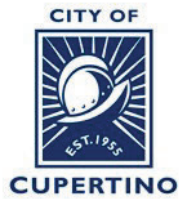


ATTACHMENT C

Appendix A

Sample Agreement with Insurance Requirements



DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE) WITH

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”),
and _____ (“Consultant”),
a Select One _____ for _____

 (“Project”), and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Basic Services. Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant’s written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Additional Services. City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal (“Additional Services”). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to “Services” in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant’s Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on _____, unless terminated earlier as provided herein (“Contract Time”). The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

Select One

3.2 Schedule of Performance. All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified in **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$ _____ ("Contract Price"), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

4.2 Basic Services. City will pay Consultant \$ _____ ("Lump Sum Price") for the complete and satisfactory performance of the Basic Services in accordance with Exhibit C. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, sub-Consultants' costs, materials, supplies, equipment, travel, taxes, overhead, and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City's reasonable satisfaction.

4.3 Additional Services. City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$ _____. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

4.4 Invoices and Payments. Monthly invoices must describe the Services completed and the Amount due for the preceding month. City will pay Consultant within thirty (30) days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in thirty (30) minute increments; (iv) the hourly billing

rate or Sub- Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.

- b. Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City- approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

5. INDEPENDENT CONTRACTOR

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

5.2 Qualifications and Standard of Care. Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

5.3 Permits and Licenses. Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

5.4 Sub-Consultants. Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

5.5 Tools, Materials, and Equipment. Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Consultant. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Consultant, or any of its employees,

Select One

agents, or subcontractors, is an employee for any purpose, then Consultant agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

5.7 Errors and Omissions. Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

During the Contract Time, Consultant may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement ("Work Product"), will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to a third-party without prior written approval by City

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

7.3 Patents and Licenses. Consultant must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

7.5 Deliverables and Format. Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

8. RECORDS

8.1 Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

8.2 Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

8.3 Consultant acknowledges that certain documents generated or received by Consultant in connection with the performance of this Agreement, including but not limited to correspondence between Consultant and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Consultant shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

9. ASSIGNMENT

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

10. PUBLICITY / SIGNS

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles. No signs may be posted, exhibited, or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

Select One

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

a. Indemnity for Design Professional Liability: With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually “City”) from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys’ fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually “Consultant”), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant’s indemnification and hold harmless obligation shall not exceed Consultant’s finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys’ fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant’s proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant’s negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City’s choice, expert fees, and all other costs and fees of litigation.

c. Claims for Other Liability. Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually “City”) from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys’ fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

11.2 Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

11.3 Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

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

11.5 This Section 11 shall survive expiration or termination of this Agreement.

12. INSURANCE

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

13. COMPLIANCE WITH LAWS

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

13.2 Labor Laws. Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

Select One

13.3 Discrimination Laws. Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Consultant shall comply with all anti-discrimination laws, including

Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited. Consultant agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement in violation of California Government Code Section 1090 et seq. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

14. PROJECT COORDINATION

14.1 City Project Manager. The City's Project Manager for all purposes under this Agreement will be _____, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

14.2 Consultant Project Manager. Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be _____, who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant will be compensated for satisfactory Services performed through the date of abandonment and will be given reasonable time to assemble the work and close out the Services. No close out work

Select One

shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 18 survives the expiration/termination of this Agreement.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

21. ENTIRE AGREEMENT

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

Select One

main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. **INSERTED PROVISIONS**

Each contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

23. **HEADINGS**

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

24. **SEVERABILITY/PARTIAL INVALIDITY**

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect.

