will be necessary to process other pending and anticipated construction permits as the project moves into the construction phase. Thus, last year the City conducted a competitive procurement process for these services through a Request for Proposals and subsequent interviews. Once the preferred vendors were selected, the City began negotiations with the consultants over payment structures. The City also worked with the consultants to establish in advance processes and procedures to ensure the review process will be as efficient and effective as possible utilizing methods learned from the Apple Park project. The consultants are now ready to immediately begin plan review of other pending applications after City Council approval of the contracts for this item.

Sustainability Impact:

No sustainability impact.

Fiscal Impact:

The City will not incur a net fiscal impact. The City will be receiving permit, plan check, and inspection fees and deposits from the developer. These fees and deposits will be recorded in specific liability and revenue accounts. From the deposits and revenues received, a portion (65%-75%) will be used for permit, plan check, and building inspections performed by Consultants and expensed accordingly in specific accounts. Deposits for Public Works inspections will be used for consultant inspections expensed on a time and materials basis.

Prepared by: Albert Salvador, Assistant Director of Community Development
Reviewed by: Benjamin Fu, Director of Community Development
Approved for Submission by: Deborah L. Feng, City Manager

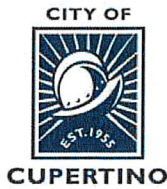
Attachments:

A – February 4, 2020 Staff Report for Plan Review and Inspection Services

B – Services Agreement – CSG Consultants, Inc.

C – Services Agreement – Independent Code Consultants, Inc.

D – Services Agreement – 4LEAF, Inc.



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and 4Leaf, Inc. ("Contractor"), a corporation for Building and Public Works inspection services for the Vallco Town Center SB 35 project, and is effective on the last date signed below ("Effective Date").

2. SERVICES

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**.

3. TIME OF PERFORMANCE

3.1 This Agreement begins on the Effective Date and ends on June 30, 2023 ("Contract Time"), unless terminated earlier as provided herein. Contractor's Services shall begin on the Effective Date and shall be completed by June 30, 2023. 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 specified by the City for each inspection task.

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. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$ 7,407,710 ("Contract Price"), based upon the scope of services in Exhibit A and the schedule, budget, and rates included in Exhibit B, 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, the individuals performing the work, and the amount due for the preceding month/period. 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. INDEPENDENT CONTRACTOR

51 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.

52 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.

53 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.

55 Tools, Materials, and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

56 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, and copies of, 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 shall be provided to the City every six months and upon completion of the work to be performed hereunder or upon termination of this Agreement, as requested by City, and thereupon shall be the exclusive property of the City. In any case, no Work Product shall be shown to any third-party without prior written approval of City and all communications with third parties shall copy City staff.

7.2 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.

7.3 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. RECORDS

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. If a supplemental examination or audit of the records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breaches of contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with supplemental examination or audit.

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. INDEMNIFICATION

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. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit C**, 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

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 Albert Salvador 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 Craig Tole 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. TERMINATION

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. 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 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. INSERTED PROVISIONS

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. SEVERABILITY/PARTIAL INVALIDITY

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 Payment of Benefits and Taxes, 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:

<p>To City of Cupertino: 10300 Torre Ave., Cupertino CA 95014</p> <p>Attention: Albert Salvador</p> <p>Email: alberts@cupertino.org</p>	<p>To Contractor: 4Leaf, Inc 2126 Rheem Dr., Pleasanton, CA 94588</p> <p>Attention: Craig Tole</p> <p>Email: ctole@4leafinc.com</p>
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27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if (a) it complies with the purchasing and contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, as amended from time to time, (b) is signed by the City Manager or an authorized designee, and (c) is approved for form by the City Attorney's Office.

28. 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

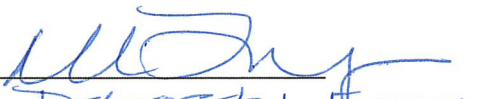
A Municipal Corporation

By

Name

Title

Date


Deborah Liffeng
City Manager
City Manager
2-20-2020


CONTRACTOR

By

Name


Title

Date



Kevin Duggan
President
2/12/20

Tax I.D. No.: 94-3393574

APPROVED AS TO FORM:


HEATHER M. MINNER
Cupertino City Attorney

ATTEST:


KIRSTEN SQUARCIA
City Clerk 2/20/20

1208679.1

EXHIBIT A – 4LEAF

Scope of Services

PROJECT DESCRIPTION

The Vallco Town Center SB35 Project is located on the 50.82-acre Vallco Mall property in the City of Cupertino, between Interstate 280 and Steven's Creek Boulevard on both sides of North Wolfe Road. The plans approved by the City of Cupertino for the development of the Vallco SB35 Project include residential, commercial, and office uses spread among multiple buildings, with underground and surface parking, two plazas, and a green roof. Multiple tenant improvements will come later in the course of the Project.

SCOPE OF INSPECTION SERVICES

BUILDING INSPECTION

Contractor shall provide Building Field Inspection services for the Project including, but not limited to the following components:

- Verification of compliance with California Building Standards Code, including building, Fire/life safety, disabled access, structural provisions, Electrical, Plumbing, and Mechanical Code, California Energy and Green Building Code and referenced standards.
- City of Cupertino Building Ordinance Code and other related local code provisions;
- Verification of compliance with the City approved plans, City standard details and specifications.
- Provide technical support in complex code interpretations and approval of alternate materials and methods of construction.
- Ensuring the quality of work.
- Coordination with City departments, other public agencies, and various utilities.
- Maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software. Producing and providing clear, succinct, well organized, and well-written inspection report/documents.
- Attend meetings with City staff as requested.

Each person performing inspections must be certified by the International Code Council (ICC), IAPMO, OSHPD, or DSA, in the discipline for which they are performing the inspection. Inspection personnel must have experience in reviewing/reading of plans for large residential and commercial mixed uses and high-rise buildings to comply with applicable law.

PUBLIC WORKS INSPECTION

Contractor shall provide Construction Inspection services for the Project including, but not limited to the following components:

- Review Conformed Set of Project Documents (plans, specs, etc.).
- Attend Pre-Construction Meeting.
- Inspect and confirm the Contractor's work follows the Contract Documents on a daily basis.
- Provide oversight of pot-holing of existing utilities to ensure these are protected and functioning during construction.
- Identify and coordinate with various City and private utilities for any additional inspections that are required during the project.
- Monitor and document that defective or non-compliant work is remedied by the Contractor.
- Maintain written and digital (photographs and videos) documentation of daily site activities.
- Maintain independent set of hard copy of As-Built drawings throughout Project's duration.
- Monitor, document, and ensure the Contractor's compliance with site requirements (e.g. Erosion Control Plan or Stormwater Pollution Prevention Plan, Traffic Control Plan(s), excavation and shoring plan, and health and safety).
- Inspect and collect material certificates for permanent materials and equipment that are received at Site. Maintain copy of records in project files.
- Confirm and document that the Contractor and subcontractor's materials such as concrete, asphalt, rebar, etc. are only being procured and delivered from certified / approved batch plants, steel shops, etc.
- Measure and document all material quantities placed by Contractor. Collect certificates of compliance and weight/quantity certificates. Review pay estimates submitted by the Contractor and provide comments to the City's designated Project Manager.
- Provide notice to the Contractor of additional dust suppression control when required.
- Coordinate materials testing and special inspections and document results and ensure deficient items are corrected.
- Ensure all special inspections and materials testing are performed in conformance with the project's specifications.
- Prepare punch list and inspection of item corrective actions.
- Provide hard copy of As-Built drawings to City.
- Attend meetings with City staff as requested.

The above public works third party inspection services are dependent upon the developer providing an up-front funding mechanism.

**EXHIBIT B – 4LEAF
Compensation**

Not-to-Exceed Amount: \$7,407,710 (for Building and Public Works Inspection Services)

BUILDING INSPECTION Payment Schedule for each building permit:

Consultant will receive 75% of the collected permit fee. The below chart lists payment schedules by percentage of that amount.*

Progress	4LEAF Fee (75% of City Permit)	Milestone
Permit Issuance	25% of the 4LEAF Fee	Date of issuance
60% Progress	Delta between 25% and 60% of the 4LEAF Fee	Proposal that milestone is met will be made by 4LEAF in writing, per permit (evidence supplied upon request). Milestone will be reached when there is mutual agreement between 4LEAF and Building Official. Agreement will not be unreasonably withheld.
90% Progress	Delta between 60% and 90% of the 4LEAF Fee	Proposal that milestone is met will be made by 4LEAF in writing, per permit (evidence supplied upon request). Milestone will be reached when there is mutual agreement between 4LEAF and Chief Building Official. Agreement will not be unreasonably withheld.
90 days after Certificate of Occupancy	Remaining 10% of 4LEAF Fee	Date of approval of final building inspection of building permit.

A summary cover sheet with all permits listed will accompany all progress invoices from 4LEAF.

*Where collected permit fees are \$15,000 or less for an individual building permit, consultant will receive the total sum of 75% of the collected permit fee. Consultant will submit monthly invoices to the City for these collected fees.

Any requests for additional services by the owner or contractor not covered by the original permit fee will be entered into a tracking system by 4LEAF. The owner or contractor shall pay

the fee to the City prior to the service being rendered. The City will initiate a Supplemental Permit to track these additional fees. All additional services shall be approved by the Building Official.

