

CC 03-21-2023

#2

Amended Attachment A -
Draft Minutes Page 12

Supplemental Report



OFFICE OF THE CITY CLERK

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
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**CITY COUNCIL STAFF REPORT
SUPPLEMENTAL**

Meeting: March 21, 2023

Agenda Item #2

Subject

Consider approval of the March 7 City Council minutes

Recommended Action

Approve the March 7 City Council minutes

Background:

The March 7 draft City Council minutes have been amended on page 12, as indicated in the redline attachment.

Attachments Provided with Agenda:

A – Draft Minutes

Attachments Provided with Supplemental:

A – Amended Draft Minutes_redline page 12

Kamyab Mashian supported the removal of Planning Commissioner R Wang.

Scott O'Neil supported the removal of Planning Commissioner R Wang.

Andrew Siegler supported the removal of Planning Commissioner R Wang.

Rajat Mehndiratta supported the removal of Planning Commissioner R Wang.

San R opposed the removal of Planning Commissioner R Wang.

Cam Coulter supported the removal of Planning Commissioner R Wang.

Dan Marshall supported the removal of Planning Commissioner R Wang.

Adam Buchbinder supported the removal of Planning Commissioner R Wang.

Erik Lindskog supported the removal of Planning Commissioner R Wang.

Raphael Villagrancia supported the removal of Planning Commissioner R Wang.

Abdullah Memon supported the removal of Planning Commissioner R Wang. (Shared a video).

Shiv Kavaluru supported the removal of Planning Commissioner R Wang.

Minna opposed the removal of Planning Commissioner R Wang.

Ava Chiao supported the removal of Planning Commissioner R Wang.

William Lin supported the removal of Planning Commissioner R Wang.

Jordan Grimes supported the removal of Planning Commissioner R Wang.

Mayor Wei closed the public comment period.

Moore moved and Chao seconded ~~a substitute motion~~ to agendize a policy process for admonition, probation, censorship, and removal for commissioners. Chao made a friendly amendment to consider any removals after a policy is in place. (Moore accepted the friendly amendment). The ~~substitute~~ motion failed with Chao and Moore voting yes.

CC 03-21-2023

#3

Chamber of Commerce Information

Supplemental Report



CITY MANAGER'S OFFICE

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CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: March 21, 2023

Agenda Item #3

Subject:

Consider staff reports and the attachments provided at the June 21, 2022 and March 7, 2023 City Council meetings regarding the Chamber of Commerce

Recommended Action:

Receive the report on previously presented Chamber of Commerce related information.

Background:

Staff's responses to questions received from councilmembers are shown in italics.

Q1: Do Chamber of Commerce members such as Apple, Recology, San Jose Water, and Rotary have contracts/agreements with the City? (**Councilmember Moore**)

Although this subject is not on the agenda for the March 21 meeting, a number of the entities mentioned have or have had agreements with the City.

Q2: The Chamber of Commerce is a 501(c)6, what is the difference between a 501(c)3 and a 501(c)6? In terms of serving the public vs. serving their members, a member of the public brought this up and it should be clarified. (**Councilmember Moore**)

A 501(c)(3) organization is an organization organized for charitable, religious, educational, scientific, or literary purposes, or for purposes of testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.

501(c)(6) organizations include business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Both types of organization are tax-exempt under the Internal Revenue Code. The distinctions between 501(c)(3) and 501(c)(6) organizations are not on the agenda for the March 21 meeting.

Q3: There are many payments in the attachments, are there contracts for them?
(**Councilmember Moore**)

The City's Purchasing Policy, in place since 2013, allows for a number of means for procurement of goods and service, including direct payment, purchase order, and contract. These expenditures are within the City Manager's authority under the Purchasing Policy. Staff is preparing a revised Purchasing Policy for Council review. To the extent this question relates to questions other than the Purchasing Policy, it involves purely administrative matters. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

Q4: Are Councilmembers allowed to ask about contracts and payments the City makes or has made when it is for goods and/or services? Is this part of the Duty of Accountability (see <https://www.scu.edu/government-ethics/resources/public-officials-as-fiduciaries/>)?
(**Councilmember Moore**)

Individual Councilmembers are entitled to receive information consistent with the requirements and limitations of Municipal Code Chapter 2.17. (CMC § 2.17.043.) Individual councilmembers may not direct or unduly influence staff execution of Council policy or City administration. (CMC §§ 2.17.032, 2.17.033, 2.17.042.) The City Manager is responsible for the implementation of Council policies, including the administration of contracts and payments. Questions about individual contracts and payments are administrative matters; Council should address purchasing issues at the policy level. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

Q5: Have Chamber members lobbied for legislation, development projects, or agreements which come before the City Council? (**Councilmember Moore**)

Although this subject is not on the agenda for the March 21 meeting, membership in the Chamber would not preclude a member from participating in the government process.

Q6: The previous Staff report provided a comparison of various other cities' Chamber agreements included Santa Clara. Is the City of Cupertino now aware that the City of Santa Clara had a legal dispute with their chamber? See <https://sanjosespotlight.com/santa-clara-initiates-litigation-against-business-group-accused-of-overbilling/> and <https://sanjosespotlight.com/santa-clara-quietly-settles-lawsuit-with-silicon-valley-chamber-of-commerce/> (**Councilmember Moore**)

Staff is now aware of the legal dispute with the Chamber.

Q7: The City paid the Chamber \$65,000 for a website. There is what looks like a proposal for a website in the attachments, where is the signed contract? Does the City own the website? If not, why? (**Councilmember Moore**)

The "I Love Cupertino" website design project was part of the City Work Program item in FY 20-21 under Targeted Marketing Programs to Assist Small Businesses. The current Purchasing Policy allows

for a number of means for procurement of goods and service, including direct payment, purchase order, and contract. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

The City's intellectual property rights with respect to the website are not on the March 21 City Council agenda.

Q8: Do contracts need to be signed by a City Staff member for them to be in force? If we see a contract with no signature what does that mean? **(Councilmember Moore)**

A signature is not generally a legal requirement for an enforceable contract in California and other common law jurisdictions. The current Purchasing Policy allows for a number of means for procurement of goods and service, including direct payment, purchase order, and contract. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

Q9: Does the city allow campaign booths at City Festivals? Does it matter if the fees are waived for the festival or not? What types of campaigning are allowed at City Festivals?
(Councilmember Moore)

This has the potential to be an involved response and discussion and is unrelated to the Chamber subject matter.

CC 03-21-2023

#4

Budget Process Review

Supplemental Report



ADMINISTRATIVE SERVICES DEPARTMENT

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CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: March 21, 2023

Agenda Item #4

Subject

Consider the Budget Process Review Final Report

Recommended Action

Receive the Budget Process Review Final Report

Background:

Staff's responses to questions received from councilmembers are shown in italics.

Q1: Page #168 Project Results

The review found that the City's budget process aligns with the significant majority of budget best practices developed by the Government Finance Officers Association (GFOA) (76 of 80 criteria in total). However, four elements lacked documentation to support alignment with best practices. The report recommended developing a prioritized implementation plan to support progress toward full alignment with GFOA best practices in the four categories that are not aligned.

4 out of 80 criteria are not aligned with best practices – Is this result considered a reasonably good result? (**Mayor Wei**)

Staff response: Yes, this is considered a good result. The City's internal auditor, Moss Adams, also stated that 95% alignment is a good result.

Q2: Are the four elements (that lack documentation to support alignment with best practices) being worked on? If yes, is there a timeline to bring full alignment? (**Mayor Wei**)

Staff response: Yes, staff is working on aligning the four elements with GFOA best practices. Staff expects to have full alignment by the end of FY 2023-24.

Q2: Page #169 Next Steps

Staff is working on implementing the report's recommendations. Is staff reporting the implementation progress to the Audit Committee? (**Mayor Wei**)

Staff response: Yes, staff will provide updates on the implementation progress to the Audit Committee as part of the quarterly budget format review on the Audit Committee's agenda.

Attachments Provided with Original Staff Report:

A. Budget Process Review Final Report

CC 03-21-2023

#5

Orchard Maintenance Services Contract

Desk Item



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT DESK ITEM

Meeting: March 21, 2023

Agenda Item #5

Subject

Consider authorizing execution of a Maintenance Services Contract for City-owned orchards.

Recommended Action

1. Authorize the City Manager to execute the Maintenance Service Contract with Anderson Tree Care Specialists, Inc. to provide orchard maintenance services for three years, at an annual amount not-to-exceed \$65,746, and if performance is satisfactory, allow up to two additional years of service.
2. Adopt Resolution No. 23-xxx approving budget modification 2223-267 increasing appropriations in the Blackberry Farm Grounds Maintenance (100-84-811) and Neighborhood Parks Maintenance (100-84-813) budgets by \$8,362 and \$3,875 respectively.

Background:

Staff's responses to questions received from councilmember are shown in italics.

Q1: How many staff members the city previous use to maintain the orchards in Stocklmeir and Blackberry Farm? Will there be a staffing adjustment to remove the extra (and now vacant) staffing positions? (**Chao**)

The staff report states "Currently, only one of the orchards near Varian Park is maintained by a contractor and the remaining two orchards at Stocklmeir and Blackberry Farm are maintained by City employees. Due to the lack of staffing resources, the City is unable to provide maintenance to a level that is satisfactory to the City. Staff is proposing to use an experienced and qualified contractor to maintain all three orchards."

Staff response: There is one staff member dedicated to maintaining the orchards and surrounding grounds area at Blackberry Farm, Stocklmeir and McClellan Ranch. In addition to maintaining the orchards, staff maintains the pathways, irrigation outside of orchards, picnic rental areas,

bocce ball court, volleyball court and general cleanup of all three sites. One staff member is unable to keep up with the workload to perform all the tasks.

There will be no staffing adjustments as staff will be dedicated to performing other duties at all three sites if the orchard maintenance services are approved.

Q2: How does the city utilize these city-owned orchards? For educational purposes or any other purposes? How does the city utilize the fruits produced? (Chao)

Staff response: As a nod to Cupertino's agricultural history, Phase 1 of the Stevens Creek Corridor Park and Restoration Project included planting small plum and apricot orchards at Blackberry Farm and revitalizing the orange orchard at Stocklmeir. Annually, the City partners with Village Harvest, and picks and donates the Stocklmeir oranges to organizations such West Valley Community Services and Second Harvest Food Bank. Since 2013, more than 27,000 pounds of fruit has been donated. The orchards in the Stevens Creek Corridor are also highlighted during Join-A-Ranger history walks.

Q3: How many acres of land in each of the three parks with orchards? (Chao)

Staff response: Based on the GIS Property Information, it is as follows:

Varian Park – 280,439 SF or 6.44 acres with approximately 1.8 acres of orchard.

Blackberry Farm – 881,504 SF or 20.24 acres with approximately 0.15 acres of orchard.

Stocklmeir – 212,973 SF or 4.89 acres with approximately 1.3 acres of orchard.

Q4: How much water is estimated that these orchards consume? (Chao)

Staff response: At both Varian and Blackberry Farm sites, there is no dedicated meter to monitor the water usage at the orchards. There is only one water meter at each site which meters water use for all ground irrigation, orchard and buildings (only at BBF). At Stocklmeir, there is a separate water meter for the orchard. Staff will extract the information and confirm accuracy prior to transmitting to Council at a later date.

Q5: What will be the performance assessment criteria and process before the city decides whether to renew the contract? (Chao)

Staff response: Staff will assess the Contractor based on their performance of meeting and completing the maintenance schedule noted in Exhibit A of the Agreement.

Q6: Are these fruit trees native plants? What's their impact or contribution on biodiversity? What's their role in the city's Climate Action Plan 2.0? (Just curious if there is any) (Chao)

Staff response: The trees are not native plants. Having healthy fruit trees can benefit everyone. The

trees enable people to go outside and explore while providing additional wildlife habitat which help maintain biodiversity. The orchards are unique such that fruit tree blossoms are an important source of nectar for pollinating insects including bees and butterflies. The orchards also provide habitats for birds and insects.

Having healthy trees helps ensure the sustainability of the urban forest and it removes carbon from the atmosphere to help reduce emissions in the City. While the carbon sequestration value of the trees themselves is relatively low, the orchards and surrounding properties represent an important historical naturalized resource and opportunity for environmental education. Specifically, the CAP 2.0 recognizes that adapting to a changing climate will require new opportunities for outdoor recreation and education (Action CS 2.1). In community surveys, protecting outdoor recreation and ecological resources is an important concern of Cupertino residents (CAP 2.0 pg 26).

Q7. Regarding Q6, the staff report states "Maintenance of these orchards is supportive of Cupertino's Climate Action Plan 2.0, under the Working with Nature strategic pillar. Proper orchard tree maintenance ensures the trees stay healthy and provide the best fruit production annually." **(Chao)**

Could you elaborate a bit more on how maintaining these fruit trees fits in the Climate Action Plan 2.0?

Staff response: As previously stated, having healthy trees helps ensure the sustainability of the urban forest and it removes carbon from the atmosphere to help reduce emissions in the City. In addition, the trees create a more biodiverse landscape, improve air quality, reduce flood risks and provide recreational benefits for the community enjoyment.

While the carbon sequestration value of the trees themselves is relatively low, the orchards and surrounding properties represent an important historical naturalized resource and opportunity for environmental education. Specifically, the CAP 2.0 recognizes that adapting to a changing climate will require new opportunities for outdoor recreation and education (Action CS 2.1). In community surveys, protecting outdoor recreation and ecological resources is an important concern of Cupertino residents (CAP 2.0 pg 26).

Q8. Please will someone show which contract services amounts and contingencies have already been used for these orchard locations? BBF, for instance, has contract services and contingencies listed. It should be easy to determine that an increase in appropriation is necessary, but this request does not tie in with the approved Budget. **(Moore)**

Staff response: The BBF Ground Maintenance Budget does not include contract services for orchard maintenance. At this moment, the contingency amount in the budget is available.

The Neighborhood Parks Budget does include contract services for orchard maintenance to maintain the Varian Park orchard. At this moment, the contingency amount in the budget is available.

Have the past years' Special Projects for BBF all been spent? We received an update on their progress fairly recently.

Staff response: In regard to the FY2022-23 Special Project budget, a portion of the budget has been spent to complete the Blackberry Farm Pedestrian Bridge Decking Replacement Project. Out of the \$30,000 approved budget, the City used \$17,900.

Because the Budget allows for movement within the Department, I do not think an increase in appropriation is needed, especially when every part of the departmental budget has a contingency to draw on. When an item is this small, \$12,000, it becomes a political issue to spend the time sorting it out.

Lastly, with regards to the purchasing policy total of \$175,000 requiring a contract to come to Council, is that the contract total regardless of time frame or is that a one year total?

Staff response: Approval authority is based on contract total amount regardless of time frame.

I think the questions are really, what requirement made it so that this item has to come to Council? Was it the contract total? What document demonstrates that? If the appropriations for the entire department have changed, that should be reflected, if not, given the flexibility within each Budget unit for movement, it would need to be proven that BBF, for example, has used up all of their funding to ask for more, care of the trees is already in the Budget, and it is not broken out as a separate item. The department is free to backfill funding as needed from within that department. The Budget does not appear to be so tightly controlled that this agenda budget request is needed, in my view. I hope this makes sense.

See PDF 53 for BBF (for example):

<https://www.cupertino.org/home/showpublisheddocument/31749/637970448232770000>

Staff response: This item is being brought to Council because the contract total amount requires Council approval. The additional appropriation is being requested as the existing program budget for BBF Ground Maintenance does not include budget appropriations to maintain the orchards at Blackberry Farm and Stocklmeir.

CC 03-21-2023

#6

On Call Tree Maintenance
Services Contract

Desk Item



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT DESK ITEM

Meeting: March 21, 2023

Agenda Item #6

Subject

Consider authorizing execution of an On-Call Tree Maintenance Services Contract with West Coast Arborists, Inc.

Recommended Action

Authorize the City Manager to execute an On-Call Maintenance Service Contract with West Coast Arborists, Inc. for three years, at an annual amount not-to-exceed \$200,000 per year, for a total of \$600,000 and if performance is satisfactory, allow up to two additional years of service.