25. **SURVIVAL**

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

26. **NOTICES**

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

To City of Cupertino: Select Address Attention: Email:	To Consultant: Attention: Email:
--	---

Select One

27. **EXECUTION**

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

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

CITY OF CUPERTINO
A Municipal Corporation

CONSULTANT

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title _____
Date _____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date: _____

Select One

EXHIBIT D
Insurance Requirements
Design Professionals & Consultants Contracts

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

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
/ *Not required. Consultant has provided written verification of no employees.*
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. If written on a claims made form:
 - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
 - b. Insurance must be maintained for at least five (5) years after completion of the Services.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

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

Additional Insured Status

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

Primary Coverage

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

Notice of Cancellation

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

Waiver of Subrogation

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

Deductibles and Self-Insured Retentions

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

Acceptability of Insurers

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

Verification of Coverage

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

Subconsultants

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

Higher Insurance Limits

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

Adequacy of Coverage

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

Appendix B

Draft City Hall Annex Program

City of Cupertino
City Hall Annex Needs Assessment
Detailed Space Requirements

Unit / Department / Division / Area / Staff / Room / Note	Space Standard		Base Need			Ideal Need		
	Code	Sq. Ft.	Staff	Qty	Sq. Ft.	Staff	Qty	Sq. Ft.

Torre Building Renovation

Front of House

One-Stop-Shop

Planning Counter	cnt-stn	40		1	40		1	40
Building Counter	cnt-stn	40		1	40		1	40
Fire Department Counter	cnt-stn	40			shared abv		1	40
Public Works Counter	cnt-stn	40			shared abv		1	40
Finance Counter	cnt-stn	40		1	40		1	40

Note: Needs space below counter to store supplies and each counter workstation should have a computer under the counter with two monitors above

Public Lobby

Lobby								
Public Waiting Area	allow	200	0	1	200	0	1	200
<i>Available queuing space for up to 6 stackable chairs</i>								
Gender Neutral Restroom	lav-2	100		1	100	0	1	100

Support Spaces

Conference room (6-person)	C-3	180		2	360			0
Conference room (8-person)	C-4	240					2	480

Front of House Assignable SF

Unit Circulation

Front of House Net SF

			0		780	0		980
Unit Circ-4	25%				195			245
			0		975	0		1,225

Back of House

Private Offices

Office	PO-4	180	2	2	300	2	2	360
--------	------	-----	---	---	-----	---	---	-----

Open Workstations

City Manager's Office	en-C	64	3	3	192	3	3	192
Public Works / Development Services	en-C	64	3	3	192	3	3	192
Administration / Reception	en-C	64	1	1	64	1	1	64
Building	en-C	64	6	6	384	6	6	384
Planning	en-C	64	3	3	192	3	3	192
Building Inspection	en-C	64	1	1	64	1	1	64
Code Enforcement	en-C	64	1	1	64	1	1	64
Finance	en-C	64	2	2	128	2	2	128
IT	en-C	64	2	2	128	2	2	128
Plan Review	en-C	64	1	1	64	1	1	64

Support Spaces

IT Supply Closet	stor-1	80		1	80		1	80
Work / Copy Room	allow	180		1	150		1	180
<i>Note: Include 2 large-scale printers, 1 plotter, and a workcounter</i>								
Mail Area	mail	30		1	25		1	30
Men's Restroom	lav-5	240		1	200		1	240
Women's Restroom	lav-5	240		1	200		1	240
Kitchen/Break Room	kitchen-3	200		1	180		1	200
Lactation Room	C-2	120		1	100		1	120
General Storage	stor-1	80		1	60		1	80
Janitor's Closet	jan	35		1	35		1	35

Fixed Elements

Electrical Room				1	13		1	13
-----------------	--	--	--	---	----	--	---	----

City of Cupertino
City Hall Annex Needs Assessment
Detailed Space Requirements

Unit / Department / Division / Area / Staff / Room / Note	Space Standard		Base Need			Ideal Need		
	Code	Sq. Ft.	Staff	Qty	Sq. Ft.	Staff	Qty	Sq. Ft.
Stair Corridor				1	38		1	38
Back of House Assignable SF			25		2,853	25		3,088
Unit Circulation	Unit Circ-4	25%			713			772
Back of House Net SF			25		3,566	25		3,860

Total Interim City Hall SF

Front of House Net SF	0	0	975	0	0	1,225
Back of House Net SF	25	0	3,566	25	0	3,860
<i>Total Net SF</i>	25		4,541	25		5,085
Total Available Net SF (1st Floor Only)			4,766			4,766
Delta			225			-319

Unit / Department / Division / Area / Staff / Room / Note	Space Standard		Existing		
	Code	Sq. Ft.	Sq. Ft.	Qty	Sq. Ft.