The City of Cupertino will collect and manage the payment collection of all permit fees. 4LEAF will receive 75% of any additional permit fees collected by the City for re-inspections, overtime inspections and out-of-scope inspections and associated costs. 4LEAF will submit monthly invoices to the City for these additional collected fees.

4LEAF will be paid within 30 days of submitting complete invoices to the City based on the above schedule of payments.

Proposed PUBLIC WORKS INSPECTION Payment Schedule and Rates:

Field Services

Public Works Resident Engineer	\$ 197 per hour
Public Works Inspector	\$ 144 per hour
Project Administrator	\$ 74 per hour

A. Overtime and Premium time will be charged as follows:

- *Night Time (work begun after 4PM or before 5AM)* 1.125 x Hourly Rate
- *Overtime (over 8 hour M-F or Saturdays)* 1.35 x Hourly Rate
- *Overtime (over 8 hour Sat or 1st 8 hour Sun)* 2 x Hourly Rate
- *Overtime (over 8 hours Sun or Holidays)* 2.5 x Hourly Rate

B. Work is subject to 4-hour minimum charges unless stated otherwise. Services billed in 4-hour increments.

C. All work with less than 8 hours rest between shifts will be charged the appropriate overtime rate.

D. Mileage and/or travel cost and travel time will be charged from site for all offsite work.

E. All expenses approved for billing by the City prior to purchase will be charged at cost.

F. 4LEAF will submit monthly invoices. 4LEAF will be paid within 30 days of submitting complete invoices to the City

G. All rates are subject to annual escalation of 3% each January 1st starting January 1, 2021.

H. Rates will be adjusted if changed circumstances require compliance with prevailing wage laws under the California Labor Code.

General Provisions:

If work on any task is not completed within the time specified by the City, and 4LEAF has not been able to address or mitigate delays to the satisfaction of the Building Official or City Engineer, the City will provide 4LEAF a written warning, and if work is not completed within 30 days of the warning, the City may hire a separate consultant to complete the work, or

perform the work with City employees, and 4LEAF shall cover the costs to complete the work, to the extent not already covered by the fees submitted for that work.

If the City is required to refund fees for any reason, or settles a claim for a refund in good faith, 4LEAF must remit to City 4LEAF's pro rata share of the refund within 30 days of notice by the City.

EXHIBIT C
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 01 (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 **\$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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/3/2019

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 be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Granite Professional Insurance Brokerage Inc. 6600 Koll Center Parkway #100 Pleasanton CA 94566	CONTACT NAME: Cert Team PHONE (A/C, No, Ext): 925-462-8400 E-MAIL ADDRESS: certrequest@graniteins.com FAX (A/C, No): 925-462-8888
INSURED 4LEAF, Inc. 2126 Rheem Dr Pleasanton CA 94588	INSURER(S) AFFORDING COVERAGE INSURER A: Travelers Property Casualty Company of America INSURER B: West American Insurance Company INSURER C: National Union Fire Ins. Co PA INSURER D: Evanston Insurance INSURER E: Redwood Fire & Casualty INSURER F:
	NAIC # 25674 44393 19445 35378 11673

COVERAGES**CERTIFICATE NUMBER:** 289676831**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	6800J268720	4/9/2019	4/9/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BAW (20) 58606441	4/9/2019	4/9/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			BE 028179840	4/9/2019	4/9/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	Y	FOWC011885	4/9/2019	4/9/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			MKL7PL0003614	4/11/2019	4/9/2020	Each Claim 2,000,000 Annual Aggregate 2,000,000 Deductible 50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All operations of the named insured. Certificate holder is named as additional insured to General Liability and Automobile Liability policies per attached endorsements CG D3 81 09 15 and CA 88 10 01 13. Waiver of subrogation applies to General Liability per endorsement CG D3 81 09 15. Waiver of subrogation applies to Auto Liability per endorsement CA 88 10 01 13. The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as additional insured on General Liability Policy per attached endorsement CG D3 81 09 15. Primary and non-contributory applies to General Liability policy per attached endorsement CG D3 81 09 15. Waivers of subrogation apply to General Liability and Workers Compensation Policies per attached endorsements CG D3 81 09 15 and WC 99 04 10 C. Professional Liability Retro Date 4/1/07

CERTIFICATE HOLDER**CANCELLATION**

City of Cupertino
10300 Torre 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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

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SECTION II - LIABILITY COVERAGE is amended as follows:**1. BROAD FORM INSURED**

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, "insured" does not include any organization that:

- (1) Is a partnership or joint venture; or
- (2) Is an insured under any other automobile policy; or
- (3) Has exhausted its Limit of Insurance under any other automobile policy.

Paragraph d. (2) of this provision does not apply to a policy written to apply specifically in excess of this policy.

- e. Any organization you newly acquire or form, other than a partnership or joint venture, of which you own more than 50 percent of the voting stock. This automatic coverage is afforded only for 180 days from the date of acquisition or formation. However, coverage under this provision does not apply:

- (1) If there is similar insurance or a self-insured retention plan available to that organization;

- (2) If the Limits of Insurance of any other insurance policy have been exhausted; or
- (3) To "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

2. EMPLOYEES AS INSURED

SECTION II - LIABILITY COVERAGE, paragraph **A.1.** - WHO IS AN INSURED is amended to include the following as an insured:

- f. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow, but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".
- g. An "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE, paragraph **A.1.** - WHO IS AN INSURED is amended to include the following as an insured:

- h. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

- (1) Only with respect to the operation, maintenance or use of a covered "auto";
- (2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement, or the permit has been issued to you; and
- (3) Only for the duration of that contract, agreement or permit

4. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, Coverage Extensions, **2.a.** Supplementary Payments, paragraphs (2) and (4) are replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic 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.

5. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, exclusion **B.5.** FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

6. HIRED AUTO PHYSICAL DAMAGE

Paragraph **A.4.** Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

- a. You hire, rent or borrow; or

- b. Your "employee" hires or rents under a written contract or agreement in that "employee's" name, but only if the damage occurs while the vehicle is being used in the conduct of your business,

subject to the following limit and deductible:

- A. The most we will pay for "loss" in any one "accident" or "loss" is the smallest of:
- (1) \$50,000; or
 - (2) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (3) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality, minus a deductible.
- B. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- C. Subject to the limit, deductible and excess provisions described in this provision, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.
- D. Subject to a maximum of \$1,000 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss.
- E. This coverage extension does not apply to:
- (1) Any "auto" that is hired, rented or borrowed with a driver; or
 - (2) Any "auto" that is hired, rented or borrowed from your "employee".

For the purposes of this provision, SECTION V - DEFINITIONS is amended by adding the following:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

7. TOWING AND LABOR

SECTION III - PHYSICAL DAMAGE COVERAGE, paragraph A.2. Towing, is amended by the addition of the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles, we will pay up to \$50 per disablement.
- b. For "light trucks", we will pay up to \$50 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.
- c. For "medium trucks", we will pay up to \$150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 - 20,000 pounds.

However, the labor must be performed at the place of disablement.

8. PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a., Coverage Extension of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended to provide a limit of \$50 per day and a maximum limit of \$1,500

9. RENTAL REIMBURSEMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, **A. COVERAGE**, is amended by adding the following:

- a. We will pay up to \$75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "accident" or "loss", to an "auto" for which we also pay a "loss" under Comprehensive, Specified Causes of Loss or Collision Coverages. We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."
- b. Rental Reimbursement will be based on the rental of a comparable vehicle, which in many cases may be substantially less than \$75 per day, and will only be allowed for the period of time it should take to repair or replace the vehicle with reasonable speed and similar quality, up to a maximum of 30 days.
- c. We will also pay up to \$500 for reasonable and necessary expenses incurred by you to remove and replace your tools and equipment from the covered "auto".
- d. This coverage does not apply unless you have a business necessity that other "autos" available for your use and operation cannot fill.
- e. 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 under Paragraph 4. Coverage Extension.
- f. No deductible applies to this coverage.

For the purposes of this endorsement provision, materials and equipment do not include "personal effects" as defined in provision 11.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, **A. COVERAGE**, we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay is \$1,000.

11. PERSONAL EFFECTS COVERAGE

- A. SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$600 for "personal effects" stolen with the "auto."

The insurance provided under this provision is excess over any other collectible insurance.

- B. SECTION V - DEFINITIONS** is amended by adding the following:

For the purposes of this provision, "personal effects" mean tangible property that is worn or carried by an insured." "Personal effects" does not include tools, equipment, jewelry, money or securities.

12. ACCIDENTAL AIRBAG DEPLOYMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, **B. EXCLUSIONS** is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion for "loss" relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Any insurance we provide shall be excess over any other collectible insurance or reimbursement by manufacturer's warranty. However, we agree to pay any deductible applicable to the other coverage or warranty.

13. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, **B. EXCLUSIONS**, exception paragraph **a.** to exclusions **4.c.** and **4.d.** is deleted and replaced with the following:

Exclusion 4.c. and 4.d. do not apply to:

- a. Electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment 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" and physical damage coverages are provided for the covered "auto"; or

If the "loss" occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.