Background:

Staff's responses to questions received from councilmember are shown in italics.

Q1: Please provide the RFP for context. (**Chao**)

Staff response: Please see attached.

Q2: I believe the state law requires the city to choose the lowest bid, unless the city council adopted a resolution to allow another to select based on the qualifications. What resolution the city has adopted for tree maintenance service to allow selection based on both bid amount and qualification? (**Chao**)

The staff report states "This is an on-call contract to provide services on unanticipated needs. As a means of comparing potential costs of the proposal, each vendor provided sample unit or line item pricing in the RFP for services that the City would likely request the successful firm to perform. When tree maintenance services are needed, the unit prices will be used to determine the overall cost of the work request. Based on these unit costs and an assessment of the qualifications of each firm, West Coast Arborists was identified as the most advantageous vendor for the City."

I understand that the lowest bid may not always be the best method. But the intent is to

ensure fair opportunity for everyone, especially underprivileged businesses.

Staff response: The selection of the contractor was conducted pursuant to the competitive bidding procedures under Section 3.22 of the City's Municipal Code. Pursuant to CMC 3.22.060(C), the City undertook a competitive process to determine the lowest responsible bidder. As reflected in the table below, West Coast Arborists provided the lowest bid amount. The recommended selection of West Coast Arborists is based on their bid amount.

| On Call Tree Maintenance Contractor | Total Unit Price Comparison |
|--|------------------------------------|
| Anderson Tree Care Specialists, Inc. | \$18,438.00 |
| The Professional Tree Care Co. | \$9,962.00 |
| Bay Area Tree Specialists | \$9,074.00 |
| Community Tree Service, Inc. | \$9,067.99 |
| Arborist Now, Inc. | \$8,188.00 |
| West Coast Arborists, Inc. | \$7,890.00 |

Q3: What evaluation criteria or scoring methods were used to determine the qualification of the applicants? Are the criteria made available to the applicants in the RFP? **(Chao)**

Staff response: The selection of the contractor was conducted pursuant to the competitive bidding procedure under Section 3.22 of the City's Municipal Code; therefore, the firm submitting the lowest cost proposal was selected. The City also reviewed the contractor's proposal to verify the firm was responsible, i.e. qualified, to perform the scope of services

Q4: What's the unit costs and ranking of qualification of all 6 of the firms who submitted their responses to RFP? **(Chao)**

Staff response: Please see below.

| On Call Tree Maintenance Contractor | Total Unit Price Comparison | Ranking Based on Total Unit Cost |
|--|------------------------------------|---|
| Anderson Tree Care Specialists, Inc. | \$18,438.00 | 6 |
| The Professional Tree Care Co. | \$9,962.00 | 5 |
| Bay Area Tree Specialists | \$9,074.00 | 4 |
| Community Tree Service, Inc. | \$9,067.99 | 3 |
| Arborist Now, Inc. | \$8,188.00 | 2 |
| West Coast Arborists, Inc. | \$7,890.00 | 1 |

Q5: Has the city or any city staff worked with any of the 6 firms before or do they have existing contract with the city? **(Chao)**

Staff response: The City Public Works Department has worked with Anderson Tree Care Specialists, Inc. in the past and has an existing on-call agreement. The City's Community Development Department has worked with West Coast Arborist, Inc. and has an existing on-call agreement.

Q6. Please provide the RFP for this item. That is my only request at this time. **(Moore)**

Staff response: Please see attached.

Attachments Provided with Original Staff Report:

- A. Draft Contract - from published agenda

Attachments Provided with Desk Item:

- B. Tree Maintenance Services RFP 2022



CITY OF CUPERTINO

REQUEST FOR PROPOSAL

FOR

TREE MAINTENANCE SERVICES

RFP Issue Date:

October 24, 2022

Submittal Due Date:

December 9, 2022 at 2:00pm

OFFICE OF THE DIRECTOR OF PUBLIC WORKS

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

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REQUEST FOR PROPOSAL CITY OF CUPERTINO

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 - Attachment B – Pricing Table
 - Attachment C – Sample of Cupertino On Call Public Works Contract
 - Attachment D – Insurance Requirements

1. INTRODUCTION

The City of Cupertino (City) was incorporated in 1955 and is located in Santa Clara County, approximately 32 miles south of the San Francisco International Airport and directly west of the City of San Jose on the western edge of the Santa Clara Valley. Cupertino strives to be a leader in providing cost effective municipal services to make government work better for residents, guests, vendors, and staff.

The City's Department of Public Works Maintenance Services Divisions are responsible for the maintenance of street trees, parks trees, and parking lot trees on City owned properties and within the public right of way. The City's tree population is over 24,000 and is diverse in both species and age.

The City invites proposals from qualified tree maintenance business that is duly registered and licensed with C-61/D49 license in the State of California to provide on-call tree maintenance services as required by the Public Works Maintenance Services Division.

2. PURPOSE OF THIS REQUEST FOR PROPOSAL

The purpose of this Request for Proposal (RFP) is to facilitate the selection of a qualified Contractor to provide on-call tree maintenance services at various locations in the City. The awarded Contractor shall provide the City with the best possible tree care to maintain the City's urban forest at a level expected by the City's residents, City Council, City staff, and visitors of the community.

Typical services include, but are not limited to, the following:

1. Remove small/large trees
2. Trim branches
3. Tree Pruning
4. Trim or remove diseased trees
5. Grind stumps
6. Chip branches
7. Haul off debris
8. Emergency Response
9. Other assignments as required

Due to the specific needs for tree work, the City may seek to enter into an agreement with multiple contractors for on-call work to ensure availability and response. The total annual contract amount is anticipated to be approximately between \$150,000 to \$200,000.

Contractors submitting a response to the RFP are required to state their understanding of the work and experience. Contractors are urged to submit concise proposals, appropriate to the scale of the work and include only items that are relevant to this work.

The City reserves the right to reject any or all responses received as a result of this solicitation; to extend the submission due date for; to modify, amend, reissue or rewrite this document; and to procure any or all services by other means.

The City will not be liable for any costs incurred for the preparation of proposals or for developing and carrying out interviews, if needed. Submission of a proposal indicates acceptance by the Contractor of the conditions contained in this RFP.

3. SCOPE OF SERVICES

The scope of work is provided in Attachment A. The Contractor's proposal shall address how the Contractor will perform and deliver the indicated services. Work tasks shall include, but are not necessarily limited to those items listed in Attachment A.

Supplies and Equipment

The Contractor shall furnish all labor, tools, equipment, and materials, and supervision except as otherwise specified, which are required to perform the maintenance assignments outlined in the Scope of Work.

All materials and supplies shall be of commercial quality only and no additional charges shall be made by the Contractor for providing and maintaining materials and equipment consistent with providing the services described in Attachment A.

The Contractor shall comply with all regulations and safety precautions listed on the product and equipment labels.

The Contractor is required to be registered with the California Department of Industrial Relations (DIR) and have a C-61/D49 Tree Service License.

4. COST PROPOSAL

The Contractor shall submit a cost proposal for services with the submittal in a separate attachment using the Pricing Table in Attachment B.

The cost proposal shall include the following:

- Proposal price shall be inclusive of all cost to manage all aspects of the Scope of Work,

Attachment A.

- The price for each item must include all direct, indirect, overhead, and markup.

The Contractor shall also include the labor rate along with cost proposal. The cost proposal and other submittal requirement information will be reviewed to select the Contractor.

The City intends to execute a three-year contract and shall retain the option to extend the term of the contract on a year-to-year basis not exceeding five years from the expiration date of the original term.

Any such renewal after the first three years shall be accomplished by the City providing a written notice of renewal to the Contractor at least 30 days prior to expiration of the term.

5. RFP SCHEDULE

Listed below is the RFP schedule. These dates are subject to change.

| <u>Approximate Dates</u> | <u>Task</u> |
|--------------------------------|----------------------------------|
| October 24, 2022 | Issuance of Request for Proposal |
| November 16, 2022 by 2:00 p.m. | Deadline to submit RFP questions |
| December 9, 2022 by 2:00 p.m. | Deadline to submit Proposal |

6. SUBMITTAL REQUIREMENTS

Pre-proposal questions or requests for clarification shall be sent via email to Jimmy Tan at JimmyT@cupertino.org and must be submitted **by 2:00 p.m. on Tuesday, November 16, 2022**. Email title should include the words "Tree Maintenance RFP." Questions or clarifications not sent to JimmyT@cupertino.org nor by the due date and time, will not receive a response. Any response provided by the City shall be posted at <https://apps.cupertino.org/bidmanagement/index.aspx>.

Proposals are due **by Tuesday, December 9, 2022, by 2:00 p.m. Late submittals will not be considered.**

Proposals must be in PDF format and are to be uploaded to the City's bid management platform at http://apps.cupertino.org/bid_management/index.aspx. The proposal shall be precise and not include any unnecessary promotional material. The City prefers a quality submittal over quantity. Succinct, responsive proposals are welcomed. Submittals will not be returned.

The proposal shall include the submittal requirement information in addition to the cost

proposal to be deemed qualified for selection. If the requested information is not provided, the submittal shall be considered non-responsive.

All submittals shall provide the following information.

A. Cover Letter

An original, signed cover letter that contains the following.

1. Name of the individual, partnership, company, or corporation submitting the proposal.
2. Statement which indicates an understanding of the Scope of Work as presented in this specification and confirmation that all terms and conditions of the RFP are understood and acknowledged by the undersigned.
3. Statement that the Contractor accepts the City's maintenance service contract, including specifically the City's Indemnification requirements and insurance coverage requirements, without modification. Contractors failing to provide this statement may be considered non-responsive and eliminated from further consideration.

B. Work Plan and Approach

Discuss the Contractor organization's understanding of the Scope of Work to be performed. Describe how the method in which the indicated services will be performed and delivered.

C. Qualification and Experience

The Contractor shall have at a minimum of five (5) years of experience providing full-service tree maintenance to governmental agencies and/or municipalities that includes, but not limited to the pruning, removal and replacement of tree and performed the responsibilities as noted in Attachment A. A description of the Contractor's qualifications, maintenance experience, organization, including the names of principals, number of employees, client base, areas of specialization and expertise, certifications, and any other pertinent information in such a manner that proposal evaluators may reasonably formulate an opinion about the stability and financial strength of the organization. Contractor shall include work experience related to working alongside sensitive habitat and creeks.

D. Key Personnel

Name, position, summary of qualifications and related experience, and proposed responsibilities of key personnel.

E. Cost Proposal

Provide cost proposal as specified in Section 5. Cost proposal shall be delivered in a separate PDF attachment.

F. References

Provide at least three references from other agencies for whom the Contractor has provided services of equivalent or greater scope as being proposed. Each reference shall include the organization name, phone number and email of the contact person, and the services performed.

7. CONTRACT REQUIREMENTS

The Contractor shall execute a standard City of Cupertino maintenance services contract, defining basic contractual relationships with attachments that specify the scope of services, compensation schedule, and deliverable schedule. A sample City maintenance services contract is attached to this RFP as Attachment C. Please note that insurance requirements are identified in Attachment D.

This contract is subject to payment of Prevailing Wages pursuant to California Labor Code Section 1720, et seq. The successful Contractor awarded the contract, and all subcontractors of any tier must not pay less than the minimum prevailing rate of per diem for each craft, classification, or type of worker needed to perform the Services.

8. ATTACHMENTS

The following attachments are provided with the RFP package:

- Attachment A – Scope of Work
- Attachment B – Pricing Table
- Attachment C – Sample of Cupertino Maintenance Services Contract
- Attachment D – Insurance Requirements

END OF REQUEST FOR PROPOSAL

ATTACHMENT A

SCOPE OF WORK

The scope of contracted work shall consist of pruning, removal, stump grinding, and other maintenance of trees, along street corridors, and throughout parks, open spaces and facilities within the City of Cupertino, hereafter referred to as the City. Work shall be administered and approved by representatives of the Department of Public Works.

1. GENERAL REQUIREMENTS

- A. Contractor shall be aware of and shall comply with the City Codes governing tree work, traffic control and any other regulations that may affect operations.
- B. The Contractor shall furnish all labor, tools, equipment, materials, and supervision necessary to perform the pruning, removal of trees, stump grinding and other arboriculture related services as described in this section, in accordance with these specifications and subject to the terms and conditions of the contract.
- C. All work performed by Contractor shall conform to the latest International Society of Arboriculture (ISA), The American National Standard for Tree Pruning (ANSI A300) and specifications listed herein. Contractor shall comply with Standards of CAL-OSHA and the American National Standard Institute, Z133 Safety Requirements.
- D. Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease, and the appropriate utility company notified. In the event that work requires excavation, the Contractor is responsible for appropriate notification of Underground Service Alert (USA).
- E. Contractor shall staff each project work site with a Supervisor who holds a current International Society of Arboriculture (ISA) Certified Arborist Credential. All Supervisors shall possess adequate technical background to ensure that all work is accomplished in compliance with applicable codes and regulations. All Contractor personnel engaged in the actual tree pruning shall hold, at minimum, a current ISA Certified Tree Worker credential. All other personnel (e.g. ground workers, traffic control staff) shall have sufficient training so as to be capable of performing their functions in a safe and proficient manner.
- F. The Contractor shall comply with all local sound control and noise level rules, regulations, and ordinances. No internal combustion engine shall operate on the project without a muffler of the type recommended by the

manufacturer. Should any muffler or other control device sustain damage, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including, but not limited to truck, transit mixers or transit equipment that may or may not be owned by the Contractor.

- G. Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes. The Contractor shall comply with the provisions of the Clean Air Act, as amended (42 W.S.C. 1957 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et. Seq.) and the regulations there under (40 C.F.R. part 15).
- H. The Contractor shall follow the appropriate best management practices contained in the California Storm Water Best Management Practice Handbook, which is available from the Santa Clara Valley Water District Non-Point Source Program.
- I. Upon completion of the scheduled work or at the end of the day, whatever occurs first, the Contractor shall clean all the streets and grounds occupied by Contractor in connection with the project, of all rubbish, debris, excess material, temporary structures, and equipment, leaving the entire site of the work in a neat and presentable condition. All cleanup and disposal cost shall be included as part of this contract at no additional cost to the City.
- J. The Contractor will be responsible for providing, placing and maintaining approved signs, barricades, pedestals, flashers, delineators, fences, barriers and flagmen where needed, and other necessary facilities in the vicinity of the maintenance area and where any dangerous conditions may be encountered as a result thereof, for the protection of the motoring public. The Contractor will not be allowed to proceed with the work until such time that a sufficient number of these protection devices have been delivered to the project site and placed on site for use.
- K. Where parked vehicles are likely to interfere with the proposed work, the Contractor will supply and post at no less than 200' intervals on each side of the street "Temporary No Parking" signs 72 hours before the start of construction and to report the time of posting to the Sheriff's Department for the purpose of establishing "Tow Away" provisions. The Contractor shall be responsible for the removal of the temporary signs upon the completion of the Work. All signs shall be kept graffiti free at all times.
- L. Should the Contractor appear neglectful in furnishing warning and protection devices as outlines above, the Director of Public Works or his/her designee may direct attention to the existence of a hazard and the necessity of additional or different measures which shall be furnished and installed by the Contractor at Contractor's own expense, free of any cost to the City. Should the Contractor refuse or fail to act in a timely manner to correct a

hazardous condition, the Director of Public Works or his/her designee may direct City forces to provide the necessary protective and warning devices as deemed appropriate by the Director of Public Works or his/her designee. The cost accrued by the City in connection therewith will be deducted from the Contractor's contract payment. Any action or inaction on the part of the City in directing attention to the inadequacy of warning and protective measures or in providing additional protective warning devices shall not relieve the Contractor from responsibility for public safety or abrogate Contractor's obligation to furnish and pay for these devices.

- M. The Contractor shall submit any and all work schedules and/or traffic control plans to the Director of Public Works or his/her designee for approval as needed.
- N. Existing improvements in areas adjoining the property whereon tree pruning work is being performed shall be protected from injury or damage resulting from operations of the Contractor.