Torre Building Existing SF

Public Lobby

Lobby					188
Receptionist					196

Private Offices

Offices		170	8	1360
Offices		150	2	300
Offices		100	1	100
Offices		84	2	168
Offices		83	4	332
Offices		80	1	80

Support Spaces

Conference room		233	1	233
Work Room		150	1	150
Men's Restroom		91	1	91
Women's Restroom		94	1	94
Kitchen/Break Room		115	1	115
Electrical Room		13	1	13
Stair Corridor		38	1	38

Assignable SF

Unit Circulation

Net SF

Unit Circ-4 25%

3458

864.5

4322.5

Appendix C

As-Built Drawings

10455 Torre Ave., Cupertino CA 95014

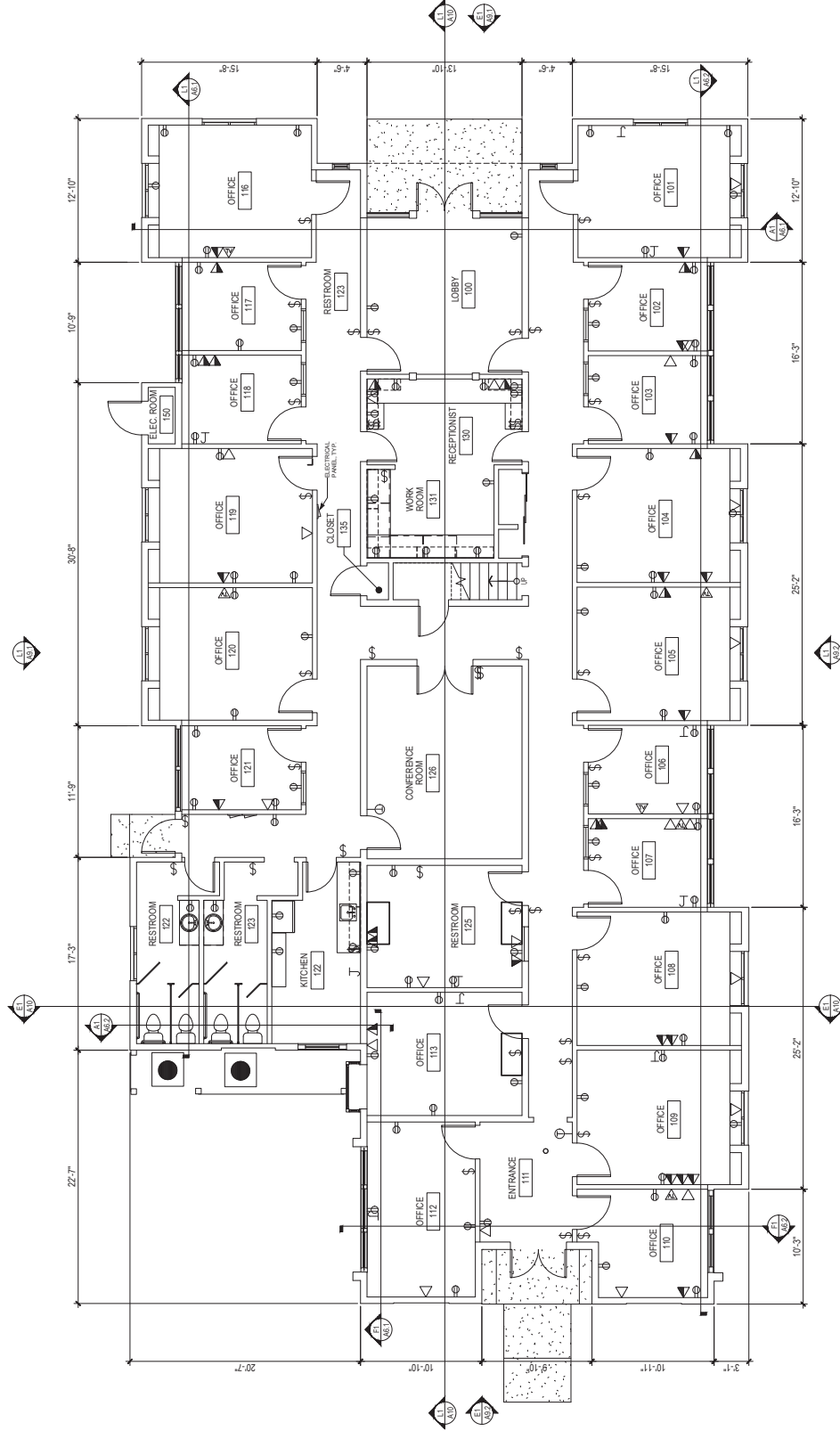
DRAWING SYMBOLS	
MATCH LINE	
COLUMN PROFILE	
BUILDING SECTION	
WALL SECTION	
ELEVATING SYMBOLS	
DETAIL SYMBOLS	
WINDY WIND	
ROOM NAME	
DOOR IDENTIFICATION	
WINDOW IDENTIFICATION	
WENTILE IDENTIFICATION	
CEILING IDENTIFICATION	
ACQUANT IDENTIFICATION	
PARALLEL IDENTIFICATION	
PERPENDICULAR IDENTIFICATION	
PARALLEL IDENTIFICATION	
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City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
408.777.3200