14. LOAN / LEASE GAP COVERAGE

- A. Paragraph C., LIMIT OF INSURANCE of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by adding the following:

The most we will pay for a "total loss" to a covered "auto" owned by or leased to you in any one "accident" is the greater of the:

1. Balance due under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of:
 - a. Overdue payments and financial penalties associated with those payments as of the date of the "loss",
 - b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear,
 - c. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease,
 - d. Transfer or rollover balances from previous loans or leases,
 - e. Final payment due under a "Balloon Loan",
 - f. The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto",
 - g. Security deposits not refunded by a lessor,
 - h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto",
 - i. Any amount representing taxes,
 - j. Loan or lease termination fees; or

2. The actual cash value of the damage or stolen property as of the time of the "loss".

An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the "loss". This adjustment is not applicable in Texas.

B. ADDITIONAL CONDITIONS

This coverage applies only to the original loan for which the covered "auto" that incurred the loss serves as collateral, or lease written on the covered "auto" that incurred the loss.

C. SECTION V - DEFINITIONS is changed by adding the following:

As used in this endorsement provision, the following definitions apply:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

A "balloon loan" is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

15. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Paragraph **D. Deductible** of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

16. PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)

Paragraph **D. Deductible** of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

The deductible does not apply to "loss" caused by collision to such covered "auto" of the private passenger type or light weight truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as maximum loaded weight the "auto" is designed to carry while it is:

- a. In the charge of an "insured";
- b. Legally parked; and
- c. Unoccupied.

The "loss" must be reported to the police authorities within 24 hours of known damage.

The total amount of the damage to the covered "auto" must exceed the deductible shown in the Declarations.

This provision does not apply to any "loss" if the covered "auto" is in the charge of any person or organization engaged in the automobile business.

17. TWO OR MORE DEDUCTIBLES

Under SECTION III PHYSICAL DAMAGE COVERAGE, if two or more company policies or coverage forms apply to the same accident, the following applies to paragraph D. Deductible:

- a. If the applicable Business Auto deductible is the smaller (or smallest) deductible it will be waived; or
- b. If the applicable Business Auto deductible is not the smaller (or smallest) deductible it will be reduced by the amount of the smaller (or smallest) deductible; or
- c. If the loss involves two or more Business Auto coverage forms or policies the smaller (or smallest) deductible will be waived.

For the purpose of this endorsement company means any company that is part of the Liberty Mutual Group.

SECTION IV - BUSINESS AUTO CONDITIONS is amended as follows:

18. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV- BUSINESS AUTO CONDITIONS, Paragraph **B.2.** is amended by adding the following:

If you unintentionally fail to disclose any hazards, exposures or material facts existing as of the inception date or renewal date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced.

However, you must report the undisclosed hazard of exposure as soon as practicable after its discovery, and we have the right to collect additional premium for any such hazard or exposure.

19. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph **A.2.a.** is replaced in its entirety by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when it is known to:
 - 1. You, if you are an individual;
 - 2. A partner, if you are a partnership;
 - 3. Member, if you are a limited liability company;
 - 4. An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.

To the extent possible, notice to us should include:

- (1) How, when and where the "accident" or "loss" took place;
- (2) The "insureds" name and address; and
- (3) The names and addresses of any injured persons and witnesses.

20. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph **A.5.**, Transfer of Rights of Recovery Against Others to Us, is amended by the addition of the following:

If the person or organization has waived those rights before an "accident" or "loss", our rights are waived also.

21. HIRED AUTO COVERAGE TERRITORY

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph **B.7.**, Policy Period, Coverage Territory, is amended by the addition of the following:

- f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the insured's responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

SECTION V - DEFINITIONS is amended as follows:

22. BODILY INJURY REDEFINED

Under SECTION V - DEFINITIONS, definition **C.** is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

COMMON POLICY CONDITIONS

23. EXTENDED CANCELLATION CONDITION

COMMON POLICY CONDITIONS, paragraph **A.** - CANCELLATION condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days prior notice of cancellation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

**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.

Schedule**Blanket Waiver**

Person/Organization	Blanket Waiver – Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
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Job Description	Waiver Premium (prior to adjustments)
All CA Operations	2416.00

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: 04/09/2019

Policy No.: FOWC011885

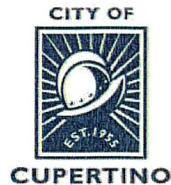
Endorsement No.:

Insured:

Premium \$

Insurance Company: Redwood Fire and Casualty Ins Co

Countersigned by _____



DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE) WITH CSG CONSULTANTS, INC.

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and CSG Consultants, Inc. ("Consultant"), a Corporation for Building plan review services for the Vallco Town Center SB35 project ("Project"), and is effective on the last date signed below ("Effective Date").

2. SERVICES

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**.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on June 30, 2023, unless terminated earlier as provided herein ("Contract Time"). The City's appropriate department head or 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. Consultant must deliver the services in accordance with the schedule specified by the City for each task. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. Consultant must begin work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified.

3.3 Time is of the essence for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual work but that will be capped so as not to exceed \$1,150,000 ("Contract Price"), based upon the scope of services in **Exhibit A** and the budget and compensation schedule included in **Exhibit B**, 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. Invoices must be submitted in accordance with the compensation schedule and state a description of the deliverable completed, the individuals performing the work, and the amount due for the preceding period. 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. INDEPENDENT CONTRACTOR

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

5.2 Qualifications and Standard of Care. Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

5.3 Permits and Licenses. Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

5.4 Sub-Consultants. Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

5.5 Tools, Materials, and Equipment. Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant 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. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant'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 Consultant. 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 Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant 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. This Section 5.6 survives the expiration/termination of this Agreement.

5.7 Errors and Omissions. Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

During the Contract Time, Consultant 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. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Consultant in, and copies of, 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 shall be provided to the City every six months and upon completion of the work to be performed hereunder or upon termination of this Agreement, as requested by City, and thereupon shall be the exclusive property of the City. In any case, no Work Product shall be shown to any third-party without prior written approval of City and all communications with third parties shall copy City staff.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

7.3 Patents and Licenses. Consultant 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 Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

7.5 Deliverables and Format. Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

8. RECORDS

8.1 Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

8.2 Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination or audit. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

9. ASSIGNMENT

Consultant 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 Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

10. PUBLICITY / SIGNS

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles. No signs may be posted, exhibited, or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

a. Indemnity for Design Professional Liability: With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors

(collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation.

c. Claims for Other Liability. Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

11.2 Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

11.3 Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

11.4 Consultant 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 Consultant 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.

11.5 This Section 11 shall survive expiration or termination of this Agreement.

12. INSURANCE

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit C**. City will not execute the Agreement until Consultant has submitted and City has reasonably 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. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Consultant shall comply with all laws and regulations applicable to this Agreement. Consultant will promptly notify City of changes in the law or other conditions that may affect the Project or Consultant's ability to perform. Consultant is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act, or other federal or state law, rule or regulation.

13.2 Labor Laws. Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

13.3 Discrimination Laws. Consultant 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. Consultant shall comply with all anti-discrimination laws, including Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited.

13.4 Conflicts of Interest. Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant 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. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and

other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

14. PROJECT COORDINATION

14.1 City Project Manager. The City's Project Manager for all purposes under this Agreement will be Albert Salvador, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

14.2 Consultant Project Manager. Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be Michael Loomis, who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant 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. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California.

Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant 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. 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 Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 18 survives the expiration/termination of this Agreement.

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 any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. 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 this 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. INSERTED PROVISIONS

Each contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

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. SEVERABILITY/PARTIAL INVALIDITY

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.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

26. NOTICES

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery 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: 10300 Torre Avenue Cupertino, CA 95014 Attention: Albert Salvador Email: alberts@cupertino.org	To Consultant: CSG Consultants, Inc 3150 Almaden Expressway, #255 San Jose, CA 95118 Attention: Michael Loomis Email: michaelloomis@csgengr.com
--	--

27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if it complies with the contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney's Office.


28. EXECUTION


The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. 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 on the Effective Date stated earlier in this Agreement.

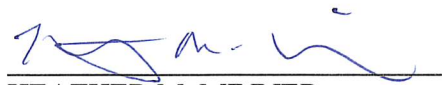
CITY OF CUPERTINO

A Municipal Corporation

By 
Name Cyrus Kianpour
Title President
Date 02-13-20
Tax I.D. No.: 91-2053749

By 
Name Deborah LiFong
Title City Manager
Date 2.20.2020

APPROVED AS TO FORM:


HEATHER M. MINNER
Cupertino City Attorney

ATTEST:



KIRSTEN SQUARCIA
City Clerk
DATE: 2/20/20

EXHIBIT A – CSG

Scope of Services

PROJECT DESCRIPTION

The Vallco Town Center SB35 Project is located on the 50.82-acre Vallco Mall property in the City of Cupertino, between Interstate 280 and Steven's Creek Boulevard on both sides of North Wolfe Road. The plans approved by the City of Cupertino for the development of the Vallco SB35 Project include residential, commercial, and office uses spread among multiple buildings, with underground and surface parking, two plazas, and a green roof. Multiple tenant improvements will come later in the course of the Project.