2. TREE PRUNING

All trimming/maintenance work shall be accordance with pruning standards as established by the latest edition of the International Society of Arboriculture Western Chapter. In all cases, the Director of Public Works or his/her designee shall have complete and sole discretion in determining conformance and acceptability of trees trimmed by the Contractor.

Maintenance pruning of trees is based on tree species, growth characteristics, tree form, tree condition, and tree structure. Tree evaluation before pruning determines what pruning must be performed to achieve or enhance a tree's structural integrity, appearance, or desired size. City trees are pruned to raise for clearance to reduce its size and to restore after damage to tree has occurred.

The specific techniques employed shall be consistent with industry practices for the size and species of the tree being trimmed. All dead, broken, damaged, loose, diseased or insect infested limbs, branches and stubs shall be removed. Small limbs, including suckers and waterspouts, shall be cut close to the trunk or branch from which they arise. Branches that are developing in a manner as to become larger than the limbs they originate from shall be removed. When encountering limbs that are weighted with more foliage than the limb is likely to support, selectively prune branches toward the end of the limb in order to reduce end weight and thus decrease the likelihood of limb failure. All cuts shall be made just outside the branch collar to the parent stem so that the wound closure can readily start under normal conditions.

Final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Excessively deep flush cuts, which produce large wounds or weaken the tree at the cut, shall not be made. The branch collar should be removed. All limbs 2" or greater shall be undercut to prevent splitting. The remaining limbs and branches shall not be split or broken at the cut. All crossed or rubbing limbs shall be removed unless approved by the Director of Public Works or his/her designee.

Contractor shall consult the Director of Public Works or his/her designee before making any cuts that could result in permanent disfigurement of the structure of any tree. If Contractor is, at any time, unclear on what course of action to follow in the field, Contractor shall consult with the Director of Public Works or his/her designee.

- a. Contractor shall comply with Standards of CAL-OSHA and the American National Standard Institute Safety Requirements.
- b. The Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease, and the appropriate utility company notified. Work shall then commence in accordance with instructions from the utility company. In the event that work causes excavation, Contractor is responsible for appropriate notification of Underground Service Alert (USA).
- c. No hooks, gaffs, spurs or climbers will be used by anyone employed for such trimming. Any vine plant growing on trees shall be removed at ground level.
- d. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth.
- e. Contractor shall maintain at least one (1) English speaking arborist, on-site, at all times.
- f. When trimming fungus, disease or fire blight infected limbs or fronds, all pruning tools shall be cleaned after each cut with alcohol or bleach.
- g. Topping shall not be done without prior approval of the City.

Specifications for Complete Trim

- a. Low branches overhanging streets shall be removed, where practical, to a minimum height above the street grade to fifteen feet (15'). Low branches overhanging sidewalks and parkway shall be removed to a minimum height of seven feet (7') and without detracting from the natural shape of the tree.
- b. Shorten the length of limbs which extend beyond the natural perimeter of an otherwise symmetrical form.
- c. Prune end branches to lighten end weight where such overburden appears

- likely to cause breakage of limbs. Remove cross limbs, water sprouts and suckers. Remove or subordinate competing central leaders as appropriate.
- d. All trees on which vines are growing shall have said vines removed. Vine tendrils shall be removed in a manner which will not injure trees or cause scarring of low branches and tree trunks.
 - e. Young trees shall be structurally pruned in accordance with Ansi A-300 Best management practices for Pruning.

3. TREE REMOVAL

Specifications for Complete Tree Removal

- a. The trees to be removed will be marked in a manner determined by the Director of Public Works or his/her designee. Only those trees so marked shall be removed by the Contractor.
- b. Trees shall be felled in a manner consistent with industry practices with the primary emphasis on the safety of the public and the protection of adjacent property. At no time shall branches, limbs or tree trunks be allowed to freefall and create damage of any type.
- c. Cranes and other rigging equipment shall be properly certified, with evidence of such available for inspection prior to use of said equipment in City of Cupertino. Crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO) and shall be prepared to display current certification prior to operating a crane in the City. The use of cranes and certified crane operators shall not result in additional charges to the City.
- d. While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. In addition, the Contractor shall not drop logs or trunks so as to create undue noise or impact shock disturbances or damages to public and/or private property.
- e. Removal of entire tree, stump remaining shall be no higher than four (4) inches above soil grade and shall be removed within 48 hours after tree removal.
- f. Work shall begin within 10 days after each request and be diligently pursued until completion.
- g. Contractor shall make all arrangements necessary to have power or utility lines temporarily disconnected, if necessary, for the safe removal of the tree.
- h. When the removal requires special or additional means, there shall be no additional units or overall cost to the City without the authorization of the Director of Public Works or his/her designee.

4. STUMP REMOVAL

Specifications for stump and surface root removal:

Stumps shall be ground to a minimum of twelve (12") inches below the level of the adjacent ground. Holes shall be filled with resulting mulch and raked level with the adjacent ground. For larger tree removals, the Contractor shall grind an additional twelve (12) inches around the circumference of the removed trunk, or import soil as needed to till into backfill in order to attain even grade with the adjacent ground. All wood, debris and excess mulch shall be removed, and the surrounding area shall be raked and /or swept clean.

NOTE: If stump grinding does not follow within the same workday as removal, a safety barricade shall be placed and maintained over the stump until the stump grinding is complete.

The Contractor shall be responsible for contacting Underground Service Alert for the locating of underground utilities prior to stumping operations. The Contractor is also responsible for identifying the location of all public and private property landscape irrigation prior to the removal of a tree and its roots. The Contractor shall be responsible for the repair of any private property irrigation system components that are damaged during a tree removal or stump grinding. Repairs should be made using components matching those that were damaged.

All lateral surface roots shall be removed to a depth of 8 inches (8") below grade. When sidewalk is present, remove all surface roots between the curb and sidewalk. When no sidewalk is present, remove surface roots.

Backfill material shall be compacted to provide for minimal settling. It shall consist of an equal mixture of soil and stumped material which shall be three (3) inches above grade to provide for any soil settlement.

5. GROWTH REGULATOR APPLICATION

If requested, the Contractor shall apply all herbicides and chemicals in accordance with law. The Contractor shall use legally approved herbicides and chemicals in proportions to the manufacturer's recommendations. The instructions on the label shall be followed explicitly and special care shall be exercised in application. When spraying, special care shall be exercised to prevent unnecessary discomfort to the people in the area.

ATTACHMENT B

PRICING TABLE

| Item | Description | Unit | Unit Price (\$) |
|--------------|--|----------------------|-----------------|
| 1 | Tree Pruning | | |
| | Small (up to 20' x 20' canopy) | Per Tree | |
| | Medium (up to 40' x 40' canopy) | Per Tree | |
| | Large (everything greater) | Per Tree | |
| 2 | Full Trim Based on Service or Special Requests | | |
| | 0"-6" dbh | Per Tree | |
| | 7"-12" dbh | Per Tree | |
| | 13"-18" dbh | Per Tree | |
| | 19"-24" dbh | Per Tree | |
| | 25" and over dbh | Per Tree | |
| 3 | Tree Removal | | |
| | Complete Tree Removal (including stump and roots) Under 36" | Per dbh | |
| | Complete Tree Removal (including stump and roots) Over 36" | Per dbh | |
| 3 | Stump Removal (including primary buttress roots) | Per Diameter Inch | |
| 4 | Fertilization/Pesticide Application | hourly | |
| 5 | Three-man crew with chip truck and chipper | hourly | |
| 6 | Three-man crew with aerial lift truck and chipper | hourly | |
| 7 | Aerial lift truck with operator for observations and inspections | hourly | |
| TOTAL | | | |



ON-CALL PUBLIC WORKS CONTRACT WITH _____

1. **PARTIES**

This On-Call Public Works Contract (“Contract”) is made by and between the City of Cupertino, a municipal corporation (“City”), and _____ (“Contractor”) a Select one _____ for _____, and is effective on the last date signed below (“Effective Date”).

2. **SCOPE OF WORK**

2.1 Scope of Work. Contractor will perform and provide all labor, materials, equipment, supplies, transportation and any other items or work necessary to perform and complete the work described in the Scope of Work (“Work”), attached and incorporated here as **Exhibit A**, on an as-needed basis. The Work must comply with this Contract and with each Service Order issued by the City’s Project Manager or his/her designee, in accordance with the following procedures, unless otherwise specified in **Exhibit A**. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Service Orders. Before issuing a Service Order, the City Project Manager will request that Work be done in writing and hold a meeting with Contractor to discuss the Service Order. Contractor will submit a written proposal that includes a specific Scope of Work, Schedule of Performance, and Compensation, which the Parties will discuss. Thereafter, City will execute a Service Order Form for the Work, attached and incorporated here as **Exhibit B**. The Service Order will specify the Scope of Work, Schedule of Performance, Compensation, and any other conditions applicable to the Service Order. Issuance of a Purchase Order is discretionary. The City Project Manager is authorized to streamline these procedures based on the City’s best interests. In particular, in emergency situations, the City Project Manager may execute a Service Order for emergency work based on oral conversations with the Contractor, without adhering to the full process outlined in this section. Contractor will not be compensated for Work performed without a duly authorized and executed Service Order.

3. **TIME OF PERFORMANCE**

3.1 Term. This Contract begins on the Effective Date and ends on _____ (“Contract Time”), unless terminated earlier as provided herein. The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Contract, 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 complete the Work within the time specified in each Service Order, and under no circumstances should the Work go beyond the Contract Time.

3.3 Time is of the essence for the performance of all the Work required in this Contract and in each Service Order. Contractor must have sufficient time, resources, and qualified staff to deliver the Work on time. Contractor must respond promptly to each Service Order request.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Work based upon actual costs and capped so as not to exceed \$_____ (“Contract Price”), based upon the Scope of Work in **Exhibit A** and the budget and rates included. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount.

4.2 Per Service Order. Compensation for Work provided under a Service Order will be based on the rates set forth in the Service Order, which shall not exceed the capped amount specified in the Service Order.

4.3 Invoices and Payments. Contractor must submit an invoice on the first day of each month, describing the Work performed during the preceding month, itemizing labor, materials, equipment, and any incidental costs incurred. Contractor will be paid ninety-five percent (95%) of the undisputed amounts billed within thirty (30) days after City receives a properly submitted invoice. Any retained amounts will be included with Contractor’s final payment within sixty (60) days of City’s acceptance of the Work pursuant to a specific Service Order as complete.

5. INDEPENDENT CONTRACTOR

5.1 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 Work and for the persons hired to work under this Contract. Contractor is not entitled to health benefits, worker’s compensation, or other benefits from the City.

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

5.3 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Work as required by law and have procured a City Business License, if required by the Cupertino Municipal Code. Contractor shall possess a California Contractor’s License in good standing for the following classification(s): _____, which must remain valid for the entire Contract Time.

5.4 Subcontractors. Only Contractor’s employees are authorized to work under this Contract. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Contract will apply to any approved subcontractor.

5.5 Tools, Materials, and Equipment. Contractor will supply all tools, materials, and

equipment required to perform the Work under this Contract.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Contract and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Contract 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 Contract, 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 Contract are not greater than they would have been had the determination not been made.

6. CHANGE ORDERS

Amendments and change orders must be in writing and signed by City and Contractor. Contractor's request for a change order must specify the proposed changes in the Work, Contract Price, and Contract Time. Each request must include all the supporting documentation, including but not limited to plans/drawings, detailed cost estimates, and impacts on schedule and completion date.

7. ASSIGNMENTS; SUCCESSORS

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

8. PUBLICITY / SIGNS

Any publicity generated by Contractor for the Project during the Contract Time, and for one (1) year thereafter must credit City contributions to the Project. The words "City of Cupertino" must be displayed in all pieces of publicity, flyers, press releases, posters, brochures, interviews, public service announcements, and newspaper articles. No signs may be posted or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

9. SUBCONTRACTORS

9.1 Contractor must perform all the Work with its own forces, except that Contractor may hire qualified subcontractors to perform up to _____ % of the Work under any give Service Order

provided that each subcontractor is required by contract to be bound by the provisions of this Contract and any applicable Service Order. Contractor must provide City with written proof of compliance with this provision upon request.

9.2 City may reject any subcontractor of any tier and bar a subcontractor from performing Work on the Project, if City in its sole discretion determines that subcontractor's Work falls short of the requirements of this Contract or constitutes grounds for rejection under the Public Contract Code. If City rejects a subcontractor, Contractor at its own expense must perform the subcontractor's Work or hire a new subcontractor that is acceptable to City. A Notice of Completion must be recorded within fifteen (15) days after City accepts the Work under a particular Service Order if the Work involves work by subcontractors.

10. RECORDS AND DAILY REPORTS

10.1 Contractor must maintain daily reports of the Work and submit them to City upon request and at completion of Work pursuant to a Service Order. The reports must describe the Work and specific tasks performed, the number of workers, the hours, the equipment, the weather conditions, and any circumstances affecting performance. City will have ownership of the reports, but Contractor will be permitted to retain copies.

10.2 If applicable, Contractor must keep a separate set of as-built drawings showing changes and updates to the Scope of Work or the original drawings as changes occur. Actual locations to scale must be identified for all major components of the Work, including mechanical, electrical and plumbing work; HVAC systems; utilities and utility connections; and any other components City determines should be included in the final drawings of the Project. Deviations from the original drawings must be shown in detail, and the location of all main runs, piping, conduit, ductwork, and drain lines must be shown by dimension and elevation.

10.3 Contractor must maintain complete and accurate accounting records of its Work, in accordance with generally accepted accounting principles, which must be available for City review and audit, kept separate from other records, and maintained for four (4) years from the date of City's final payment.

11. 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 Contractors ("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 Contract or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations or warranties;
- (b) Performance or nonperformance of the Work or of any obligations under the Contract by Contractor, its employees, agents, servants, or subcontractors;
- (c) Payment or nonpayment by Contractor or its subcontractors or sub-subcontractors for Work

- performed on or off the Project Site; and
- (d) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors.

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

11.3 Contractor's duties under this entire Section 11 are not limited to Contract Price, Workers' Compensation, or other employee benefits, or the insurance and bond coverage required in this Contract. Nothing in the Contract shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnatee.

11.4. Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Contract, a purchase order or other transaction.

11.5. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Contract. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

11.6. This Section 11 shall survive termination of the Contract.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit C**, and must maintain the insurance for the Contract Time, or longer as required by City. City will not execute the Contract 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 Contract.

13. COMPLIANCE WITH LAWS

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

13.2 Labor Laws.

- a. The following provisions apply to any Service Order of \$1,000 or more:

- i. **In General.** For purposes of California labor law, this is a public works contract

subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.). In accordance with Labor Code Section 1771, Contractor and all subcontractors shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations (“DIR”) to all workers employed on this project. In accordance with Labor Code Section 1815, Contractor and all subcontractors shall pay all workers employed on this project 1 ½ the basic rate of pay for work performed in excess specified hour limitations. The work performed pursuant to this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

- ii. **Registration.** Contractor and all subcontractors shall not engage in the performance of any work under this Contract unless currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. Contractor represents and warrants that it is registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code and will provide its DIR registration number, along with the registration numbers of any subcontractors as required, to the City.
- iii. **Posting.** Contractor shall post at the job site the determination of the DIR director of the prevailing rate of per diem wages together with all job notices that are required by regulations of the DIR.
- iv. **Reporting.** Contractor and any subcontractors shall keep accurate payroll records in accordance with Section 1776 of the Labor Code and shall furnish the payroll records directly to the Labor Commissioner in accordance with the law.
- v. **Report on Prevailing Rate of Wages.** The City has obtained the general prevailing rate of per diem wages in the vicinity of the project for each type of worker needed, a copy of which is on file at the City of Cupertino City Hall, and shall be made available to any interested party upon request.
- vi. **Employment of Apprentices.** Contractor’s attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor. It shall be the responsibility of the Contractor to effectuate compliance on the part of itself and any subcontractors with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- vii. **Penalties.** Contractor’s attention is directed to provisions in Labor Code Sections 1775 and 1813. In accordance with Labor Code Section 1775, Contractor and subcontractors may be subject to penalties for Contractor’s and subcontractors’ failure to pay prevailing wage rates. In accordance with Labor Code Section 1813, Contractor or subcontractors may be subject to penalties for Contractor’s or subcontractors’ failure to pay overtime pay rates for hours worked by workers employed on this project in excess specified hour limitations.