10455 Torre Ave.
AS-BUILT
FIELD DOCUMENT
10455 Torre Ave.,
Cupertino, CA 95014

COUNT PROJECT NUMBER	
PROJECT NUMBER	LP001-002.01
DRAWING #	N
SHEET NO.	N
TITLE	COVER SHEET



A-1	1/4" = 1'-0"	FLOOR PLAN - LEVEL 1
-----	--------------	----------------------

**FLOOR PLAN -
LEVEL 1**

AB-2.1

208 HANES

10455 Torre Ave.
AS-BUILT
FIELD DOCUMENTED
10455 Torre Ave.,
Cupertino, CA 95014

 **City of Cupertino**
10300 Torre Avenue
Cupertino, CA 95014
408.777.3200



ARCTM
ARCHITECTURAL
RESOURCE CONSULTANTS

18141 Irvine Blvd., Tustin, CA 92780-3408

FIELD INVESTIGATION INFORMATION

Field survey period of observation: 2021/11-01 - 2021/11-04

Marion of Cornwall;
Genaro Vazquez

Author of survey: The intent of this survey is:

For research purposes only. Use of this product is not intended for use as a food or as a food additive.

Method of survey

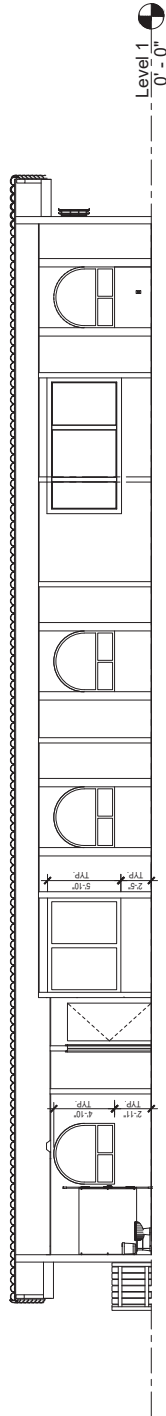
Definition Scanning!

Unsupervised conditions:

Survey Control: Survey control was not required.

Baruch Meir: All physical phenomena or

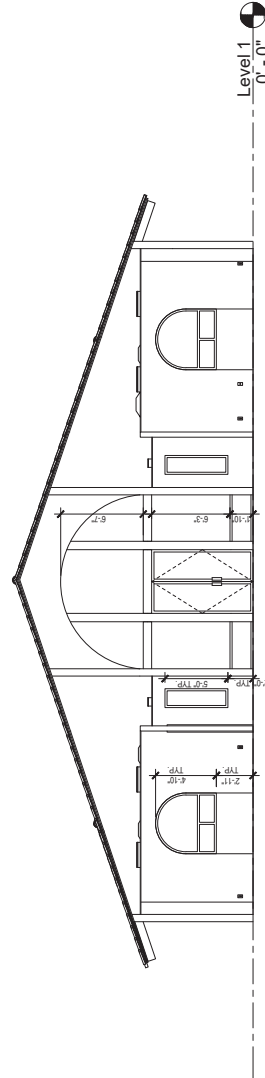
Classification:



L-1	1/4" = 1'-0"	INTERIOR ELEVATION - NORTH 1
-----	--------------	------------------------------

[illegible]

F-1	1/4" = 1'-0"	INTERIOR ELEVATION NORTH 2
-----	--------------	----------------------------



A-1	1/4" = 1'-0"	INTERIOR ELEVATION EAST
-----	--------------	-------------------------

ARCTM
ARCHITECTURAL
RECORDS COMPANY

18141 Irvine Blvd., Tustin, CA 92780-3408
www.arc-records.com 949.831.8115

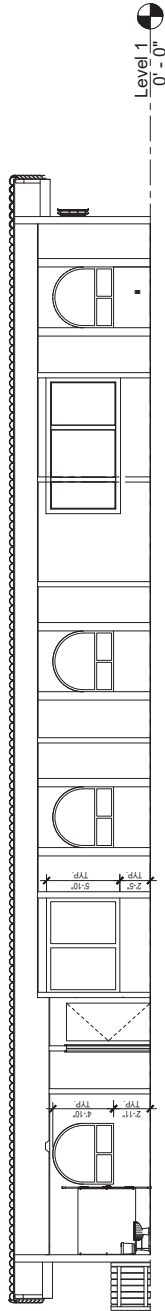
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
408.777.3200

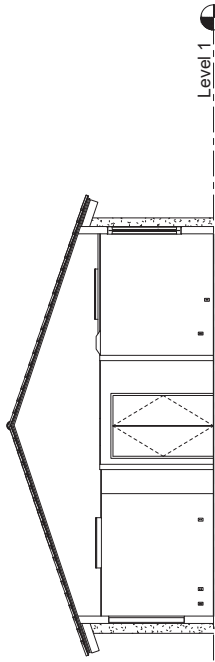
10455 Torre Ave.
AS-BUILT
FIELD DOCUMENTED
10455 Torre Ave.,
Cupertino, CA 95014

DAY PROJECT NUMBER		OF PROJECT NUMBER	
231001502.01		231001502.01	
SHEET NO.		SHEET NUMBER	
15		15	
SCALE		SCALE	
1/4" = 1'-0"		1/4" = 1'-0"	
INTERIOR ELEVATIONS		INTERIOR ELEVATIONS	

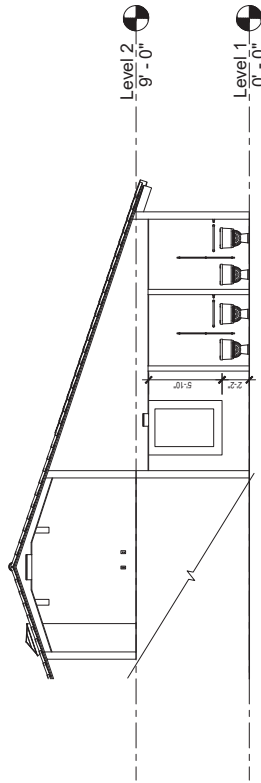




L-1 1/4" = 1'-0" INTERIOR ELEVATION - SOUTH



F-1 1/4" = 1'-0" INTERIOR ELEVATION WEST 1



A-1 1/4" = 1'-0" INTERIOR ELEVATION WEST 2

FIELD INVESTIGATION INFORMATION

Fieldwork period of performance: 2021/1/13 - 2021/1/14
Name of surveyor: George Aragon
This report of this survey was prepared solely for the purpose of design and construction of the proposed project and is not intended for any other purpose. The surveyor is not responsible for any errors or omissions in the field or in the preparation of this report.
Method of survey: Measurements have been taken with the following method: (see page 10) The survey was conducted using a total station and a laser level.
Unusual conditions: Unusual conditions have not been observed. City conditions that were observed by the field crew of the field crew have been noted.
Survey control: Survey control was not required as the survey was conducted in an open area.
Survey details: The survey was conducted in an open area and no details were observed.
Comments: Plans have been prepared for the project and are not intended for construction. The survey was conducted in an open area and no details were observed.
Coordinate System: The survey was conducted in an open area and no details were observed.