SCOPE OF BUILDING PLAN REVIEW SERVICES

CSG will provide building plan review services for **core & shell permits for the foundation and superstructures for multiple buildings, two below grade parking structures with foundation and podium with associated structural elements, a bridged structure over Wolfe Road and green roof structure with associated structural and landscape elements**, and other related plan review services as assigned by the Building Official. CSG's scope of work excludes site work and tenant improvements.

Plan review services will include, but not be limited to, the following components:

1. Ensure compliance with State and local laws and regulations.
2. Ensure compliance with City of Cupertino Municipal Code and City of Cupertino's Conditions of Approval.
3. Ensure drawings conform and comply with Title 24 California Code of Regulations.
 - Fire and Life-Safety
 - Accessibility
 - Structural
 - Plumbing
 - Mechanical
 - Electrical
 - Energy
 - Green Building Standards
4. Substantiate structural plans meet recommendations made in the project geotechnical report.
5. Ensure plans and details are consistent with product specifications and certification.

OTHER TASKS

1. Attendance of Design and Construction Meetings.

2. Review and assist with technical problems that arise during construction, including RFI's and shop drawings.
3. Will maintain a tracking system to document all plan reviews and reports, tracking of construction progress and processing of change orders, RFI's and deferred submittals.
4. Other related plan review services as assigned by the Building Official.

**EXHIBIT B – CSG
Compensation**

Not-to-Exceed Amount: \$1,150,000.

Payment Schedule for each building permit application:

Consultant will receive 65% of the submitted Plan Check fee. The below chart lists payment schedules for standard review by percentage of that amount.*

Payment	Amount	Payment Milestone
1 st Payment	30% Plan Check Fee	Initial Assignment for review
2 nd Payment	25% Plan Check Fee	1 st Comprehensive Plan Review comments issued to applicant
3 rd Payment	25% Plan Check Fee	2 nd Comprehensive Plan Review comments issued to applicant
Final Payment	20% Total Plan Check Fee	Approval of Plans

*Where submitted Plan Check fees are \$15,000 or less for an individual building permit applications, consultant will receive the total sum of 65% of the collected plan check fee. Consultant will submit monthly invoices to the City for these collected fees.

Consultant will receive 65% of any additional Plan Check fees collected by the City for Expedited, Overtime, and/or Non-Business hours Plan Review services requested by applicant. Consultant will submit monthly invoices to the City for these additional collected fees.

Major design changes occurring after the initial plan review submittal will be charged as deemed appropriate and negotiated by all parties for building and public works plan review, provided additional permit fees are submitted by the developer for the major design changes.

Consultant will be paid within 30 days of submitting complete invoices to the City based on the above schedule of payments.

If work on any task is not completed within the time specified by the City, and Consultant has not been able to address or mitigate delays to the satisfaction of the Building Official, the City will provide Consultant a written warning, and if work is not completed within 30 days of the warning, the City may hire a separate consultant to complete the work, or perform the work with City employees, and Consultant shall cover the costs to complete the work, to the extent not already covered by the Plan Check fees submitted for that work.

While Plan Check fees are nonrefundable after review has started, if the City is required to refund fees for any reason, or settles a claim for a refund in good faith, Consultant must remit to City Consultant's pro rata share of the refund within 30 days of notice by the City.

EXHIBIT C
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 01 (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 **\$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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/3/2020

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

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

PRODUCER Arthur J. Gallagher & Co. Insurance Brokers of CA, Inc. LIC #0726293 1255 Battery Street, Suite 450 San Francisco CA 94111	CONTACT NAME:	
	PHONE (A/C, No., Ext): 415-536-8617 FAX (A/C, No.): 415-536-8627	
INSURED CSG Consultants, Inc. 550 Pilgrim Drive Foster City, CA 94404	E-MAIL ADDRESS: certrequests@ajg.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Arch Insurance Company	11150
	INSURER B: Redwood Fire and Casualty Insurance Co	11673
	INSURER C: Zurich American Insurance Company of IL	27855
	INSURER D: Travelers Property Casualty Co of America	25674
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 274054137

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			CPO-7414724-00	2/2/2020	12/4/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 No Ded \$
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			CPO-7414724-00	2/2/2020	12/4/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ No Ded \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			ZUP-21P37869-20-NF	2/2/2020	12/4/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	Y	CSWC036787	12/4/2019	12/4/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER No Ded E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	<input checked="" type="checkbox"/> Professional Liability retro date: 1/1/1991		Y	PAAEP0008804	12/4/2019	12/4/2020	Each Claim Aggregate Deductible: \$5,000,000 \$5,000,000 \$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Vallco Town Center

CERTIFICATE HOLDER

CANCELLATION

City of Cupertino
10300 Torre Avenue
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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
 - (a) Less than 52 feet long; and
 - (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:
 - a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

- b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph 6. under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph 9.a. of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. **Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph (b) of Paragraph a. is replaced by the following:

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

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under **Supplementary Payments - Coverages A and B**, Paragraph 1.b. is replaced by the following:

- b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

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

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
 - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- 2. 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.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) 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.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.**

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:
 - (1) 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.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. 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:

- a. Required by the contract or agreement; or
 - b. 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.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph 2.a.(1) of Section II - Who Is An Insured is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

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

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 8. **Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization 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" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF CANCELLATION PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Any term or provision of the Cancellation Conditions of the policy or any endorsement amending or replacing such Conditions is amended by the following:

If you have agreed in a written contract or written agreement to provide a person or organization notice of cancellation we agree to the following:

Provide 30 days prior written cancellation notice to such person or organization for reasons other than nonpayment of premium, but only if we are provided with a schedule of persons or organizations with whom you have agreed to provide notification more than 30 days before the cancellation is to take effect.

For purposes of this endorsement, knowledge of the agent as to the persons or organizations requesting notice of cancellation is insufficient to invoke our duty to provide notice of cancellation unless the identity of the persons or organizations is provided directly to us in accordance with the terms of this endorsement.

Failure to provide notice to a person or organization in accordance with the terms of this endorsement shall not extend the effective date of the cancellation or otherwise affect cancellation of the policy as to any insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

COVERAGE INDEX

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SECTION II - LIABILITY COVERAGE is amended as follows:**1. BROAD FORM INSURED**

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, "insured" does not include any organization that:

- (1) Is a partnership or joint venture; or
- (2) Is an insured under any other automobile policy; or
- (3) Has exhausted its Limit of Insurance under any other automobile policy.

Paragraph d. (2) of this provision does not apply to a policy written to apply specifically in excess of this policy.

- e. Any organization you newly acquire or form, other than a partnership or joint venture, of which you own more than 50 percent of the voting stock. This automatic coverage is afforded only for 180 days from the date of acquisition or formation. However, coverage under this provision does not apply:

- (1) If there is similar insurance or a self-insured retention plan available to that organization;

- (2) If the Limits of Insurance of any other insurance policy have been exhausted; or
- (3) To "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

2. EMPLOYEES AS INSURED

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- f. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow, but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".
- g. An "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- h. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

- (1) Only with respect to the operation, maintenance or use of a covered "auto";
- (2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement, or the permit has been issued to you; and
- (3) Only for the duration of that contract, agreement or permit

4. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, Coverage Extensions, 2.a. Supplementary Payments, paragraphs (2) and (4) are replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic 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.

5. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, exclusion B.5. FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

6. HIRED AUTO PHYSICAL DAMAGE

Paragraph A.4. Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

- a. You hire, rent or borrow; or

- b. Your "employee" hires or rents under a written contract or agreement in that "employee's" name, but only if the damage occurs while the vehicle is being used in the conduct of your business,

subject to the following limit and deductible:

- A. The most we will pay for "loss" in any one "accident" or "loss" is the smallest of:
- (1) \$50,000; or
 - (2) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (3) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality, minus a deductible.
- B. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- C. Subject to the limit, deductible and excess provisions described in this provision, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.
- D. Subject to a maximum of \$1,000 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss.
- E. This coverage extension does not apply to:
- (1) Any "auto" that is hired, rented or borrowed with a driver; or
 - (2) Any "auto" that is hired, rented or borrowed from your "employee".

For the purposes of this provision, SECTION V - DEFINITIONS is amended by adding the following:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

7. TOWING AND LABOR

SECTION III - PHYSICAL DAMAGE COVERAGE, paragraph A.2. Towing, is amended by the addition of the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles, we will pay up to \$50 per disablement.
- b. For "light trucks", we will pay up to \$50 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.
- c. For "medium trucks", we will pay up to \$150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 - 20,000 pounds.

However, the labor must be performed at the place of disablement.

8. PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a., Coverage Extension of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended to provide a limit of \$50 per day and a maximum limit of \$1,500

9. RENTAL REIMBURSEMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

- a. We will pay up to \$75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "accident" or "loss", to an "auto" for which we also pay a "loss" under Comprehensive, Specified Causes of Loss or Collision Coverages. We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."
- b. Rental Reimbursement will be based on the rental of a comparable vehicle, which in many cases may be substantially less than \$75 per day, and will only be allowed for the period of time it should take to repair or replace the vehicle with reasonable speed and similar quality, up to a maximum of 30 days.
- c. We will also pay up to \$500 for reasonable and necessary expenses incurred by you to remove and replace your tools and equipment from the covered "auto".
- d. This coverage does not apply unless you have a business necessity that other "autos" available for your use and operation cannot fill.
- e. 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 under Paragraph 4. Coverage Extension.
- f. No deductible applies to this coverage.