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

c. As required by Labor Code Section 1861, by signing this Contract Contractor certifies as

follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the work of this contract."

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or subcontractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Contractor, its employees, subcontractors, servants, and agents, may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of law, including Government Code section 1090 and Government Code section 81000 and their accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined by state law, or in violation of a City ordinance or policy while serving as a City Representative or for one year thereafter. Contractor, its employees, subcontractors, servants, and agents warrant they are not employees of City nor do they have any relationship with City officials, officers, or employees that creates a conflict of interest. Contractor may be required to file a conflict of interest form if it makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by City rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements, or terminating this Contract. City reserves all other rights and remedies available under the law and this Contract, including the right to seek indemnification under Section 11 of this Contract.

14. BONDS

For any Service Order of \$25,000 or more, Contractor must obtain a payment bond and a performance bond, each in the penal sum of 100% of the compensation pursuant to the Service Order, using the Bond Forms attached and incorporated here as **Exhibit D**. Each bond must be issued by a surety admitted in California, with a financial rating from A.M. Best Company of Class A- or higher, or as otherwise acceptable to City. If an issuing surety cancels a bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable to City within seven (7) calendar days after written notice from City. If Contractor fails to do so, City may in its sole discretion and without prior notice, purchase bonds at Contractor's expense, deduct the cost from payments due Contractor, or terminate the Service Order or Contract. City will not authorize work under a Service Order until the required bonds are submitted.

15. UTILITIES, TRENCHING, AND EXCAVATION

15.1 Contractor must call the Underground Service Alert (“USA”) 811 hotline and request marking of utility locations before digging or commencing Work. For underground service alerts for street lighting and traffic signal conduits, City’s Service Center must be called at (408) 777-3269. Government Code Section 4215 requires Contractor to notify City and Utility in writing if it discovers utilities or utility facilities not identified in the Contract.

15.2 Pursuant to Government Code Section 7104, Contractor must stop work, notify City in writing, and wait for instructions if one of the conditions below is found at the worksite. City will work with Contractor to amend the Contract or issue a change order if the discovered conditions materially change the Work/Performance, Contract Time or Contract Price.

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

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

16. URBAN RUNOFF MANAGEMENT

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

- (a) Install storm drain inlet protection devices such as sand bag barriers, filter fabric fences, and block and gravel filters at all drain inlets impacted by construction. During the annual rainy season, October 15 through June 15, storm drain inlets impacted by construction work must be filter-protected from onsite de-watering activities and saw-cutting activities. Shovel or vacuum saw-cut slurry and remove from the Work site;
 - (b) Cover exposed piles of soil or construction material with plastic sheeting. Store all construction materials in containers;
 - (c) Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm
-

drains prior to rain and at the end of each work day. When the Work is completed, wash the streets, collect and dispose of the wash water offsite in lawful manner;

- (d) After breaking old pavement, remove debris to avoid contact with rainfall/runoff;
- (e) Maintain a clean work area by removing trash, litter, and debris at the end of each work day and when Work is completed. Clean up any leaks, drips, and other spills as they occur.

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

17. PROJECT COORDINATION

City Project Manager. The City assigns _____ as the City's representative for all purposes under this Contract, with authority to oversee the progress and performance of the Scope of Work. 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 _____ as its single Representative for all purposes under this Contract, with authority to oversee the progress and performance of the Work. Contractor's Project manager is responsible for coordinating and scheduling the Work in accordance with City instructions, service orders, and the Schedule of Performance. Contractor must regularly update the City's project manager about the status, progress and any delays with the work. City's written approval is required prior to Contractor substituting a new Representative which shall result in no additional costs to City.

18. ABANDONMENT AND TERMINATION

18.1 City may abandon or postpone the Work or parts thereof at any time. Contractor will be compensated for satisfactory Work performed through the date of abandonment and will be given reasonable time to close out Work under a Service Order. With City's pre-approval in writing, the time spent in closing out Work under a Service Order will be compensated up to ten percent (10%) of the total time expended in performing the Work.

18.2 City may terminate the Contract for cause or without cause at any time. Contractor will be paid for satisfactory Work rendered through the termination date and will be given reasonable time to close out the Work.

18.3 Final payment will not be made until Contractor delivers the Work and provides records documenting the Work, products, and deliverables completed.

19. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

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

Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

20. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Contract, the prevailing party will be entitled to reasonable attorney fees and costs.

21. SIGNS/ADVERTISEMENTS

No signs may be displayed on or about City's property, except signage which is required by law or by the Contract, without City's prior written approval as to size, design and location.

22. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Contract.

23. WAIVER

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

24. WARRANTY

Contractor warrants that materials and equipment used will be new, of good quality, and free from defective workmanship and materials, and that the Work will be free from material defects not intrinsic in the design or materials. All Work, materials, and equipment should pass to City free of claims, liens, or encumbrances. Contractor warrants the Work and materials for one year from the date of City's acceptance of the Work as complete ("Warranty Period"), except when a longer guarantee is provided by a supplier, manufacturer or is required by this Contract. During the Warranty Period, Contractor will repair or replace any Work defects or materials, including damage that arises from Contractor's Warranty Work, except any wear and tear or damage resulting from improper use or maintenance.

25. ENTIRE AGREEMENT

This Contract and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete contract between City and Contractor with respect to the Work and the Project. No oral contract or implied covenant will be enforceable against City. If there is any inconsistency between any term, clause, or provision of the main Contract and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Contract shall prevail and be controlling.

26. SEVERABILITY/PARTIAL INVALIDITY

If a court finds any term or provision of this Contract to be illegal, invalid, or unenforceable, the legal portion of said provision and all other contract provisions will remain in full force and effect.

27. SURVIVAL

The contract provisions which by their nature should survive the Contract or Completion of Project, including without limitation all provisions regarding warranties, indemnities, payment obligations, insurance, and bonds, shall remain in full force and effect after the Work is completed or Contract ends.

28. INSERTED PROVISIONS

Each provision and clause required by law for this Contract 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.

29. HEADINGS

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

30. COUNTERPARTS

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

31. NOTICES

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth (5th) calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

| | |
|---|---|
| To City of Cupertino Select Address Attention: Copy to: Email: | CONTRACTOR Attention: Copy to: Email: |
|---|---|

32. EXECUTION

The persons signing below warrant they have the authority to enter into this Contract and to legally bind their respective Parties. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313. This Contract 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 Contract to be executed.

CITY OF CUPERTINO

A Municipal Corporation

CONTRACTOR

By_____

Name_____

Title_____

Date_____

By_____

Name_____

Title_____

Date_____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date_____

ON-CALL PUBLIC WORKS CONSTRUCTION CONTRACTS***Insurance Requirements: Exhibit C***

Contractor shall procure and maintain for the duration of the contract, *and for five years following the completion of the Project*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (“CGL”): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, *written on a comprehensive general liability form, and must include coverage for liability arising from Contractor’s or Subcontractor’s acts or omissions, including Contractor’s protected coverage, blanket contractual, products and completed operations, vehicle coverage and employer’s non-ownership liability coverage, with limits of at least \$2,000,000 per occurrence. The CGL policy must protect against any and all liability for personal injury, death, property damage or destruction, and personal and advertising injury.* If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - a. It shall be a requirement under this agreement 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 (1) the minimum coverage/limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Contractor'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 CG 20 10 04 13
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect City as a named insured.
2. **Automobile Liability:** ISO Form CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired autos (Code 8) and non-owned autos (Code 9), with limit 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 accident for bodily injury or disease, or as otherwise required by statute. If Contractor is self-insured, Contractor must provide a Certificate of Permission to Self-Insure, duly authorized by the DIR.

☐ N/A if box checked (*Contractor provides written verification it has no employees*).
4. **Professional Liability** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate.

☐ N/A if box checked (*Contract is not design/build*).
5. **Builder’s Risk.** Course of Construction insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

☐ N/A if box checked (*Project does not involve construction or improvements/installations to property*).

6. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

☐ N/A if box checked (*Project does not involve environmental hazards*).

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

Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. At City's option, either: (1) Contractor shall cause the insurer to reduce or eliminate self-insured retentions as respects City, its officers, officials, employees, and volunteers; or (2) Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of the Services performed by or on behalf of Contractor including materials, parts, or equipment furnished. Endorsement of CGL coverage shall be at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

Primary Coverage

For any claims related to this Project, Contractor's insurance coverage shall be "**primary and non-contributory**" and at least as broad as ISO CG 20 01 04 13 with respect to City, its officers, officials, employees and volunteers, and shall not seek contribution from City's insurance. If the limits of insurance are satisfied in part by **Umbrella/Excess Insurance**, the Umbrella/Excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a "primary and non-contributory" basis for the benefit of City.

Notice of Cancellation

Each insurance policy required shall provide that coverage shall not be canceled, except with notice to the City. Each certificate of insurance must state that the coverage afforded by the policy is in force and will not be reduced, cancelled or allowed to expire without at least 30 days advance written notice to City, unless due to non-payment of premiums, in which case ten days advance written notice must be provided to City. Such notice must be sent to City via certified mail and addressed to the attention of the City Manager.

Builder's Risk

Contractor may submit Builder's Risk insurance in the form of Course of Construction coverage, which shall **name the City as a loss payee**, as its interest may appear. The Builder's Risk policy must be issued on an occurrence basis, for all-risk coverage on a 100% completed value basis on the insurable portion of the Project, with no coinsurance penalties, and for the benefit of City. If the Project does not involve new or major reconstruction, City may elect, acting in its sole discretion, to accept an Installation Floater policy instead of Builder's Risk. For such projects, the Property Installation Floater shall include improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment, and shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Waiver of Subrogation

Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City. Contractor agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Acceptability of Insurers

Insurance must be issued by insurers acceptable to City and licensed to do business in the State of California, and each insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Surety Bonds

As required by Contract and described in the Contract Documents. The Payment and Performance Bonds shall be in a sum equal to the Contract Price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the Contract is for longer than one year a Maintenance Bond equal to 10% of the Contract Price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

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

CC 03-21-2023

#7

Petition for
Reconsideration Sign
Exception

Desk Item



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL REPORT DESK ITEM

Meeting: March 21, 2023

Agenda Item # 7

Subject

Consider petition for reconsideration regarding the City Council decision of February 7, 2023, to uphold the appeal in part, approve one of the two requested freeway-oriented signs, and deny the requested sign exception. Application No(s): EXC-2022-003; Applicant(s): David Ford (All Sign Services); Location: 20565 Valley Green Dr.; APN #326-10-044.

Recommended Action

That the City Council conduct a public hearing and adopt Resolution No. 23-XXXX denying the petition for reconsideration.

Background:

City Staff has also received questions from City Councilmembers. **Staff's responses to questions received from councilmember are shown in *italics*.**

Q1: Could council have imposed conditions of approval on the Public Storage building at the time that the Architectural and Site Plan permits were approved that would have:

1. required the cosmetic freeway-facing hallway to be turned off or dimmed after regular business hours?
2. disallowed the cosmetic freeway-facing hallway?
3. disallowed additional signage on the freeway-facing building walls?

(Councilmember Fruen)

Staff response: City Council, within its discretion, has authority to impose conditions of approval, including but not limited to architectural modifications. These include the limitations as mentioned in the above questions.

Q2: The Hyatt House features illuminated signage on its main building facings, including an ostensibly freeway-facing sign.

1. When did the Hyatt House illuminated freeway-facing sign come before the Planning Commission?
2. What is the level of luminosity of the Hyatt House freeway-facing sign?

(Councilmember Fruen)

Staff response: The Planning Commission at its hearing on January 8, 2019, approved a Sign Program (SP -2018- 04) to allow new signs consistent with Condition of Approval #25 of City Council Resolution No. 14- 202, Sign Exception (EXC- 2018- 06) to consider allowing six wall signs, including three freeway-oriented wall signs, at the Hyatt House Hotel. All signs that were included in the subsequent Building Permit were below 250 foot-lamberts.

Q3: How should we catalogue and announce all ex parte disclosures?

1. Do we need to include all emails received to the city council email address that have come in after the February 7 hearing?

Staff response: Each councilmember should disclose ex parte communications after the agenda item has been introduced. However, there is no need to disclose emails sent to Councilmembers unless they are from the applicant or the appellant. In that case, stating that the councilmember received emails from the applicant or appellant would be sufficient.

CC 03-21-2023

#7

Petition for
Reconsideration

Supplemental Report



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
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CITY COUNCIL STAFF REPORT SUPPLEMENTAL Meeting: March 21, 2023

Agenda Item # 7

Subject

Consider petition for reconsideration regarding the City Council decision of February 7, 2023 to uphold the appeal in part, approve one of the two requested freeway-oriented signs, and deny the requested sign exception. Application No(s): EXC-2022-003; Applicant(s): David Ford (All Sign Services); Location: 20565 Valley Green Dr.; APN #326-10-044.

Recommended Action

That the City Council conduct a public hearing and adopt Resolution No. 23-XXXX denying the petition for reconsideration.

Background:

Subsequent to the publishing of the agenda for the March 21, 2023 City Council hearing, it was brought to Staff's attention that two attachments to the Reconsideration Form filed by Rhoda Fry were inadvertently not included. These attachments are included in the amended Attachment B *Petition for Reconsideration submitted by Rhoda Fry* included with this Supplemental Report.

Further, City Staff has also received questions from City Councilmembers. **Staff's responses to questions received from councilmember are shown in *italics*.**

Q1: When was the Public Storage Building application approved by the City Council (**Mayor Wei**)

Staff response: The Public Storage building was approved by the City Council on June 18, 2019.

Q2: Can you tell me again (1) the size of the new illuminated sign that was approved, and (2) the brightness? (**Vice Mayor Mohan**)

Staff response: The approved sign is 165 square feet in size and the foot lamberts is 88.8.

Q3: The CMC states "All developments in a commercial, office, industrial, institutional, or residential district, with four or more tenant spaces on the same parcel, shall adopt a comprehensive sign program to encourage creativity and ensure high quality in the design and display of multiple permanent signs." (CMC 19.104.130.1) and "The adoption of a sign program shall be required at the time of the initial construction of a new project." (CMC 19.104.130.2) Where do I find the "comprehensive sign program", as required by CMC 19.104.130 to be adopted "at the time of initial construction"? **(Councilmember Chao)**

Staff response: As this development is occupied by a single tenant, a sign program is not required.

Q4: In the CMC 19.104.200 Freeway Orientation states, under the column header "Approval Authority", it reads "•Oriented to regular street system adjoining the property rather than exclusively visible from the freeway - CDD" and under the column header "Review Criteria", it reads "•Applies to all signs within 660 ft. of "landscaped freeway" measured from edge of right-of-way"

- ⇒ Case 1: Any sign NOT "without 660 ft of landscaped freeway" is NOT a freeway oriented sign, per CMC 19.104.200. Right?
- ⇒ Case 2: Any sign "within 660 ft of landscaped freeway" is a freeway oriented sign, per CMC 19.104.200. Right?
- ⇒ I am curious why the distance 660 ft was chosen? If any one knows...
- ⇒ I assume that I-280 is a landscaped highway. I am curious whether I-85 is one or not?

- ⇒ Case 2.1: For any sign "within 660 ft of landscaped freeway" (thus, a freeway oriented sign), if the sign is "Oriented to regular street system adjoining the property rather than exclusively visible from the freeway - CDD" => Such a freeway-oriented sign shall be approved by CDD, right?