For the purposes of this endorsement provision, materials and equipment do not include "personal effects" as defined in provision 11.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay is \$1,000.

11. PERSONAL EFFECTS COVERAGE

- A. SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$600 for "personal effects" stolen with the "auto."

The insurance provided under this provision is excess over any other collectible insurance.

- B. SECTION V - DEFINITIONS is amended by adding the following:

For the purposes of this provision, "personal effects" mean tangible property that is worn or carried by an insured." "Personal effects" does not include tools, equipment, jewelry, money or securities.

12. ACCIDENTAL AIRBAG DEPLOYMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion for "loss" relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Any insurance we provide shall be excess over any other collectible insurance or reimbursement by manufacturer's warranty. However, we agree to pay any deductible applicable to the other coverage or warranty.

13. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS, exception paragraph a. to exclusions 4.c. and 4.d. is deleted and replaced with the following:

Exclusion 4.c. and 4.d. do not apply to:

- a. Electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment 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" and physical damage coverages are provided for the covered "auto"; or

If the "loss" occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.

14. LOAN / LEASE GAP COVERAGE

- A. Paragraph C., LIMIT OF INSURANCE of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by adding the following:

The most we will pay for a "total loss" to a covered "auto" owned by or leased to you in any one "accident" is the greater of the:

1. Balance due under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of:
 - a. Overdue payments and financial penalties associated with those payments as of the date of the "loss",
 - b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear,
 - c. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease,
 - d. Transfer or rollover balances from previous loans or leases,
 - e. Final payment due under a "Balloon Loan",
 - f. The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto",
 - g. Security deposits not refunded by a lessor,
 - h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto",
 - i. Any amount representing taxes,
 - j. Loan or lease termination fees; or

2. The actual cash value of the damage or stolen property as of the time of the "loss".

An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the "loss". This adjustment is not applicable in Texas.

B. ADDITIONAL CONDITIONS

This coverage applies only to the original loan for which the covered "auto" that incurred the loss serves as collateral, or lease written on the covered "auto" that incurred the loss.

- C. SECTION V - DEFINITIONS is changed by adding the following:

As used in this endorsement provision, the following definitions apply:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

A "balloon loan" is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

15. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Paragraph **D. Deductible** of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

16. PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)

Paragraph **D. Deductible** of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

The deductible does not apply to "loss" caused by collision to such covered "auto" of the private passenger type or light weight truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as maximum loaded weight the "auto" is designed to carry while it is:

- a. In the charge of an "insured";
- b. Legally parked; and
- c. Unoccupied.

The "loss" must be reported to the police authorities within 24 hours of known damage.

The total amount of the damage to the covered "auto" must exceed the deductible shown in the Declarations.

This provision does not apply to any "loss" if the covered "auto" is in the charge of any person or organization engaged in the automobile business.

17. TWO OR MORE DEDUCTIBLES

Under SECTION III PHYSICAL DAMAGE COVERAGE, if two or more company policies or coverage forms apply to the same accident, the following applies to paragraph D. Deductible:

- a. If the applicable Business Auto deductible is the smaller (or smallest) deductible it will be waived; or
- b. If the applicable Business Auto deductible is not the smaller (or smallest) deductible it will be reduced by the amount of the smaller (or smallest) deductible; or
- c. If the loss involves two or more Business Auto coverage forms or policies the smaller (or smallest) deductible will be waived.

For the purpose of this endorsement company means any company that is part of the Liberty Mutual Group.

SECTION IV - BUSINESS AUTO CONDITIONS is amended as follows:

18. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV- BUSINESS AUTO CONDITIONS, Paragraph **B.2.** is amended by adding the following:

If you unintentionally fail to disclose any hazards, exposures or material facts existing as of the inception date or renewal date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced.

However, you must report the undisclosed hazard of exposure as soon as practicable after its discovery, and we have the right to collect additional premium for any such hazard or exposure.

19. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph **A.2.a.** is replaced in its entirety by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when it is known to:
 1. You, if you are an individual;
 2. A partner, if you are a partnership;
 3. Member, if you are a limited liability company;
 4. An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.

To the extent possible, notice to us should include:

- (1) How, when and where the "accident" or "loss" took place;
- (2) The "insureds" name and address; and
- (3) The names and addresses of any injured persons and witnesses.

20. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph A.5., Transfer of Rights of Recovery Against Others to Us, is amended by the addition of the following:

If the person or organization has waived those rights before an "accident" or "loss", our rights are waived also.

21. HIRED AUTO COVERAGE TERRITORY

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph B.7., Policy Period, Coverage Territory, is amended by the addition of the following:

- f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the insured's responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

SECTION V - DEFINITIONS is amended as follows:

22. BODILY INJURY REDEFINED

Under SECTION V - DEFINITIONS, definition C. is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

COMMON POLICY CONDITIONS

23. EXTENDED CANCELLATION CONDITION

COMMON POLICY CONDITIONS, paragraph A. - CANCELLATION condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days prior notice of cancellation.

POLICY NUMBER: BAA60684163

COMMERCIAL AUTO
CA 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS 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.

Effective Date: **12/4/2019**

Named Insured: CSG Consultants, Inc.; Precision Inspection-CSG

SCHEDULE

Name of Person(s) or Organization(s): as required by 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED – NONCONTRIBUTING

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS 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.

Schedule

Name of Person(s) or Organization(s): Any entity with respect to a covered "auto" provided that you and such entity have agreed in a written contract, agreement, or permit to add such entity as an "insured".

Regarding Designated Contract or Project: N/A

Each person or organization shown in the Schedule of this endorsement 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.

The following is added to the Other Insurance Condition:

If you have agreed in a written agreement that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the agreement was executed prior to the "bodily injury" or "property damage", then this insurance will be primary and we will not seek contribution from such insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF CANCELLATION PROVISIONS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
GARAGE COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by this endorsement.

Any term or provision of the Cancellation Conditions of the policy or any endorsement emending or replacing such Conditions is amended by the following:

If you have agreed in a written contract or written agreement to provide a person or organization notice of cancellation we agree to the following:

- a. Provide a 30 days prior written cancellation notice to such persons or organization for reasons other than nonpayment of premium, but only if we are provided with a schedule of persons or organizations with whom you have agreed to provide notification more than 30 days before the cancellation is to take effect.

As a condition of this endorsement, you must notify your agent of any written contract or agreement where you have agreed to provide notice of cancellation, other than nonpayment of premium, to a specific person or organization.

Failure to provide to a person or organization in accordance with the terms of this endorsement shall not extend the effective date of the cancellation or otherwise affect cancellation of the policy as to any insured.

**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 2% of the total manual premium otherwise due on such remuneration. The minimum premium for this endorsement is \$350.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE**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**

All CA Operations

3196.00

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 12/04/2019

Policy No. **CSWC036787**

Endorsement No.

Insured CSG Consultants, Inc.

Premium \$

Insurance Company Redwood Fire And Casualty Insurance

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION – CERTIFICATE HOLDERS
(SPECIFIED DAYS)**

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. If possible, such copies of the notice will be mailed at least 30 days, except for cancellation for non-payment of premium which will be mailed 10 days, prior to the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

Schedule

Person(s) or Organization(s) including mailing address:

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule above to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule.

All other terms and conditions of this policy remain unchanged.

Endorsement Number: 7

Policy Number: **PAAEP0008804**

Named Insured: CSG Consultants, Inc.

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: **December 4, 2019**



DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE) WITH INDEPENDENT CODE CONSULTANTS, INC.

1. **PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and Independent Code Consultants, Inc. ("Consultant"), a Corporation for Building and Public Works plan review services for the Vallco Town Center SB35 project ("Project"), and is effective on the last date signed below ("Effective Date").

2. **SERVICES**

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**.

3. **TIME OF PERFORMANCE**

3.1 Term. This Agreement begins on the Effective Date and ends on June 30, 2023, unless terminated earlier as provided herein ("Contract Time"). The City's appropriate department head or 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. Consultant must deliver the services in accordance with the schedule specified by the City for each task. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. Consultant must begin work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified in **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. **COMPENSATION**

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual work but that will be capped so as not to exceed \$13,500,000 ("Contract Price"), based upon the scope of services in **Exhibit A** and the budget, rates, and compensation schedule included in **Exhibit B**, 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. Invoices must be submitted in accordance with the compensation schedule and state a description of the deliverable completed, the individual performing the work, and the amount due for the preceding period. 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. INDEPENDENT CONTRACTOR

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

5.2 Qualifications and Standard of Care. Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

5.3 Permits and Licenses. Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

5.4 Sub-Consultants. Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

5.5 Tools, Materials, and Equipment. Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant 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. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant'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 Consultant. 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 Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant 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. This Section 5.6 survives the expiration/termination of this Agreement.

5.7 Errors and Omissions. Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

During the Contract Time, Consultant 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. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Consultant in, and copies of, 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 shall be provided to the City every six months and upon completion of the work to be performed hereunder or upon termination of this Agreement, as requested by City, and thereupon shall be the exclusive property of the City. In any case, no Work Product shall be shown to any third-party without prior written approval of City and all communications with third parties shall copy City staff.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

7.3 Patents and Licenses. Consultant 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 Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

7.5 Deliverables and Format. Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

8. RECORDS

8.1 Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

8.2 Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination or audit. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

9. ASSIGNMENT

Consultant 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 Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

10. PUBLICITY / SIGNS

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles. No signs may be posted, exhibited, or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

a. Indemnity for Design Professional Liability: With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or

willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation.

c. Claims for Other Liability. Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

11.2 Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

11.3 Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

11.4 Consultant 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 Consultant 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.

11.5 This Section 11 shall survive expiration or termination of this Agreement.

12. INSURANCE

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit C**. City will not execute the Agreement until Consultant has submitted and City has reasonably 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. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Consultant shall comply with all laws and regulations applicable to this Agreement. Consultant will promptly notify City of changes in the law or other conditions that may affect the Project or Consultant's ability to perform. Consultant is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act, or other federal or state law, rule or regulation.

13.2 Labor Laws. Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

13.3 Discrimination Laws. Consultant 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. Consultant shall comply with all anti-discrimination laws, including Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited.

13.4 Conflicts of Interest. Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant 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. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and

other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

14. PROJECT COORDINATION

14.1 City Project Manager. The City's Project Manager for all purposes under this Agreement will be Albert Salvador, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

14.2 Consultant Project Manager. Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be Abigail Obligation, who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant 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. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California.

Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant 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. 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 Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 18 survives the expiration/termination of this Agreement.

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 any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. 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 this 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. INSERTED PROVISIONS

Each contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

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. SEVERABILITY/PARTIAL INVALIDITY

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.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

26. NOTICES

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery 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: 10300 Torre Avenue Cupertino, CA 95014 Attention: Albert Salvador Email: alberts@cupertino.org	To Consultant: Independent Code Consultants, Inc 6280 W. Las Positas Blvd., Suite 220 Pleasanton, CA 94588 Attention: Abigail Obligation Email: aobligacion@independentcodeconsultants.com
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27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if it complies with the contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney's Office.


28. EXECUTION


The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. 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 on the Effective Date stated earlier in this Agreement.


CITY OF CUPERTINO

A Municipal Corporation

By 
Name ABIGAIL OBLIGACION
Title PRESIDENT
Date FEB. 12, 2020
Tax I.D. No.: 37-1876705

By 
Name Deborah L. Feng
Title City Manager
Date 2.20.2020

APPROVED AS TO FORM:


HEATHER M. MINNER
Cupertino City Attorney

ATTEST:



KIRSTEN SQUARCIA
City Clerk
DATE: 2/20/20

EXHIBIT A – ICCI Scope of Services

PROJECT DESCRIPTION

The Vallco Town Center SB35 Project is located on the 50.82-acre Vallco Mall property in the City of Cupertino, between Interstate 280 and Steven's Creek Boulevard on both sides of North Wolfe Road. The plans approved by the City of Cupertino for the development of the Vallco SB35 Project include residential, commercial, and office uses spread among multiple buildings, with underground and surface parking, two plazas, and a green roof. Multiple tenant improvements will come later in the course of the Project.

SCOPE OF PLAN REVIEW SERVICES

ICCI will provide building and public works plan review services for the Vallco SB35 Project. These include, tenant improvement building application plan reviews, Public Works permit applications for site development, including green roof review, geotechnical peer review, and other related plan review services as assigned by the Building Official and/or City Engineer. The scope of services does not include building plan review services for core & shell permits for the foundation and superstructures for multiple buildings, two below grade parking structures with foundation and podium with associated structural elements, a bridged structure over Wolfe Road and green roof structure with associated structural and landscape elements, which ICCI understands is being provided to the City by a separate firm.

Plan review services will include, but not be limited to, the following components:

BUILDING PLAN REVIEW

1. Ensure compliance with State and local laws and regulations.
2. Ensure compliance with City of Cupertino Municipal Code and City of Cupertino's conditions of approval.
3. Ensure drawings conform and comply with Title 24 California Code of Regulations.
 - Fire and Life-Safety
 - Accessibility
 - Structural
 - Plumbing

- Mechanical
 - Electrical
 - Energy
 - Green Building Standards
4. Substantiate structural plans meet recommendations made in the project geotechnical report.
 5. Ensure plans and details are consistent with product specifications and certification.

ON-SITE BUILDING PLAN REVIEW

A licensed plan review engineer will be available to be at the project site, provided this service is requested by the developer and funded through an up front deposit account. The plan review engineer is the first point of contact for code consultation, review and approval of RFIs and field revisions on behalf of the City of Cupertino as noted under plan review services listed above.

PUBLIC WORKS PLAN REVIEW

1. Ensure compliance with State and local laws and regulations.
2. Ensure compliance with City of Cupertino Municipal Code and standards (including Caltrans standards where appropriate), conditions of approval, and mitigation measures relating to civil design and work within the public right of way.
3. Substantiate that grading plans meet recommendations made in the project geotechnical report.
4. Grading plan check to include a review of grading operations and their effects on existing improvements and utilities, comparison with existing elevations and verification of cut and fill quantities and review of onsite retaining walls and shoring facilities.
5. Review of street improvement plans, including surface improvements, traffic signals, signs and striping, traffic control plans, street lighting, drainage and utilities, landscaping and all other aspects of public facilities and streets in and around the project site.
6. Review of on-site utilities, including storm drain facilities such as proposed storm water treatment measures and storm water pump systems, sanitary sewer, water and other utilities to ensure said improvements meet City requirements.
7. Surface drainage and fine grading to ensure storm water is adequately conveyed to the storm drain system, this includes overland release patterns to ensure that the risk of onsite and offsite flooding is minimized to acceptable levels.

8. Verify hydrology calculations match what is shown on the Improvement Plans and storm system is adequately sized for the design storm.
9. Review of on-site storm water management plan.
10. Review of green roof with respect to public works/civil engineering and landscape design aspects.
11. Verify work is consistent with existing and proposed easements and related land use elements, and provide recommendations for possible modifications, including relocation of existing easements or acceptance of new easements necessary to facilitate the development.
12. Confirm full trash capture requirements identified in MRP Section C.10 are effectively met.
13. Review and evaluate the total project waste management plan including: estimated volumes generated, waste conveyance systems, storage capacities, and City waste hauler collection/circulation routes.
14. Review of encroachment permits associated with the project to ensure consistency with approved plans.
15. Review of cost estimates for proposed work and verification that costs are commensurate with industry standard costs for construction, labor, and materials.

OTHER TASKS

1. Attendance of Design and Construction Meetings.
2. Review and assist with technical problems that arise during construction, including RFI's and shop drawings.
3. Will maintain a tracking system to document all plan reviews and reports, tracking of construction progress and processing of change orders, RFI's and deferred submittals.
4. Transportation services related to transportation planning, traffic operations, freeway and corridor studies, traffic engineering design (including PG&E), intelligent transportation systems (ITS), traffic safety and multi-modal studies.
5. Professional geotechnical related services.

The above public works third party plan review services are dependent upon the developer providing an up-front funding mechanism.

EXHIBIT B – ICCI Compensation

BUILDING PLAN REVIEW

Not-to-Exceed Amount: \$1,000,000 / Year

Payment Schedule for each building permit application:

Consultant will receive 65% of the submitted Building Plan Check fee. The below chart lists payment schedules for standard review by percentage of that amount.*

Payment	Amount	Payment Milestone
1 st Payment	30% Plan Check Fee	Initial Assignment for review
2 nd Payment	25% Plan Check Fee	1 st Comprehensive Plan Review comments issued to applicant
3 rd Payment	25% Plan Check Fee	2 nd Comprehensive Plan Review comments issued to applicant
Final Payment	20% Total Plan Check Fee	Approval of Plans

*Where submitted Plan Check fees are \$15,000 or less for an individual building permit application, consultant will receive the total sum of 65% of the collected plan check fee . Consultant will submit monthly invoices to the City for these submitted fees.

Consultant will receive 65% of any additional Plan Check fees collected by the City for Expedite, Overtime, and/or Non-Business hours Plan Review services requested by applicant. Consultant will submit monthly invoices to the City for these additional collected fees.

ON-SITE BUILDING PLAN REVIEW

Not-to-Exceed Amount: \$500,000 / Year

Plan Review Engineer at Project Site	\$185.00/hour, invoiced monthly
--------------------------------------	---------------------------------

PUBLIC WORKS AND GEOTECHNICAL PLAN REVIEW

Not-to-Exceed Amount: \$3,000,000 / Year

Payment Schedule for each public works permit application:

Consultant will receive 65% of the submitted Public Works Application fee. The below chart lists payment schedules for standard review by percentage of that amount.*

Payment	Amount	Payment Milestone
1 st Payment	30% Plan Check Fee	Initial Assignment for review
2 nd Payment	25% Plan Check Fee	1 st Comprehensive Plan Review comments issued to applicant
3 rd Payment	25% Plan Check Fee	2 nd Comprehensive Plan Review comments issued to applicant
Final Payment	20% Total Plan Check Fee	Approval of Plans

*Where submitted Plan Check fees are \$15,000 or less, consultant will receive 65% of the submitted fee. Consultant will submit monthly invoices to the City for these submitted fees.