- ⇒ Case 2.2: For any sign "within 660 ft of landscaped freeway" (thus, a freeway oriented sign), if the sign is exclusively visible from the freeway => Such a freeway oriented sign shall be approved by PC, right? **(Councilmember Chao)**

Staff response: Not all signs that are within 660 feet are freeway oriented. But all signs outside of 660 feet, regardless of if they are facing a freeway, are not subject to Planning Commission review as a freeway-oriented sign. Councilmember Chao's understanding under Cases 2.1 and 2.2 are consistent with the Sign Ordinance. Both Highways 85 & 280 are considered "landscaped freeways."

Q5: The staff report for the Feb. 7, 2023 states that "Council's review of the Planning Commission's determination is de novo. The Council may affirm or modify the Commission's decision based on evidence presented at the public hearing, including any evidence in the record."

"De novo is a Latin term that means "anew," "from the beginning," or "afresh." When a court hears a case "de novo," it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case." (https://www.law.cornell.edu/wex/de_novo#:~:text=De%20novo%20is%20a%20Latin,court%20to%20hear%20the%20case.)

⇒ Since the decision was "de novo", I actually did not look at the agenda packet for the Oct. 11, 2022 Planning Commission meeting since I thought I am supposed to make a decision ONLY BASED ON the evidence presented at the February 7, 2023 meeting. Is that correct?

But the Plan Set was NOT in the agenda packet. As a result, the measurements of the signs were not provided in the "evidence" so that I could realistically calculate the area of the signs. Therefore, it seems there were insufficient evidence provided in the February 7, 2023 Council agenda.

Or the evidence made available to the Council on Feb. 7, 2023 would also include anything presented at the Oct. 11, 2022 Planning Commission? Please clarify the legal requirement for "evidence" for such a quasi-judicial decision. **(Councilmember Chao)**

Staff response: Plan sets that were provided at the October 11, 2022 Planning Commission hearing were also provided to City Council for the February 7, 2023 hearing. The Deputy City Clerk, Lauren Sapudar, sent out an email on February 1, 2023 (6:01 pm) with links to all agenda items, including the plan set for Item 16. The administrative record for the project will include evidence submitted in connection with all hearings on the project, including the Planning Commission hearing and both City Council hearings.

In the plan sets, Sheets 2 & 3 provided area calculations of all the proposed wall signs, as well as illumination intensity. The area calculation standard is consistent with [CMC 19.08 Definitions Appendix D](#), individually lettered signs.

Q6: Whether the proposed signs comply with the regulation and is harmonious in the neighborhood and the zone?

I also did not realize at the Feb. 7, 2023 meeting that ALL of letters of the "Public Storage" will be illuminated bright white. Sorry for my ignorance for not understanding the terminology used. I thought "internally illuminated with LED lighting" (as stated in the Feb. 7, 2023 staff report) means the illumination would be less since the illumination is not outside.

I found the following image from this petition:

<https://www.change.org/p/say-no-to-huge-illuminated-sign-facing-280-on-public-storage-building>.



Now I understand that for the Public Storage sign, all the big bold letters are like light tubes themselves. This is a fact that I did not know on February 7, 2023.

With this new knowledge about the Public Storage signs, I do not think they are harmonious to the neighborhood and the zone where it is located for office and residential use.

I find that this style of illuminated bright white signs are not consistent with the existing regulations as stated in the Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT:

" In order to **preserve design harmony between new and existing buildings** and in order to **preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and, with the future character of the neighborhood and purposes of the zone in which they are situated."** (Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT:)

This style of illuminated bright white signs are not consistent with this description of the development made in Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT:

"The building is designed in a contemporary architectural style **to emulate an office building**. The architectural style is consistent with the adjacent office building uses and residential building. The location, height and materials of walls, fencing, and plantings **have been designed to harmonize with adjacent structures**." (Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT)

No other office building in the neighborhood or in the zone uses such illuminated bright white signs today. And no future use in the zone with office and residential uses will likely use such illuminated bright white signs.

Since the Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT was not included in the agenda packet for the Feb. 7, 2023 Council meeting, I was not able to make the above findings at the time.

I would like to know the staff's rationale for not providing such finding above in the staff report. Perhaps, there are something I missed or misunderstood?
(Councilmember Chao)

Staff response: The development of the building was approved by City Council on June 18, 2019. As this is not an approval that requires an Architectural and Site Approval, those findings are not applicable to this application. In addition, the size, design, luminosity, and location of the freeway-oriented sign was apparent or could have been discovered through the exercise of reasonable diligence prior to the February 7 City Council hearing. Accordingly, these considerations are not a basis for reconsideration of Council's decision under Municipal Code section 2.08.096(B).

Q7: Would the internally illuminated bright signs, where each letter by itself a light tube have to follow this city regulation as stated in the Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT?

"**Lighting for development** should be adequate to meet safety requirements as specified by the engineering and building departments, and **provide shielding to prevent spill- over light to adjoining property owners**;" (Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT)

I think it should, since it will generate "**spill-over light to adjoining property owners**" and shielding should be provided.

It does not matter what's the source of the light, interior, exterior or from illuminated signs, they are all "lighting from the development".

Right?

Please let me know whether I misunderstood the regulation or have missed anything?
(Councilmember Chao)

Staff response: The Architectural and Site Approval contemplated this for parking lot and exterior lighting to be in conformance with [19.124.040](#) and [19.102.040](#) . However, lighting for signage has standards in the Sign Ordinance for intensity, with the maximum 250 footlamberts. In addition, the size, design, luminosity, and location of the freeway-oriented sign was apparent or could have been discovered through the exercise of reasonable diligence prior to the February 7 City Council hearing. Accordingly, these considerations are not a basis for reconsideration of Council's decision under Municipal Code section 2.08.096(B).

Q8: This line of questions may or may not be related to the sign permit application, while I am trying to understand the requirements a development project like Public Storage need to comply with.

As a policymaker, we adopt resolutions and ordinances, I certainly hope that we can hold the project applicants accountable to the requirements we approved the project under, whether they are conditions of approval or conditions under existing law, such as CMC or the General Plan.

(CQ = Compliance question)

CQ1: I remember that in the June 18, 2019 the Council was concerned of how a Public Storage building would fit into the neighborhood, given that they are right across from a residential development. Thus, we added a condition and the project applicant also promised at the Council meeting **to provide nice landscaping at the front of the building to reduce the impact to the neighborhood.**

I found the following item was indeed added to the "ARCHITECTURAL AND SITE APPROVAL PERMIT" in Resolution 19-072.

"EAST ELEVATION

The applicant shall work with the City to neutralize the building color and materials along the eastern elevation, and shall modify the vegetation, as necessary, to improve the aesthetics of the project. The modification shall be reviewed and approved by the Director of Community Development prior to the issuance of building permit."
(Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT)

=> What has been done to "neutralize the building color and materials"?

=> What has been done to "modify the vegetation, as necessary, to improve the aesthetics of the project."

When I visited the project last Wednesday, this is what I see:



There is very little vegetation. Perhaps, the plants are just too small right now?

CQ2: The ARCHITECTURAL AND SITE APPROVAL PERMIT states the requirement:
"In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and, with the future character of the neighborhood and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. ... Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill- over light to adjoining property owners;" (Resolution 19-072 ARCHITECTURAL AND SITE APPROVAL PERMIT)

Above is the requirements under the existing regulations.

Below describes how this development will comply with the code:

"The building is designed in a contemporary architectural style to emulate an office building. The architectural style is consistent with the adjacent office building uses and residential building. The location, height and materials of walls, fencing, and plantings have been designed to harmonize with adjacent structures."

=> The Public Storage building constructed does not "emulate an office building" at all, especially with the blinding interior light, which spills over the adjoining property and even spilled over to the residential building across the highway. It is not harmonious with the adjacent structure.

I took this photo from the residential development across I-280. The row of bright interior lights are not found in any other building in that neighborhood or zone and is not found anywhere in Cupertino.

How does this Public Storage building harmonize "the future character of the neighborhood and purposes of the zone in which they are situated," which is zoned for office and residential uses.



Residents expect that the City Council adopt policies and then the policies are followed by project applicants and the promises made are not broken.

It is my responsibility as a City Councilmember to ask these questions.

Since the question CQ2 has to do with whether the development, including its signs, is harmonious with the neighborhood and the zone where it's located. It is relevant to the reconsideration for signs too.

Thus, I would appreciate an answer before the meeting. **(Councilmember Chao)**

Staff response: The development of the building was approved by City Council on June 18, 2019 and is not presently before the City Council. In addition, the conditions discussed above were apparent or could have been discovered through the exercise of reasonable diligence prior to the February 7 City Council hearing. Accordingly, these

considerations are not a basis for reconsideration of Council's decision under Municipal Code section 2.08.096(B).

Attachments Provided with Original Staff Report:

Staff Report

A – Draft Resolution

B – Petition for Reconsideration submitted by Rhoda Fry

Attachments Provided with Supplemental 1:

B – Amended Attachment B – Petition for Reconsideration by Rhoda Fry

Date: February 17, 2023
From:
Rhoda Fry (and Cupertino Residents Doe 0 – 100)
10351 San Fernando Avenue
Cupertino, CA 95014-2832
fryhouse@earthlink.net
408-529-3560



OFFICE OF THE CITY CLERK

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

RECONSIDERATION PETITION

NOTICE: *Reconsideration petitions are only accepted for adjudicatory matters that are quasi-judicial decisions by the City Council. The reconsideration petition is subject to the requirements of and must comply with section 2.08.096 of the Cupertino Municipal Code, available in the City Clerk's office or online at http://www.amlegal.com/cupertino_ca/. Please review this form carefully and provide a detailed explanation for each item. Failure to meet the requirements of section 2.08.096 may result in rejection of the reconsideration petition.*

1. Project for which you are requesting reconsideration:

Application No.: EXC-2022-003

Applicant(s) Name: David Ford, All Sign Services; Location: 20565 Valley Green Dr.; APN: 326-10-044

3. Contact information for party requesting reconsideration:

Name: Rhoda Fry (and Cupertino Residents Doe 0 – 100)

Address: 10351 San Fernando Avenue, Cupertino CA 95014-2832

Phone: 408-529-3560

Email: fryhouse@earthlink.net

4. Date of Council meeting considering the project for which you are requesting reconsideration:

February 7, 2023

Reconsideration petitions must be filed within ten (10) calendar days of the date of the Clerk's notice.

5. Details of grounds for reconsideration (Cupertino Municipal Code Section 2.08.096).

A petition for reconsideration must specify, in detail, each and every ground for reconsideration. Failure to specify the particular ground(s) for reconsideration will preclude any omitted ground(s) from being raised or litigated in a subsequent judicial proceeding.

In addition, the grounds for reconsideration are limited to the criteria listed below. Failure to meet these grounds may result in rejection of the petition for reconsideration. Check all grounds that apply and provide detailed explanations of the facts supporting each ground for reconsideration (provide supporting documentation and attach additional sheets if necessary):

By this statement, all information on the City of Cupertino website pertaining to the 10/21/22 Planning Commission meeting and the 2/7/2023 City Council meeting and other documents pertaining to the Public Storage site, the General Plan, the North De Anza Boulevard Special Center plan, and the CMC are included in this document.

✓ An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.

Explanation of new evidence and why it could not have been produced earlier:

The City was likely unaware of Public Storage's updated image policies that tout that "the building is the sign." Public Storage's architect said in this blog post: "We had seven different types of signs," she said. "Now, not only do we now have a consolidated sign, the new building is the sign." <https://www.publicstorage.com/blog/public-storage/public-storage-locations-get-a-new-look> In spite of the following business hours, Office Hours Mon-Sun 8:00am to 7:00pm and Gate Access Hours Mon-Sun 6:00am to 9:00pm, the Cupertino Public Storage building is illuminated 24x7. If the building is indeed the sign, it must not be illuminated 24x7. Moreover, it is much too large to have that much illumination. Interestingly, two sides of the building that are visible from the freeway are illuminated – the backside that faces offices remains dark. Additionally, the illuminated sign that faces the adjacent condominiums remains illuminated after 11pm which is a code violation. The excessive light is a public nuisance to residents. See also EXHIBIT 1.

✓ An offer of relevant evidence which was improperly excluded at any prior city hearing.



Explain relevant evidence and how, when it was excluded at a prior hearing:

A. The council packet did not show the setting of the building within the community and how it looked from various residences/hotel or freeway at different times of day. How could the City Council make an informed decision about freeway-oriented signage without this information? Furthermore, on February 13, I spoke with Planner Martire and lamented that the proposed illuminated freeway-oriented Public Storage sign would be in a line view of many residents' homes. He was surprised and unaware that residents would be facing the signs. If he had known, then perhaps the council would have been given more information. The proposed signs are in a direct line view of the De Anza Forge Condominiums and can be seen from the Markham Apartments and the Cupertino Hotel along with the freeway. The City Council was denied substantial evidence. Refer to EXHIBIT 1 (setting) and EXHIBIT 2 (nighttime photographs).

B. Council was not provided with detailed images or specifications of the proposed illuminated Public Storage sign along with other illuminated signage facing the freeway. In fact, there are no similarly situated properties in the City. The only illuminated sign that somewhat faces the freeway is the Cupertino Hotel. Council was not given any tools to compare the Cupertino hotel sign with the proposed Public Storage sign. Its sign is on the northbound onramp, not on the freeway. It is barely visible driving South on 280 and not at all going North. Nor does it appear to directly face dwelling units in the way that the Public Storage building does. I walked the length of the condo complex adjacent to Public Storage and climbed up to the fence-line and could not see the Cupertino Hotel sign. It is possible that residents on higher floors might have a glimpse of the sign. If council had made a site visit or had images of the Cupertino Hotel sign along with the Public Storage sign (even the one that is installed provides some insight), they would have realized that these two properties are very different and would need to be treated differently (19.104.220 C. The sign shall also be compatible with the aesthetic character of the surrounding developments and neighborhood.)

Council was not provided visuals on the levels of illumination, this would have been needed to provide an informed decision on the subjective criteria in 19.104.220 ("the aesthetic appearance of signs is subjective"). When comparing the illumination between the proposed Public Storage Sign and the Cupertino Hotel Sign, there is no comparison. But the council was not provided a side-by-side comparison. Public Storage is bright white and huge and the Hotel is soothing dark blue and is of modest size. Although the proposed sign is within the foot-lamberts requirements for signage, no explanation of what it means or what it looks like was provided. A foot-lambert refers to the amount of illumination per square foot. So the bigger the signage, the more illumination it will have. Note that the applicant explained that he wants signage to be visible to motorists traveling 70 to 75 miles per hour (which is speeding in our community) past the property. (19.104.220 G. The sign's color and illumination shall not produce distraction to motorists or nearby residents.) In other words, the applicant wants motorists to be distracted by his advertising sign.

If council had gone on an appropriate site visit or been provided appropriate information, they could have made an informed decision to either not allow any illumination or even no signage.