Consultant will receive 65% of any additional Plan Check fees collected by the City for Expedite, Overtime, and/or Non-Business hours Plan Review services requested by applicant. Consultant will submit monthly invoices to the City for these additional collected fees.

GENERAL PROVISIONS

If work on any task is not completed within the time specified by the City, and Consultant has not been able to address or mitigate delays to the satisfaction of the Building Official or City Engineer, the City will provide Consultant a written warning, and if work is not completed within 30 days of the warning, the City may hire a separate consultant to complete the work, or perform the work with City employees, and Consultant shall cover the costs to complete the work, to the extent not already covered by the fees submitted for that work.

While Plan Check fees are nonrefundable after review has started, if the City is required to refund fees for any reason, or settles a claim for a refund in good faith, Consultant must remit to City Consultant's pro rata share of the refund within 30 days of notice by the City.

Major design changes occurring after the initial plan review submittal will be charged as deemed appropriate and negotiated by all parties for building and public works plan review, provided additional permit fees are submitted by the developer for the major design changes.

Consultant will be paid within 30 days of submitting complete invoices to the City based on the above schedule of payments.

EXHIBIT C
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 01 (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 **\$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.



INDEP-2

OP ID: BMH

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/28/2020

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

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

PRODUCER Discovery Bay Ins. Serv., Inc. 1555 Riverlake Rd., Ste. F Discovery Bay, CA 94505 Melissa Hoffman		925-516-4700		CONTACT NAME: Melissa Hoffman	
				PHONE (A/C, No, Ext): 925-516-4700	FAX (A/C, No): 925-516-4202
				E-MAIL ADDRESS: melissa@discoverybayins.com	
				INSURER(S) AFFORDING COVERAGE	
				INSURER A: Evanston Insurance Company	
				INSURER B: United Financial Casualty Co.	
				INSURER C: State Compensation Ins Fund	
				INSURER D: Landmark American Ins. Co.	
				INSURER E:	
				INSURER F:	

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X		3AA371980	12/03/2019	12/03/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			06461327-2	01/11/2020	01/11/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ HNOA \$ 100,000
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$ 10000			EZXS3017175	12/03/2019	12/03/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	9224300-20	01/11/2020	01/11/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Errors & Omissions			LHR779417	01/10/2020	01/10/2021	E&O 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are listed as additional insureds on General Liability per attached endorsement.

CERTIFICATE HOLDER

CANCELLATION

The City of Cupertino
10300 Torre Avenue
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

Melissa Hoffman



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
LIQUOR LIABILITY COVERAGE FORM
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM

SCHEDULE

Additional Premium: \$ 500 (Check box if fully earned. <input checked="" type="checkbox"/>)
--

- A.** Who Is An Insured is amended to include as an additional insured any person or entity to whom you are obligated by valid written contract to provide such coverage, but only with respect to negligent acts or omissions of the Named Insured and only with respect to any coverage not otherwise excluded in the policy.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. 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.

Our agreement to accept an additional insured provision in a contract is not an acceptance of any other provisions of the contract or the contract in total.

When coverage does not apply for the Named Insured, no coverage or defense will apply for the additional insured.

No coverage applies to such additional insured for injury or damage of any type to any "employee" of the Named Insured or to any obligation of the additional insured to indemnify another because of damages arising out of such injury or damage.

- B.** With respect to the insurance afforded to these additional insured, the following is added to 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.

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Person Or Organization:

Any person(s) or organization(s) with whom the Named Insured agrees, in a written contract executed prior to the "occurrence", to waive rights of recovery

Additional Premium: \$ 250

The following is added to Condition **8**. Transfer Of Rights Of Recovery Against Others To Us under Section **IV** – Commercial General Liability Conditions:

We waive any right of recovery we may have against any person or organization shown in the Schedule of this endorsement. This waiver applies only to the person or organization shown in the Schedule of this endorsement.

All other terms and conditions remain unchanged.

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.



ENDORSEMENT AGREEMENT
WAIVER OF SUBROGATION
BLANKET BASIS

BROKER COPY

HOME OFFICE
SAN FRANCISCO

EFFECTIVE JANUARY 12, 2020 AT 12.01 A.M.
AND EXPIRING JANUARY 12, 2021 AT 12.01 A.M.

9224300-20
RENEWAL
NA
1-69-33-36
PAGE 1 OF 1

ALL EFFECTIVE DATES ARE
AT 12:01 AM PACIFIC
STANDARD TIME OR THE
TIME INDICATED AT
PACIFIC STANDARD TIME

INDEPENDENT CODE CONSULTANTS (A CO
6280 W LAS POSITAS BLVD STE 220
PLEASANTON, CA 94588

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
2.00% OF THE TOTAL POLICY PREMIUM.

SCHEDULE

<u>PERSON OR ORGANIZATION</u>	<u>JOB DESCRIPTION</u>
ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER	BLANKET WAIVER OF SUBROGATION

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE
OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS, OR LIMITATIONS OF THIS
POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE
HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR
LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO: JANUARY 2, 2020


AUTHORIZED REPRESENTATIVE


PRESIDENT AND CEO



**APPROVED MINUTES
CUPERTINO CITY COUNCIL
Tuesday, December 1, 2020**

SPECIAL MEETING

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

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul, and Councilmembers Liang Chao, Rod Sinks, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

STUDY SESSION

1. Subject: Study Session on Climate Action Plan 2.0 initial draft goals and vision statement
Recommended Action: Provide input and direction on the Climate Action Plan 2.0 initial draft goals and vision statement

Written communications for this item included a staff presentation.

Sustainability Manager Andre Duuvoort gave a presentation.

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

Pragya Natarajan, on behalf of Cupertino High School Environmental Club, supported a climate action plan, a 2030 deadline, and incentivizing electricity.

Gwyn Azar on behalf of Cupertino Youth Climate Action Team supported a climate action plan, an aggressive policy, and joining carbon neutral by 2030.

Jennifer Griffin supported sustainability goals, discussions on density building issues and new HVAC technologies, and was opposed switching from gas.

Sophia Wang, on behalf of Cupertino Youth Climate Action Team, supported adopting a replace on burnout ordinance, rebates, and Menlo Park's ordinance goals.

Dashiell Leeds, on behalf of Sierra Club Loma Prieta Chapter, supported an ordinance like Menlo Park's or Palo Alto's, adopting by 2030, and moving to full electrification.

Housing Commissioner Connie Cunningham (representing self), supported environmental justice, carbon neutral goals, and green infrastructure.

Shani Kleinhaus, on behalf of Santa Clara Valley Audubon Society, supported a climate action plan including biodiversity for nature and sustaining local species.

Planning Commissioner Kitty Moore (representing self) supported transitioning from wood heating, new HVAC technologies, and improving diversion rates of recyclables.

Mayor Scharf closed the public comment period.

Councilmembers asked questions and made comments.

There was overall support to explore aggressive climate action goals if the data analysis is supportive and substantive.

ADJOURNMENT

REGULAR MEETING

At 6:45 p.m. Mayor Steven Scharf called the Regular City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul, and Councilmembers Liang Chao, Rod Sinks, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

CEREMONIAL MATTERS AND PRESENTATIONS

POSTPONEMENTS

1. Subject: Municipal Code Amendments to update existing Mobile Vending regulations, including but not limited to regulations in Chapter 5.48, and potential conforming edits to other chapters in the Municipal Code, including in Titles 5, 11, 13 and 19. Application No(s): MCA-2020-004; Applicant(s): City of Cupertino; Location: citywide. This item has been continued to December 15.
2. Subject: Approving City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees. This item has been continued to December 15.

City Clerk Kirsten Squarcia noted that This item has been continued to January 19 instead of the December 15 date noted on tonight's agenda.

ORAL COMMUNICATIONS

Written Communications for this item included an email to Council.

Jennifer Griffin was concerned about the process for funding and introducing housing bills and loss of local control and supported greater transparency.

Michael Haas, on behalf of Charlene Lee, was concerned about the November 3, 2020 election results, her candidate biography posting on the City website, and development within the City.

Rhoda Fry was opposed to naming city buildings after individuals and honorary plaques in recognition of city leaders including the Library expansion project.

Viggie34 talked about taking photos of a homeless encampment next to Vallco, his interaction with encampment residents and the police, and his plans to file a lawsuit for compensation.

Charlene Lee was concerned about the conduct and results of the November 3, 2020 election, her candidate biography posting on the City website, and collection of her campaign signs.

REPORTS BY COUNCIL AND STAFF (10 minutes)

3. Subject: City Manager update on emergency response efforts
Recommended Action: Receive City Manager update on emergency response efforts

City Manager Deborah Feng reported on the State's COVID-19 tier guidelines and Cupertino case counts and testing opportunities; Parks and Recreation activities; and a homeless encampment update regarding outreach and engagement for unhoused residents.

Council received the City Manager update on emergency response efforts.