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| <p>Installed sign as viewed from adjacent condo. The illuminated portion of the sign is reportedly 52 square feet. The illuminated portion of the freeway-facing sign would be 165 square feet. This gives an idea as to how bright it would be. The letters appear much brighter than the building's interior lighting. This photo was taken between 10:30 pm and 11:00 pm on 2/15/2023. IMAGINE A SIGN 3X LARGER THAN THE ABOVE. IS IT COMPARABLE TO THE CUPERTINO HOTEL?</p> | <p>CUPERTINO HOTEL: This photo has been enlarged. Otherwise you would not be able to recognize it. This is a view of Cupertino Hotel from the on-ramp to 280 North from De Anza. On the freeway heading south, the blue sign was sometimes hidden and other times very subdued. I was unable to see the sign from the condos across the freeway having walked the fence line and even climbed up to it. It is unlikely that much of this sign is visible from the condos. Pphoto was taken between 10:30 pm and 11pm on 2/15/2023.</p> |

C. Please bear with me on this section – it is rather long but makes a point. The council packet failed to explain that the new public storage building is an intensification of a non-conforming use within the North De Anza Boulevard Special Center. **Consequently, it is even more important that the look of the building and its signage conform to adjacent uses.**

Resolution 19-072 describing the architectural and site approval permit included boilerplate text pertaining to signage, “(c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development.” The document as a whole makes various promises that pertain to the entire building and signage, including but not limited to: (see ATTACHMENT A for the entire resolution)

- “In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and, with the future character of the neighborhood and purposes of the zone in which they are situated” and
- “development should be designed to protect residents from noise, traffic, light and visually intrusive effects” and
- “provide shielding to prevent spill- over light to adjoining property owners”

Regarding the North De Anza Boulevard Special Center: The new building (4 stories 264K square feet per <https://www.cupertino.org/our-city/departments/community-development/planning/major-projects/public-storage>) is four times the size as the building it replaces and has 2600 units. In 2006, Public Storage proposed a new building in this same location (Application U3-2006-03, ASA-2006-05, EA2006-06. This proposed building (3 stories 155K square feet) was estimated at three times the size of the original and the Planning Department recommended against it and the Planning Commission concurred:




Public Storage is located in the North De Anza Boulevard Special Center in which self-storage is a non-conforming use, the description of the Special Center has not changed in decades. The 2006 recommendation for rejection noted that the replacement building would be substantially inconsistent with the area and would significantly intensify the use of the site,

“The proposed mini-storage facility is a non-office use that does not promote these General Plan policies for maintaining cohesive office parks and, therefore, staff believes that the project, which will significantly intensify the use of the site as a mini-storage facility by almost tripling the amount of existing mini-storage building area, will conflict with these policies. The proposed project will offer very little public and community benefit, as it is anticipated to generate a minimal amount of retail sales tax to the City for its sales of packing/boxing supplies, and is substantially inconsistent with the surrounding uses of the area that include office and multiple-family residential.”

Additionally, “Staff is also concerned about the height of the proposed buildings as they will be prominently visible from Interstate 280, the new condominium development currently under construction to the east, the existing residential neighborhood to the west and the two-story office buildings occupied by Apple to the south.” The new building has 32 parking spaces and the rejected smaller building had 80 parking spaces. (<https://www.cupertino.org/our-city/departments/community-development/planning/major-projects/public-storage>)

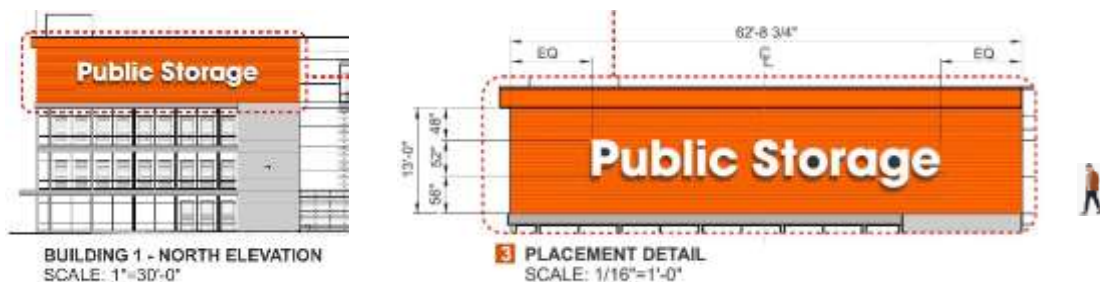
Because the new building is even more visible than the proposed 2006 building, its visual impacts from I-280 are greater today than they were in 2006. Consequently, every possible measure must be taken to minimize its impacts, including signage, on residents. See ATTACHMENT B for 2006 Public Storage rejection.

D. The Council was not provided information on how the signs are measured. **The way the signage has been measured is deceiving.** The large sign is made up of orange stripes with white lettering on top. Only the outline of the white lettering is measured in determining the sign's size. The rest of the building is silver gray and tan. Here is the new Cupertino Public Storage building with the sign already installed that does not face the freeway.

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| <p>Daytime photo from website of Cupertino building. The sign is made up of orange stripes with white lettering on top. https://www.publicstorage.com/blog/public-storage/cupertino-storage-units-reopen-near-apple-campus</p> | <p>Nighttime photo around 10:30PM as seen from adjacent condo complex. Sign and lights remain on after 11pm. The words even appear brighter than the interior lighting. The proposed freeway-oriented lettering portion of the sign is over three times larger.</p> | <p>Note that the back of the building, which faces Apple office buildings has no orange rectangles. Consequently, the orange rectangles really do look like signs. Also, the back is not illuminated at night.</p> |

Following is an excerpt of the plan in the Planning Commission packet. A reasonable person who looks at the outlined portion of the image on the left sees an image similar to the one above: a sign made up of orange stripes with white lettering on top. The measurement of this outlined area is shown on the right. It measures about 800 square feet. The maximum signage area per CMC is 200 square feet. **Effectively, the proposed sign exceeds the 200 square-foot maximum.** The measurement provided to council was the minimum circumference of the illuminated lettering; this is deceiving.

The staff had many creative options at its disposal to show the public and council the true scale of the proposed sign. Next to the right schematic, I've added an approximate 6-foot tall human for illustrative purposes.



✓ Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.

Explain facts and how those facts show that the Council operated outside its jurisdiction:

No validation from Caltrans that the proposal was compliant.

✓ Proof of facts which demonstrate that the City Council failed to provide a fair hearing.

Explain facts and how those facts demonstrate failure to provide a fair hearing:

A. The “approval authority” for Freeway Oriented signs is the Planning Commission per CMC Table 19.104.200. It is customary for Planning Commissioners to make site visits. Because the Council became the approval authority for a Planning Commission decision, they should have made a site visit in order to provide a fair hearing.

B. Council was told that the Planning Commission’s decision was not valid – but a portion of their denial was based on information in the signage CMC 19.104. The denial stated: “The location of Signs Two and Three along the north elevations of Buildings One and Two could result in a situation that is materially detrimental to the public health, safety, or welfare to the community...” This would imply that the Council was not permitted to vote on the basis of public health, safety, and community welfare which is incorrect. The video meeting shows much confusion on the part of the staff and council members.

C. The council packet lacked clear instructions on what was being voted on and what criteria needed to be used for the vote. This is surprising because this was the second hearing for the sign. During the planning commission, the city attorney told the planning commission that their approval / denial of the sign was discretionary. How did that meeting go wrong and why weren’t the issues that created a de novo hearing at the council resolved? Because the council did not have an appropriate rubric, the council could not provide a fair hearing. **The packet failed to explain council could vote for 0, 1 or 2 freeway-facing signs. The packet failed to provide the relatively short criteria upon which they would be voting.** At a minimum, Council needed this:

19.104.050 Sign Permit Application–Review Criteria.

The Approval Body shall review the sign application to ensure that the following criteria are met:

- A. The proposed sign meets the requirements of this title or any special conditions imposed in the development.
- B. The proposed sign's color and illumination is not in conflict with the safe flow of traffic on the City streets.
- C. The sign is in conformance with the Design Criteria in Section [19.104.220](#).

19.104.220 Design Criteria–Permanent Signs.

Although the aesthetic appearance of signs is subjective, the City recognizes that certain basic design guidelines are needed in order to maintain the City's high quality appearance. The following criteria shall be incorporated into the design of signs.

C. All signs shall be architecturally compatible and in harmony with the building with which it is principally associated, by incorporating its colors, materials, shape and design. The sign shall also be compatible with the aesthetic character of the surrounding developments and neighborhood.

- E. Sign copy shall be simple and concise, without excessive description of services or products.
- F. Internally illuminated signs shall not have a directly visible light source.
- G. The sign's color and illumination shall not produce distraction to motorists or nearby residents.

D. The lack of clarity in the packet was further muddled by conflicting instructions from the City manager, attorney, and planner. Examples include, the attorney gave an explanation and the city manager said no, let me explain. The planner’s presentation failed to mention that the City Council had the discretion reject all freeway-oriented signs per CMC 19.104. Councilmember Chao asked whether council can uphold the planning commission decision to deny both signs and the City Manager Wu said no, but then explained that the council could deny both signs or allow one (two signs were not provided as an option). The council could not come to the same conclusion as the planning commission? The City Attorney said that the Planning Commission decision was not legally justifiable but did not describe how. The council would need to find a

legally justifiable basis to deny the sign – but what were the specifics of the basis? He wound up being interrupted by the manager. Council would need to find a legally justifiable basis to deny the sign, but what would have basis be? The council could approve additional signs – but could they deny all freeway facing signs? And there are design criteria that all signs must meet – and what are they? Chao asks if staff thought there was justification to deny both signs. City manager implies no. City Attorney stated that grounds for denial is if design criteria is not met, but Council is not provided the criteria. City manager says that once you have a freeway facing sign that it is subject to planning commission's approval. You just have to watch the video. It is just too confusing.

The planner said the sign met requirements for size and lighting but failed to spell out that there were additional criteria, some of which is subjective. After council struggled in its deliberation and were obviously confused, staff requested a break. They came back in another failed attempt to clarify instructions. The planner showed only the text of 19.104.050, not 19.104.220. The planner told council that the signage was compliant with 19.104.050 which incorporated 19.104.220, leading council members to believe that they had to vote in favor of the signage. But it was up to the council to make that determination. The City manager corrected the planner. Who is the council supposed to listen to? The attorney, the city manager, the expert planner? **The three staff members did not reconcile clear direction to the council even after having called for a break.** Further, the text of 19.104.220 was not shown in the packet or at the council meeting. Even after Councilmember Moore asked that 19.104.220 be displayed, it was not. **Council needs clear instructions in the packet and during meetings in order to provide a fair hearing.**

E. It bears repeating that the City Attorney stated that the council decision needed to be made on design criteria but staff never provided the City Council Design Criteria (CMC 19.104.220), which is relatively short.

F. Had the neighbors across the freeway been notified, the council would have received significant input from neighbors about the proposed signage. It is appropriate to extend notification when there are special circumstances that cause unexpected impacts. We know that freeway-oriented signage is special because approval authority is assigned to the planning commission instead of the Community Development Director for other signs. See EXHIBIT 3 for the types of letters they would have received – these are letters that we sent after the hearing when residents learned of council's decision. Because of this, council was incapable of providing a fair hearing.

G. Recall, the City Council was being asked to make a decision that normally has the Planning Commission as Approval Authority. Specifically, the Planning Commission is the Approval Authority for Freeway-Oriented signs (19.104.200). Councilmember Moore, is the only councilmember with Planning Commission experience and mentions distracting spillover lighting. She asked that the short text of 19.104.220, upon which the decision would be rendered, be displayed for all councilmembers to see. It was not. She also asked for a continuation of this agenda item and gave her reasons. It was not. Consequently, council was unable to have a fair hearing and was hampered in its ability to make an informed decision.

H. It is hard to understand the fairness of a hearing when a building that has not even received its final inspection report is considered an existing building. The original plan set did contain signage that is very similar to the current proposal.

I. The council's lack of planning commission experience and access to the municipal code that explains the intent of the sign ordinance outlined in 19.104.010 hindered their ability to have a fair hearing. Was this intent fulfilled? The Planning Commission understood that the purpose of

the sign was mainly advertising. The council did not understand how to balance the needs of the community with the desires of the business to advertise per 19.104.010.

19.104.010 Purpose and Intent.

- A. The purpose of the sign ordinance is to identify and enhance businesses while maintaining the aesthetic appearance of the City.
- B. A good sign program will provide information to the public concerning a particular business or use and will serve the visual and aesthetic desires of the community.
- C. The City has adopted this title with the intent to:
 1. Provide architectural and aesthetic harmony of signs as they relate to building design and surrounding landscaping;
 2. Provide regulations of sign dimensions and quantity which will allow for good visibility for the public and the needs of the business while providing for the safety of the public by minimizing distraction to the motorist and pedestrian;
 3. Provide for sign regulations that will be compatible with the building, siting, and the land uses the signs are intended to identify;
 4. Provide for maintenance of existing signs and a program for bringing nonconforming signs into conformance with the standards of this title as changes are made to the signs or businesses;
 5. Provide procedures which will facilitate the efficient processing of sign applications; and
 6. Provide design criteria which will promote attractive and effective signs for Cupertino residents, businesses, employees and visitors.

- ✓ Proof of facts which demonstrate that the City Council abused its discretion by:
- o (a) Not preceding in a manner required by law; and/or
 - o (b) Rendering a decision which was not supported by findings of fact; and/or
 - o (c) Rendering a decision in which the findings of fact were not supported by the evidence.

Explain facts and how those facts demonstrate abuse of discretion related to items (a)-(c):

When council was told that the Cupertino Hotel sign also faced the freeway, some left to the conclusion that it was similar to the proposed Public Storage sign. As shown earlier in this document, it is not. Council relied on the assumption that the signs and locations of the signs are similar but they are not. Council decision was not supported by facts.

6. Signature(s) *Rhoda Fry* (and other Cupertino Residents)

PS – per code, I respectfully request refund of fees. Thank You.

Please complete form, include reconsideration fee of \$356.20 pursuant to Resolution No. 22-049 payable to City of Cupertino and return to the attention of the City Clerk, 10300 Torre Avenue, Cupertino, California (408) 777-3223.

Acceptance of a petition by the City Clerk is for timeliness purposes only and does not constitute a determination that the petition meets the requirements for reconsideration under section 2.08.096 of the Municipal Code. The City reserves the right to review petitions after submission and reject those that do not meet the criteria set forth in Cupertino Municipal Code Section 2.08.096.

PAYMENT PROOF



EXHIBIT 1 – Residents and Hotel Guests who will see the Illuminated Public Storage Sign

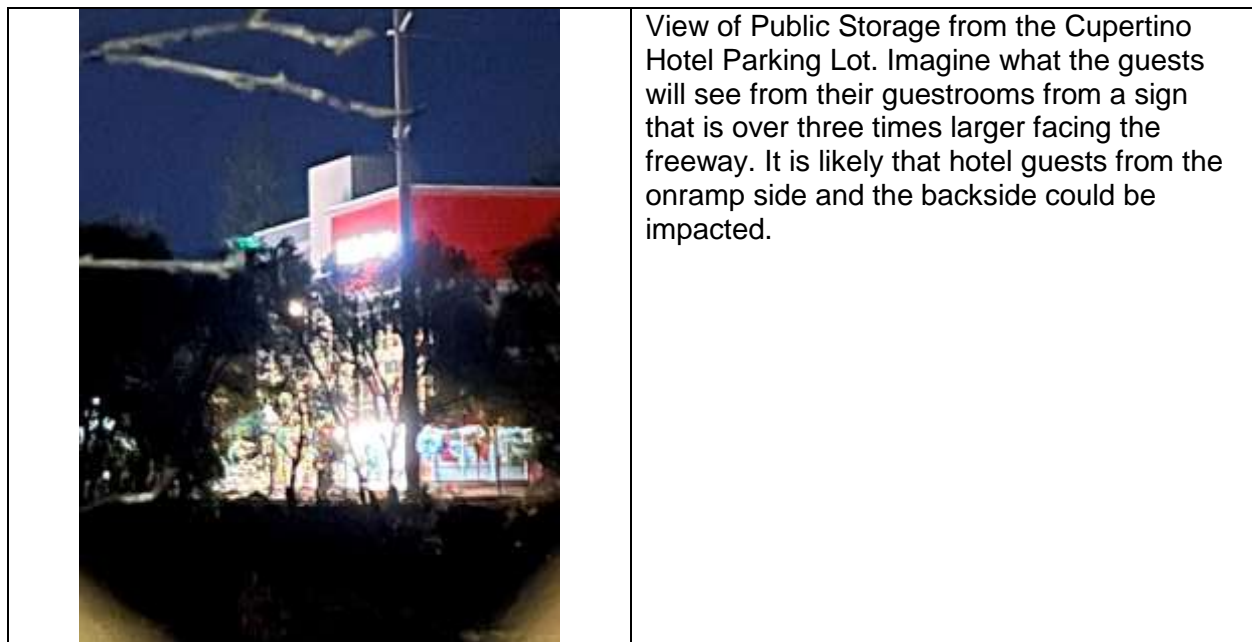
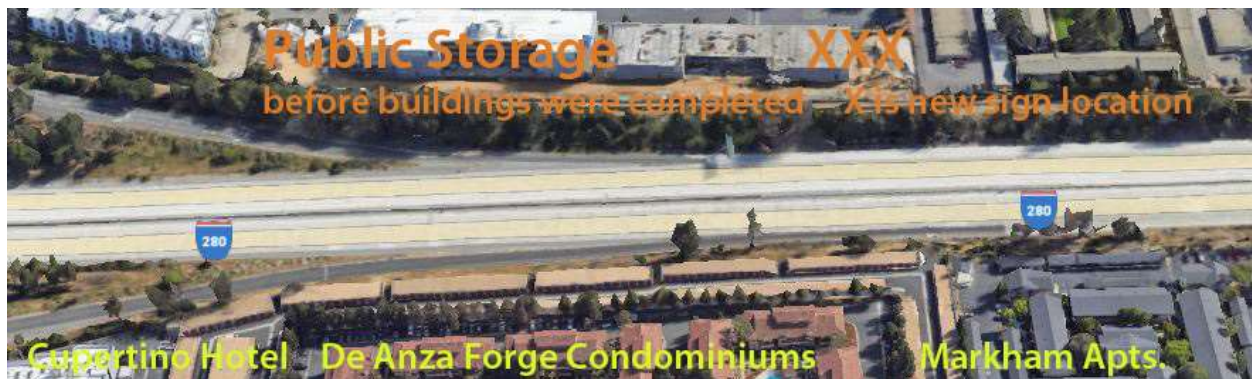


EXHIBIT 2 –Existing Public Storage Sign, Cupertino Hotel Sign, Views from De Anza Forge

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| <p>Installed sign as viewed from adjacent condo. The illuminated portion of the sign is reportedly 52 square feet. The illuminated portion of the freeway-facing sign would be 165 square feet. This gives an idea as to how bright it would be. The letters appear much brighter than the building's interior lighting. This photo was taken between 10:30 pm and 11:00 pm on 2/15/2023.</p> <p>IMAGINE A SIGN 3X LARGER THAN THE ABOVE. IS IT COMPARABLE TO THE CUPERTINO HOTEL?</p> | <p>CUPERTINO HOTEL: This photo has been enlarged. Otherwise you would not be able to recognize it. This is a view of Cupertino Hotel from the on-ramp to 280 North from De Anza. On the Freeway heading north, it was sometimes hidden and other times very subdued. I was unable to see the sign from the condos across the freeway having walked the fence line and even climbed up to it. It is unlikely that much of this sign is visible from the condos. This photo was taken between 10:30 pm and 11:00 pm on 2/15/2023.</p> |
|  |  |
| <p>View from a lower unit in a De Anza Forge condo.</p> | <p>View from a different unit in a De Anza Forge condo.</p> |

These photos were taken between 10:30 pm and 11:00 pm on 2/15/2023 at the De Anza Forge Condominiums along the various areas that face the freeway. The sign would be installed at the highest point on the building. In all cases, the photos are taken from a vantage point that is further away from the Public Storage building than a view from a condo.



**EXHIBIT 3 – EXCERPTS LETTERS RECEIVED BY CITY CLERK/COUNCIL FROM
NEIGHBORS WHO WOULD BE AFFECTED BY SIGNAGE BETWEEN 2/8 and 2/16
(names/addresses redacted)**

My name is [REDACTED] and I own a condo in the DeAnza Forge community [REDACTED]
[REDACTED]

Please do not allow Public Storage to have illuminated signage facing the freeway until 11pm daily. This signage will be visible from my home and disrupt our quality of life. The proposed lighted sign is 165 square feet on an 800+ square-foot orange background. In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision. The City Council should have upheld the Planning Commission's determination; there should be no sign. Alternatively, as a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

I am also very concerned about highway/driving safety with that proposed illuminated sign.

Please do not allow Public Storage to have illuminated signage facing the freeway, especially if it is lit until 11pm daily. The lights from the Public Storage are already very bright in the evening. Adding large illuminated lettering onto the side of the buildings would only further increase the buildings brightness and make it an even bigger visual eyesore. Nearby residents don't want a nightlight. It would only further increase the amount of light pollution coming inside our homes. Not to mention, it would make our homes less desirable, if we were to rent or sell it in the future.

The two newly-built, 4-story Public Storage buildings are now the first thing you see when you look out of our bedroom and living-room windows, since they are now at eye level with our condo. We bought our condo in 1985, even before the Cupertino Inn was built, when our condo still had the beautiful unobstructed views of the mountains and there were a lot more planted trees everywhere. I think around that time, the one-story Public Storage facility was originally built in Cupertino, as well. In fact, in all the 40 years that it's been at that location, Public Storage has never had a sign facing the freeway to advertise its location, much less needed one that was illuminated. We don't think it should be necessary for them to have one now. Due to the large size of both buildings and their trademark burnt orange and grey color, they are very hard to be missed from the freeway. Illuminating the name of the company, so that it can further advertise its brand, at the detriment of the neighbors and the driving cars, should not be allowed. Let's leave the bright lights and lit signs for Las Vegas and not Cupertino. The only entity benefiting from the proposed illuminated signage would be Public Storage; not the overall community. I am respectfully requesting that the signage have no illumination.

All view access to the mountains cutoff by building line.

Thank you so much for taking away what little view we had.

Photo; Feb 15, 735a



Dear City Council:

Please do not allow Public Storage to have illuminated signage facing the freeway until 11pm daily. This signage will be visible from my home and disrupt my quality of life. The proposed lighted sign is 165 square feet on an 800+ square-foot orange background.

- The building has already cutoff good views of the mountains. Had it been one story lower, the tops of the mountains would be visible. Maybe it doesn't matter to you but it mattered to me. Public Storage wins. I lose. Poor choice by allowing this.
- Now to make it worse already the hallways are lighted projecting across the highway into bedroom.

Photo : 1020p, Feb 14th, 2023



Views of mountains gone.

- To make matters worse, the illuminated sign will be visible from many of the condominiums at De Anza Forge. We already lost a view to the south of the mountains, there will be a large obtrusive lighted sign directly in the sight-line. This will negatively affect the value of all condominiums in the complex.

- In October, the Planning Commission denied any signage facing the freeway per CMC 19.104;
- in February, the City Council ignored their decision. The City Council should have upheld the Planning Commission's determination; there should be no sign.

Alternatively, as a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

Furthermore, do you think this building meets the City Council's promise made specifically for this building? Resolution 19-072 stated "In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and, with the future character of the neighborhood and purposes of the zone in which they are situated."

If the new City Council truly cares about the residents of Cupertino, please do not allow Public Storage to have an illuminated signage facing the freeway until 11pm daily. This signage would be visible from home and would disrupt our quality of life. The proposed lighted sign is 165 square feet on an orange background measuring over 800 square feet.

Would you like it if you lived here and you saw that sign each night?

In October, the Planning Commission denied any signage facing the freeway per CMC 19.104. In February, the City Council ignored their decision. As a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers find the building and is large enough to advertise their business during daylight hours.

I feel this is a very reasonable request. I am not asking for the removal of the sign. Please reconsider so that the signage is not lit up when it's dark.

Please do not allow Public Storage to have illuminated signage facing the freeway until 11pm daily. This signage will be visible from my home and disrupt my quality of life. The proposed lighted sign is 165 square feet on an 800+ square-foot orange background. In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision. The City Council should have upheld the Planning Commission's determination; there should be no sign. Alternatively, as a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

Furthermore, do you think this building meets the City Council's promise made specifically for this building? Resolution 19-072 stated "In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and, with the future character of the neighborhood and purposes of the zone in which they are situated."

Please do not allow Public Storage to have illuminated signage facing the freeway until 11pm daily. This signage would be visible from my property. It will surely disrupt the quality of life.

The proposed lighted sign is 165 square feet on an orange background measuring over 800 square feet. In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision.

As a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

Please don't allow public storage to have signage facing the freeway until 11 pm daily.

This signage would be visible from my home and would disrupt my quality of life. The proposed illuminated sign is 165 square feet with an orange background measuring over 800 square feet.

In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision. As a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

Please do not allow Public Storage to have illuminated signage facing the freeway until 11pm daily. This signage would be visible from my home and would disrupt my quality of life. The proposed lighted sign is 165 square feet on an orange background measuring over 800 square feet. In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision. As a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

Please do not allow Public Storage to have illuminated signage and room lighting facing the freeway until 11p.m. daily. This signage and bright room lighting showing bright orange doors is visible from my home and has been disrupting my quality of life. The proposed lighted sign is 16 square feet on an orange background measuring over 800 square feet.

In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision. As a compromise, I am respectfully requesting that the signage have no illumination and room lightening will be either shut off or significantly dimmed so that the light pollution will not cause sleep disturbance for the residents. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours and bright ugly room lighting is just wasting precious community electricity.

Please do not allow Public Storage to put up an enormous illuminated sign facing 280. The building, which was recently constructed, already interferes with the quality of my life since it is lit up all night long and the light goes directly into my condo on the other side of the freeway. The proposed illuminated light would only make the problem worse, especially during the summer months when windows are kept open to let cool air in (letting in also the view of a large glowing sign). Where I once had a lovely view of the

mountains, I now have an ugly grey building blocking it, with the threat of an enormous illuminated Public Storage sign being placed upon it. Please do not allow this to happen.

In October, the Planning Commission denied any signage facing the freeway per CMC 19.1-4, so it seems like this should not happen.

I look forward to seeing the action you take in this matter.

The newly-built Public Storage building is a problem. I live in a condominium De Anza behind Homestead Square Shopping Center, facing to Freeway 280. Recently the new building was built and the building is a total obstacle for all the residents in my neighbors. We could see the mountains over Freeway 280 but now we cannot enjoy the view. What we see through the windows is just a storage building. It's worse. The building has large windows and the corridors are lit by the light until late at night. But I have never saw a soul in the corridor. The building in front of our residence is ugly at daytime. The building with lighted windows is ugly at night. The Public Storage building is already a problem.

And now.

Please do not allow Public Storage to have illuminated signage facing the freeway until 11pm daily. This signage would be visible from my home and would disrupt my quality of life. The proposed lighted sign is 165 square feet on an orange background measuring over 800 square feet. In October, the Planning Commission denied any signage facing the freeway per CMC 19.104; in February, the City Council ignored their decision. As a compromise, I am respectfully requesting that the signage have no illumination. The sign does not help prospective customers to find the building and is big enough for advertising the business during daylight hours.

RESOLUTION NO. 19-072

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING AN
ARCHITECTURAL AND SITE APPROVAL PERMIT TO ALLOW THE
DEMOLITION OF AN EXISTING PUBLIC STORAGE FACILITY AND THE
CONSTRUCTION OF A NEW PUBLIC STORAGE FACILITY CONSISTING OF
TWO (2) FOUR (4)-STORY BUILDINGS WITH BASEMENTS LOCATED AT
20565 VALLEY GREEN DRIVE**

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2018-04
Applicant: Andres Friedman
Property Owner: Storage Equities, Inc.
Location: 20565 Valley Green Drive (APN: 326-10-044)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL PERMIT:

WHEREAS, the City Council of the City of Cupertino received an application for an Architectural and Site Approval as described in Section I. of this Resolution; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the application; and

WHEREAS, the Planning Commission held a public hearing on May 28, 2019 and recommended that the City Council approve the application, subject to conditions; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15332, and the exemption in CEQA Guidelines section 15183, for the reasons set forth in the staff report dated May 28, 2019 and incorporated herein; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The proposal, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

The proposed project is a redevelopment of an existing Public Storage facility. The redevelopment allows for continued operation and expansion of the existing use. The project will provide for a new building design that meets new building requirements, provided high quality architecture, and improvements in the vicinity, such as the 12-foot easement along the entire north side of the property for a multi-use trail. The project will also provide increase landscaping and tree canopy coverage throughout the site. Therefore, the proposal will not be detrimental or injurious to property or improvements in the vicinity.

2. The proposal is consistent with the purposes of Chapter 19.134, Architectural and Site Review, of the Cupertino Municipal Code, the General Plan, and applicable specific plans, zoning ordinances, conditional use permits, exceptions, subdivision maps, or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings;

The proposed project complies with primary building height of 45 feet listed in the General Plan: Community Vision 2015-2040. Further, the project is located far from existing multi-story buildings. The gradual transition related to height is completed by the use of various building materials, architectural features, and setbacks that help to avoid abrupt changes in building scale and make the project compatible with any existing and future development(s).

- b) In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and, with the future character of the neighborhood and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners;

The building is designed in a contemporary architectural style to emulate an office building. The architectural style is consistent with the adjacent office building uses and residential building. The location, height and materials of walls, fencing, and plantings have been designed to harmonize with adjacent structures. Utility structures and trash enclosures have been designed to have landscaping that conceals the structures from adjacent uses. The project uses various planting and ground cover materials to prevent dust and erosion, and the project is only removing

trees that are in conflict with necessary improvements to accommodate the proposed project. Additionally, where trees are proposed for removal, new trees are replacing them. Lighting for the development has been reviewed and design to minimize impacts to adjacent developments by preventing spillover light to adjacent properties.

- c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development; and

Signage approval is not included in this application.

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

The proposed project has increased front and rear setbacks from existing residential development. The project has been designed to protect residents from noise, traffic, light and visually intrusive impacts by placing the active uses more than 150 away from neighboring residential areas. Additionally, the project has incorporated perimeter landscaping to further minimize any visually intrusive effects to adjacent properties.

WHEREAS, on June 18, 2019, the City Council held a duly noticed public hearing to receive public testimony on the Project, including the categorical exemption in CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183 and reviewed and considered the information contained in the staff report pertaining to the Project, all other pertinent documents, and all written and oral statements received by the City Council at or prior to the public hearing; and

NOW, THEREFORE, BE IT RESOLVED that after careful consideration of the CEQA exemption memorandum, maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this resolution beginning on PAGE 3 thereof,

1. The City Council exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183. The exemption in CEQA Guidelines section 15332 applies to an infill development project which 1) is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable Zoning designations and regulations; 2) occurs within the City limits on a site of less than 5 acres in size that is substantially surrounded by urban uses; 3) is located on a site that has no value for endangered, rare or threatened species; 4) would not result in any significant effects related to traffic, noise, air quality or water quality; and 5) can be adequately served

by all required utilities and public services. The exemption in CEQA Guidelines section 15183 applies to a project that is consistent with General Plan designations and zoning for the site described in the General Plan, the potential impacts of which would be substantially mitigated by the imposition of uniformly applied standard conditions of approval. The General Plan Amendment, Housing Element Update, and Associated Rezoning Final Environmental Impact Report (SCH No. 2014032007), certified by the City Council on December 4, 2014, was prepared consistent with the requirements for applicability of streamlining under CEQA Guidelines Section 15183(d)(2), and there are no environmental effects that are peculiar to the proposed project or project site that were not analyzed in the General Plan EIR;

2. The application for an Architectural and Site Approval, Application no. ASA-2018-04 is hereby recommended to be approved; and

The subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no.(s) ASA-2018-04 as set forth in the Minutes of the City Council Meeting on June 18, 2019, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set dated February 4, 2019 consisting of 26 sheets labeled as, "A Redevelopment for Public Storage" labeled as Sheet 1-26, prepared by KSP Studio and BKF; except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2018-03, EXC-2018-01, and TR-2019-11 are concurrently enacted, and shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

5. FINAL ARCHITECTURAL DETAILS AND EXTERIOR BUILDING MATERIALS

The final building exterior plan shall closely resemble the details shown on the original approved plans. The final building design and exterior treatment plans (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits and through an in-field mock-up of colors prior to application to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

6. EAST ELEVATION

The applicant shall work with the City to neutralize the building color and materials along the eastern elevation, and shall modify the vegetation, as necessary, to improve the aesthetics of the project. The modification shall be reviewed and approved by the Director of Community Development prior to the issuance of building permits.

7. MAXIMUM PARAPET HEIGHT

The proposed parapet architectural feature/screen shall not exceed 37".

8. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

9. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City.

10. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of June, 2019, by the following vote:

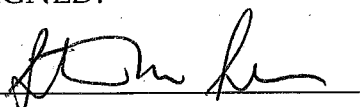

Vote Members of the City Council

AYES: Scharf, Chao, Paul, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

| | |
|---|--------------|
| SIGNED: | |
|  | 24 June 2019 |
| Steven Scharf, Mayor City of Cupertino | Date |
| ATTEST: | |
|  | 6/24/19 |
| Grace Schmidt, City Clerk | Date |

CITY OF CUPERTINO

10300 Torre Avenue, Cupertino, California 95014

DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT FORM

Application: U-2006-03, ASA-2006-05, EA-2006-06

Agenda Date: May 9, 2006

Applicant: Timothy Reeves, on behalf of Public Storage

Owner: Public Storage, Inc.

Location: 20565 Valley Green Drive, APN 326-10-044

APPLICATION SUMMARIES:

USE PERMIT and ARCHITECTURAL & SITE APPROVAL to demolish an existing 53,890 square foot, single-story storage facility and construct a 155,253 square foot, three-story storage facility.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend to the City Council:

1. Approval of the negative declaration, file no. EA-2006-06
2. Denial of the Use Permit, file no. U-2006-03, based on the model resolution.
3. Denial of the Architectural & Site Approval, file no. ASA-2006-05, based on the model resolution.

Project Data:

| | |
|----------------------------------|--|
| General Plan Designation: | Industrial/Residential |
| Zoning Designation: | P (CG, ML, Res 4-10) |
| Specific Plan: | North De Anza Boulevard Special Center |
| Site Area: | 130,469 square feet (2.99 acres) |
| Existing Building SF: | 53,890 square feet (to be demolished) |
| Proposed Building SF: | Building A: 74,511 square feet Building B: 80,742 square feet |
| | Total Building SF: 155,253 square feet |

| | |
|--------------------------------------|--|
| Building Coverage: | 39.6% |
| Floor Area Ratio: | 1.19 |
| Building Height: | 43 feet maximum, 45 allowed |
| Required Parking: | N/A |
| Provided Parking: | 80 spaces |
| Hours of Operation (Storage): | 6:00 a.m. - 9:00 p.m. (same as existing hours) |
| Hours of Operation (Office): | 9:00 a.m. - 5:00 p.m. (same as existing hours) |
| Total Employees: | 5 employees |
| Employees at any one time: | 2 employees |

Environmental Assessment: Negative Declaration

BACKGROUND:

Development of the site will require removal of all of the existing mini-storage buildings on the property, consisting of nine single-story buildings with an associated rental office. The project site is surrounded by Interstate 280 to the north, existing two-story office buildings and Valley Green Drive to the south, a condominium development (Oak Park Village) under construction to the east and a multiple-family residential neighborhood to the west. The site is accessed from Valley Green Drive by a 30-foot wide driveway easement that is on the adjacent properties to the south and east.

DISCUSSION:**Site Layout.**

The proposed project is comprised of two three-story buildings in the center of the property. Building A is proposed to be 74,511 square feet and will include 631 storage units with an associated 1,100 square foot rental office. Building B is proposed to be 80,742 square feet with 537 rental units. Eighty parking spaces will be provided around the new buildings. Landscaping will be provided along the perimeter of the site.

The site is located within a Planned Development zoning district, which does not provide setback standards. The proposed project will have a setback of 51 feet from the northern property line (adjacent to Interstate 280), a 15 foot rear yard setback from the southern property line, a 54 foot setback from the eastern property line (that includes half of the 30-foot driveway easement) and 50 feet from the western property line (adjacent to the multiple-family residential neighborhood).

Architecture and Building Materials.

The architecture of the buildings has been designed to be compatible with the Oak Park Village condominium development with respect to wall articulations, building shapes and variation of wall heights. The proposed buildings provide considerable wall articulations to break up the 370-foot wall lengths of each building.

Additionally, varying wall heights have been proposed by incorporating different roof shapes and wall heights. The buildings' heights are consistent with the adjacent three-story, 45-foot height Oak Park Village development. However, the existing two-story office buildings to the south are considerably lower, with a height of approximately 33 feet to the top of roof and 36 feet to the top of parapet.

The building materials include use of stucco EIFs (exterior insulation and finish systems), split face concrete masonry blocks, cornice treatments and metal awnings. The applicant is proposing to use a combination of gray, sand, and white colors for the building. Metal awnings are proposed to be painted orange to match the corporate logo color of Public Storage.

Although the buildings have been designed to be compatible with the surrounding uses, staff believes they will appear industrial, with a significant amount of three-story high wall area without windows and significant use of concrete split face masonry block units. Therefore, the proposed project will still appear somewhat different from the surrounding developments. The Oak Park Village condominiums will have a significant amount of window area and will have a stucco exterior, as do the existing two-story office buildings to the south.

Staff is also concerned about the height of the proposed buildings as they will be prominently visible from Interstate 280, the new condominium development currently under construction to the east, the existing residential neighborhood to the west and the two-story office buildings occupied by Apple to the south.

Landscaping.

Existing landscaped areas include a planter area adjacent to the rental office building at the entrance to the project site, some redwood trees along the northern property line at the entrance to the site, and a five-foot landscaped area with redwood and fern pine trees. Landscape screening of the site benefits from the landscaping on adjacent properties, including eucalyptus trees in a planter area on the adjacent property to the south and mature trees planted in the Interstate 280 right-of-way landscape area between the freeway and the project site.

The conceptual landscape plan provides enhanced landscaping, due to additional setbacks provided by the new buildings. No existing trees will be removed. The landscape plan provides for new and extended landscape planter areas around the perimeter of the site, including a 10-foot wide planter along the northern property line, a 15-foot wide planter along the southern property line, a 25-foot planter along the western property line and a 30-foot planter along the eastern property line. Additionally, planter areas will be installed between parking spaces along the northern elevation of the building to accommodate new magnolia trees.

Staff finds that although the applicant is significantly increasing landscape area along the perimeter of the project site, the number of trees to be added appears minimal. If the Planning Commission recommends approval of the project, staff recommends that the Commission require additional trees on the site.

Public Art. The recently adopted General Plan requires that new projects of 50,000 square feet or more contribute ¼% of their construction valuation toward public art. If the Planning Commission recommends approval of the project, a condition of approval requires public art for this project.

Parking.

The City's parking ordinance does not include a parking requirement for storage facilities. As a result, a parking study was prepared by TJKM Transportation Consultants to determine the parking demands of the project. The study was based upon analysis of the entry/exit log data for the month of March and driveway counts collected during the evening peak period between 4:00 p.m. and 6:00 p.m. on a weekday.

The study was also based upon a total projected building square footage of approximately 204,000 square feet and 83 parking spaces. Since preparation of this parking study, the proposed square footage of the building was reduced to 155,253 square feet and 80 parking spaces. Staff believes that the proposed number of parking spaces will be sufficient to accommodate the use.

North De Anza Special Center

The project site is located in the North De Anza Special Center area. Per the General Plan, this area focuses on development activities including office, industrial, research and development with supporting commercial and residential uses. Developments in this area are required to adhere to design elements by providing extensive landscape setbacks/corridors adjacent to De Anza Boulevard. Since the site has no direct street frontage, the landscape setback/corridor requirements do not apply.

Maintaining Cohesive Commercial Centers and Office Parks

The General Plan includes policies for the maintenance of cohesive commercial centers and office parks, which encourage new development and expansion of commercial/office uses within these areas. The project site is located in an area identified as an office park.

The proposed mini-storage facility is a non-office use that does not promote these General Plan policies for maintaining cohesive office parks and, therefore, staff believes that the project, which will significantly intensify the use of the site as a mini-storage facility by almost tripling the amount of existing mini-storage building area, will conflict with these policies. The proposed project will offer very little public and community benefit, as it is anticipated to generate a minimal amount of retail sales tax to the City for its sales of packing/boxing supplies, and is substantially inconsistent with the surrounding uses of the area that include office and multiple-family residential. More importantly, the substantial intensification of this site will preclude future development of the site for future expansion of an office park, and particularly a high tech office park currently occupied by Apple.

Although the applicant has made substantial design changes to provide a design that is compatible with surrounding buildings, staff believes that the proposed project does not follow the policies for maintaining cohesive commercial/office parks. Therefore,

staff does not support the proposed project, particularly since these policies were developed by the recently adopted General Plan of November 2005, and recommends that the Planning Commission recommend denial of the project.

Environmental Review.

The Environmental Review Committee (ERC) reviewed this project on April 12, 2006 and recommended approval of a negative declaration for this project. Items discussed included additional landscaping to be provided on the site, staffing and hours of operation, and parking.

Enclosures:

Model Resolutions recommending Denial

Model Resolutions recommending Approval

Exhibit A: Public Storage Project Description

Exhibit B: General Plan policy for Maintaining Cohesive Commercial Centers and Office Parks

Exhibit C: Parking study prepared by TJKM Traffic Consultants dated March 20, 2006
Initial Study and ERC Recommendation
Plan Set

Submitted by: Aki Honda, Senior Planner

Approved by: Steve Piasecki, Director of Community Development



G: CupertinoNT/Planning/PDREPORT/pcUsereports/2006ureports/ciddyU-2006-03.doc

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

MODEL RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
RECOMMENDING DENIAL OF A USE PERMIT TO DEMOLISH AN EXISTING 53,890
SQUARE FOOT, SINGLE-STORY STORAGE FACILITY AND CONSTRUCT A 155,253
SQUARE FOOT, THREE-STORY STORAGE FACILITY ACCESSED FROM VALLEY
GREEN DRIVE (PUBLIC STORAGE).

SECTION I: FINDINGS

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Use Permit, as described in Section II of this Resolution; and

WHEREAS, the necessary public notices have been given in accordance with the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held one or more public hearings on this matter; and

WHEREAS, the applicant has not met the burden of proof required to support said application; and has not satisfied the following requirements:

- 1) The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;
- 2) The proposed use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of this title; and
- 3) The proposed development is consistent with the North De Anza Boulevard Special Center area.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, the application for Use Permit is hereby recommended for denial, subject to the conditions which are enumerated in this Resolution beginning on Page 2 thereof; and

That the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the public hearing record concerning Application No. U-2006-03 as set forth in the Minutes of the Planning Commission Meeting of May 9, 2006, and are incorporated by reference as though fully set forth herein.

SECTION II: PROJECT DESCRIPTION

Application No.: U-2006-03 (EA-2006-06)
Applicant: Timothy Reeves (Public Storage)
Location: 20565 Valley Green Drive

PASSED AND ADOPTED this 9th day of May 2006, at a Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Steve Piasecki
Director of Community Development

Marty Miller, Chairperson
Planning Commission

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

MODEL RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
RECOMMENDING DENIAL OF AN ARCHITECTURE AND SITE APPROVAL TO
DEMOLISH AN EXISTING 53,890 SQUARE FOOT, SINGLE-STORY STORAGE
FACILITY AND CONSTRUCT A 155,253 SQUARE FOOT, THREE-STORY STORAGE
FACILITY ACCESSED FROM VALLEY GREEN DRIVE (PUBLIC STORAGE).

SECTION I: FINDINGS

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Use Permit, as described in Section II of this Resolution; and

WHEREAS, the necessary public notices have been given in accordance with the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held one or more public hearings on this matter; and

WHEREAS, the applicant has not met the burden of proof required to support said application; and has not satisfied the following requirements:

- 1) The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;
- 2) The proposed use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of this title; and
- 3) The proposed development is consistent with the North De Anza Boulevard Special Center area.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, the application for Architectural and Site Approval is hereby recommended for denial, subject to the conditions which are enumerated in this Resolution beginning on Page 2 thereof; and

That the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the public hearing record concerning Application No. ASA-2006-05 as set forth in the Minutes of the Planning Commission Meeting of May 9, 2006, and are incorporated by reference as though fully set forth herein.

SECTION II: PROJECT DESCRIPTION

Application No.: ASA-2006-05 (EA-2006-06)
Applicant: Timothy Reeves (Public Storage)
Location: 20565 Valley Green Drive

PASSED AND ADOPTED this 9th day of May 2006, at a Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Steve Piasecki
Director of Community Development

Marty Miller, Chairperson
Planning Commission

CC 03-21-2023

#8

I-280 Trail Name Change

Desk Item



PUBLIC WORKS DEPARTMENT

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

CITY COUNCIL STAFF REPORT DESK ITEM

Meeting: March 21, 2021

Agenda Item #8

Subject

Consider adoption of a Resolution approving Tamien Innu (Tamien Trail) as the officially recognized trail name for the I-280 Trail.

Recommended Action

Conduct a public hearing and adopt Resolution No. 23-xxxx (Attachment A) approving Tamien Innu as the officially recognized trail name for the I-280 Trail.

Background:

Staff's responses to questions received from councilmember are shown in italics.

Q1: I have one more question of the Trail Naming item. I noticed that these are the methods used for the survey:

Outreach Methodology:

- City-wide mailer
- Items of Interest
- Cupertino SR2S Newsletter
- Social Media
- E-Notification

Is there a ball park figure of how much it cost for the survey? (**Wei**)

Staff response:

The city-wide mailer cost \$7,128.36.

| | |
|---------------------------------|-------------------|
| <i>Folgers Graphics Printer</i> | <i>\$3,039.13</i> |
| <i>USPS Postage</i> | <i>\$4089.23</i> |
| <i>Total</i> | <i>\$7128.36</i> |

The cost of eNews, Items of Interest, Newsletters, and social media are free. Staff cannot quantify the time it took to post on various outreach sites or research and create the survey.

CC 03-21-2023

#8

I-280 Trail Name Change

Supplemental Report



PUBLIC WORKS DEPARTMENT

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

CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: March 21, 2023

Agenda Item #8

Subject

Consider adoption of a Resolution approving Tamien Innu (Tamien Trail) as the officially recognized trail name for the I-280 Trail

Recommended Action

Conduct a public hearing and adopt Resolution No. 23-040 (Attachment A) approving Tamien Innu as the officially recognized trail name for the I-280 Trail

Background:

Staff's response to question received from councilmember are shown in italics.

Q1: How many people responded to the survey? (**Wei**)

Staff response: The City received 112 responses.

CC 03-21-2023

#9

Letter in Opposition to the
Taxpayer Protection &
Government
Accountability Act

Desk Item



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT DESK ITEM

Meeting: March 21, 2023

Agenda Item #9

Subject

Consider submitting a letter in opposition to the Taxpayer Protection and Government Accountability Act (Initiative No. 21-0042A).

Recommended Action

Approve the submission of a letter in opposition to the Taxpayer Protection and Government Accountability Act.

Background:

Staff's responses to questions received from councilmember are shown in italics.

Q1: "On December 2021, before the measure qualified for inclusion on the ballot, the Legislative Review Committee took a position opposing the measure. Former Mayor Darcy Paul sent a letter to Senators Dave Cortese and Josh Becker and Assemblymembers Evan Low and Marc Berman conveying the City's opposition to the measure on April 8, 2022." Please advise which two City Councilmembers served on the LRC on December 2021? **(Mayor Wei)**

Staff response: At that time, the LRC was made up of Councilmember Liang Chao and Councilmember Kitty Moore.

CC 03-21-2023

#10

General Plan Annual
Report and Housing
Element Annual Progress
Report (APR)

Desk Item



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL REPORT DESK ITEM

Meeting: March 21, 2023

Agenda Item # 10

Subject

2022 General Plan Annual Report and Housing Element Annual Progress Report (APR).

Recommended Action

Receive reports and authorize submittal to the Department of Housing and Community Development (HCD)

Background:

City Staff has also received questions from City Councilmembers. **Staff's responses to questions received from councilmember are shown in *italics*.**

1. Q1: Could you please supply me with the total for all ADUs permitted by year since the beginning of the 5th RHNA Cycle?
(**Councilmember Fruen**)

Staff response:

Below are the ADUS approved per year as reported as part of the City's HCD APR:

| 2014/2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>14</i> | <i>18</i> | <i>12</i> | <i>15</i> | <i>15</i> | <i>19</i> | <i>41</i> | <i>23</i> |