4. Subject: Report on Committee assignments_
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Scharf moved and Sinks seconded to approve the items on the Consent Calendar except for Item No. 8 which was pulled for discussion. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the November 17 City Council minutes_
Recommended Action: Approve the November 17 City Council minutes
6. Subject: Approve the November 19 City Council minutes
Recommended Action: Approve the November 19 City Council minutes.
7. Subject: Set hearing date on January 19, 2021 to declare a public nuisance (from weeds) and to consider objections for proposed removal; declare properties as having potential fire hazards from weeds or other potential nuisances for the Cupertino Weed Abatement Program.
Recommended Action: Adopt Resolution No. 20-136 declaring properties as having potential fire hazards from weeds or other potential nuisances; and set hearing on January 19, 2021 to declare a public nuisance and to consider objections for proposed removal.
8. Subject: Mitigation Fee Act - Annual & Five-Year Report - Fiscal Year 2019-2020_
Recommended Action: 1. Accept the Annual & Five-Year Review of the City of Cupertino's Development Impact Fees (Government Code Section 66000 et seq.); and 2. Adopt Resolution No 20-137 entitled "A Resolution of the Cupertino City Council Approving the Annual & Five-Year Development Impact Fee Report for FY Ending June 30, 2020 and Making Required Findings."

Scharf moved and Willey seconded to:

1. Accept the Annual & Five-Year Review of the City of Cupertino's Development Impact Fees (Government Code Section 66000 et seq.); and
2. Adopt Resolution No 20-137 entitled "A Resolution of the Cupertino City Council Approving the Annual & Five-Year Development Impact Fee Report for FY Ending June 30, 2020 and Making Required Findings."

The motion carried unanimously.

9. Subject: Consider changes to the part-time salary schedules for classifications and job series impacted by minimum wage adjustments.
Recommended Action: Adopt Resolution No. 20-138 establishing changes to part-time salary schedules for classifications impacted by minimum wage adjustments and realign wage increases with position advancement.

SECOND READING OF ORDINANCES

10. Subject: Second reading of Ordinance No. 20-2216 to amend Cupertino Municipal Code Chapter 2.40 (concerning the Disaster Council and the emergency management program).
Recommended Action: Conduct the second reading and enact Ordinance No. 20-2216: "An ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 2.40 (concerning the Disaster Council and the Emergency Management Program)."

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2216: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 2.40 (concerning the Disaster Council and the Emergency Management Program)."

Scharf moved and Willey seconded to read the title of Ordinance No. 20-2216 by title only and that the City Clerk's reading would constitute the second reading thereof.

Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

Scharf moved and Willey seconded to enact Ordinance No. 20-2216.

Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

PUBLIC HEARINGS

11. Subject: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004; Applicant: City of Cupertino; Location: City-wide)

Recommended Action: That the City Council:

1. Find the proposed actions are exempt from CEQA; and,
2. Conduct the first reading of Ordinance No. 20-2217 "An Ordinance of the City Council of the City of Cupertino Amending City Code to Add Chapter 19.102: Glass and Lighting Standards and to Amend Chapter 19.08 Definitions, Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Bird-Safe and Dark Sky Policies." (Attachment A)

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

Planning Manager Piu Ghosh and Senior Planner Erick Serrano gave a presentation.

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

Jill Halloran supported dark skies and bird safe design.

Shani Kleinhaus, on behalf of the Santa Clara Valley Audubon Society, supported the Dark Sky and Bird-Safe Design Ordinance

Housing Commissioner Connie Cunningham (representing self) supported the Dark Sky and Bird-Safe Design Ordinance

Peter Friedland supported the Dark Sky and Bird-Safe Design Ordinance

Lisa Karpinski supported the Dark Sky and Bird-Safe Design Ordinance

Mike Rhode was concerned about retail risks, lighting restrictions, and security and safety, and supported postponing the item.

Greg Whitney was concerned about impacts on retail and restaurants, security and safety, and uninviting lighting aspects, and supported looking at other cities first.

Jean Bedord was concerned tax implications on business structures, overregulating commercial activity, and conducting commercial-community outreach.

Dashiell Leeds, on behalf of the Sierra Club Loma Prieta Chapter, supported the Dark Sky and Bird-Safe Design Ordinance.

Rhoda Fry supported the Dark Sky and Bird-Safe Design Ordinance.

Anjali Kausar, on behalf of the Chamber Commerce, was concerned about further outreach to businesses and supported postponing the item.

Rose Friedland supported the Dark Sky and Bird-Safe Design Ordinance.

Planning Commissioner Kitty Moore (representing self) was concerned about string lighting regulations and addressing commercial area concerns.

Mayor Scharf closed the public hearing.

Council recessed from 8:30 p.m. to 8:35 p.m.

Councilmembers asked questions and made comments.

Paul moved to call the question. The motion carried with Sinks voting no.

Paul moved and Chao seconded to continue this item until December 15. The motion carried with Sinks voting no.

ORDINANCES AND ACTION ITEMS

12. Subject: Updated Administrative Procedures Within the Community Funding Grant Policy.

Recommended Action: Review and adopt updated administrative procedures within the Community Funding Grant Policy, including an earlier submission date for applications, program funding range, and affirmation that all qualified applicant materials will be brought to City Council.

Written communications for this item included a staff presentation, Amended Attachment B – Community Funding Policy (redline version), and Amended Attachment C - Community Funding Policy (clean version).

Director of Parks and Recreation Joanne Magrini gave a presentation.

Councilmembers asked questions and made comments.

Scharf moved and Sinks seconded to adopt updated administrative procedures within the Community Funding Grant Policy, including an earlier submission date for applications, program funding range, and affirmation that all qualified applicant materials will be brought to City Council. The motion carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

- Added a future agenda item to discuss nonprofit funding as a line item in the budget (Chao/Scharf)
- Added a future agenda item to review existing policy for naming public buildings, donations, and recognition strategies (Chao/Scharf)

ADJOURNMENT

At 10:13 p.m., Mayor Scharf adjourned the meeting.



Kirsten Squarcia, City Clerk

5/18/2022 Proposed Budget Meeting Questions

1. Enterprise funds – Why isn't Blackberry farm pool/picnic an enterprise fund? Who are we serving/not serving along with profit and loss statement?
 - a. All expenses related to Blackberry Farm pool and picnic area can be found in budget unit 100-63-612 on pages 352-354 of the FY 2022-23 proposed budget. The revenue and expenditure table shows revenues and expenditures along with any use of fund balance or General fund subsidy (General fund costs) for 2 years of actuals along with last years adopted budget and this year's proposed budget. This budget currently operates in a deficit as fee revenues are set up to only costs recover about 60% of actual costs per City Council direction as part of the last citywide fee study. Staff is requesting additional funds to conduct a new fee study in FY 22-23 for City Council consideration in this year's budget. Based on research conducted, the FY 2007-08 budget document appears to recommend the movement of this operation from an Enterprise Fund to the General Fund because it was not self-sustaining at that time. Given that currently you can view the profit and loss easily in the budget we have not transitioned this back to an enterprise fund. Also, it still requires a subsidy.
 - b. Staff utilize two metrics to measure resident/non-resident use of Blackberry Farm. The first is swimming pool users and collected when visitors check in to the kiosk to enter the pool area. The second metric is based on picnic site reservations, which are charged based on the renter's residency status. A summary of the users from 2017 to 2021 are shown below:

Blackberry Farm User Summary 2017 to 2021

Swimming Pool Users	2017	2018	2019	2020	2021*
Residents	6582	6117	5903	COVID	5019
Non-Residents	11869	11027	9935	COVID	6467
Total Swimmers	18451	17144	15838	COVID	11486
% Residents/Non-Residents	36%/64%	36%/64%	37%/63%	COVID	44%/56%

Picnic Site Reservations	2017	2018	2019	2020	2021*
Residents	103	96	101	COVID	53
Non-Residents	150	130	152	COVID	32
Total Reservations	253	226	253	COVID	85
% Residents/Non-Residents	41%/59%	42%/58%	40%/60%	COVID	62%/38%

A few things to note:

1. Blackberry Farm was closed in 2020 due to the COVID pandemic.

5/18/2022 Proposed Budget Meeting Questions

2. *Blackberry Farm was only open for 70 days in 2021 (out of the maximum 100 days per year) due to the pandemic.

2. Where do we sit in the market compared to other jurisdictions in turnover since 2018 to the present?

Agency Name	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
San Jose	8%	15%	6%	7%	
Sunnyvale	11%	12%	11%	12%	
Mountain View	8%	9%	8%	8%	
Santa Clara	8%	5%	10%	8%	
Los Gatos					
Los Altos	12%	13%	15%	8%	12%
Los Altos Hills	9%	24%	15%	11%	
Palo Alto	9%	9%	12%	9%	
Gilroy		24%	24%	36%	
Morgan Hill					
Campbell					
Saratoga		22%	12%	11%	11%
Milpitas		11%	6%	8%	13%
Median	9%	13%	11%	9%	
Average	9%	14%	12%	12%	
Cupertino	11%	11%	6%	16%	
% From Above/Below Median	28%	-13%	-43%	87%	
% From Above/Below Average	19%	-25%	-46%	38%	
Notes:					
Cupertino - Includes voluntary, involuntary separations and Retirements.					
San Jose - Excludes Retirements					
Sunnyvale - Includes voluntary, involuntary separations and Retirements. FY20/21 is an estimate					
Los Altos Hills - Excludes Probationary Releases					
Milpitas - Includes voluntary, involuntary separations and retirements					
Saratoga - Includes voluntary, involuntary separations and retirements					
Los Altos - Includes voluntary, involuntary separations and retirements					
Campbell - data pending					