NOTES

1. The survey was conducted in an open area and no details were observed.
2. The survey was conducted in an open area and no details were observed.
3. The survey was conducted in an open area and no details were observed.
4. The survey was conducted in an open area and no details were observed.
5. The survey was conducted in an open area and no details were observed.
6. The survey was conducted in an open area and no details were observed.
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8. The survey was conducted in an open area and no details were observed.
9. The survey was conducted in an open area and no details were observed.
10. The survey was conducted in an open area and no details were observed.

CONTRACT

ARC
ARCHITECTURAL
11441 Pioneer Blvd., Suite 100, San Jose, CA 95131-3408
www.arc-architectural.com 408.851.8115

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
408.777.3200

10455 Torre Ave.
AS-BUILT
FIELD DOCUMENTED
10455 Torre Ave.
Cupertino, CA 95014

PROJECT NUMBER: 10455 Torre Ave.
PROJECT NAME: 10455 Torre Ave.
PROJECT LOCATION: 10455 Torre Ave.
PROJECT DATE: 10455 Torre Ave.

PROJECT NUMBER: 10455 Torre Ave.
PROJECT NAME: 10455 Torre Ave.
PROJECT LOCATION: 10455 Torre Ave.
PROJECT DATE: 10455 Torre Ave.

PROJECT NUMBER: 10455 Torre Ave.
PROJECT NAME: 10455 Torre Ave.
PROJECT LOCATION: 10455 Torre Ave.
PROJECT DATE: 10455 Torre Ave.

Appendix D

Photo Documentation

The drawing and photos are located in a folder here: [Appendix D - Photo Documentation](#)

Folders:

- Drawings: Contains PDFs with location of photos taken
- Media:
 - 360 Photos: JPEG files
 - Viewable 360 Photos: Chrome HTML documents

Appendix E

10455 Torre Avenue Inspection Report

Property Inspection & Due Diligence Report for...



**10455 Torre Ave.
Cupertino, CA**

Prepared By:

Silicon Valley Building Inspections

Building Inspections, Code Compliance, Facilities Planning

1180 Coleman Ave
San Jose, CA 95110
408 540-8984

TABLE OF CONTENTS

I	BUILDING & SITE OVERVIEW
II	SUMMARY
III	SITE & ACCESSIBILITY
IV	INTERIOR ACCESS
V	INTERIOR IMPROVEMENTS
VI	SUMMARY OF MAJOR SYSTEMS
VII	SITE PLAN
VIII	PHOTOGRAPHS

This report is copyrighted by *Silicon Valley Building Inspections*, 2021.
No part may be used or reproduced in any form without the expressed
written consent of Silicon Valley Building Inspections.

Areas obscured by furnishings or areas that were not readily accessible were
not inspected and are therefore not included in this report.

This report does not cover inspections for pests, molds or hazardous materials of any kind.

I BUILDING AND SITE OVERVIEW

This report has been assembled for the building and site located at 0455 Torre Ave in Cupertino CA.

Description of the Property

The site consists of a free-standing single story wood framed, stucco exterior building that totals approximately 7,000 SF. (square footage was not verified as part of this inspection).

The building was built in late 1970's and it is currently configured for multiple tenants, mostly lawyers. The interior of the building is largely in original condition. All of the interior doors have original "knob" style hardware. The restrooms have two stalls each, but none of the stalls are handicap compliant. The break sink is not accessible or compliant. Several broken door closers were noted. A number of offices and conference rooms have (likely original) wall coverings on them which in some areas is starting to peel off.

None of the lighting has been upgraded. Many of the rooms or offices have the original "single switching". There have been no Title-24 upgrades; there are no lighting controls. None of the outlets or switches are labeled. No exit signs or emergency lights were noted.

At least two of the Forced Air Units (FAU's are original), while the other two units (located in the attic) have been replaced. Three of the four condensers have been replaced and one appears to be original. Insulation on the refrigerant lines (located in the fenced-in condenser area needs to be replaced where it is failing.

The exterior of the building is generally in good condition with several minor exceptions. These include some trip hazards in the sidewalks, the tree(s) that hang over the edge of the roof need to be cut back. Vent screens need to be sealed to prevent entry by rodents and other pests. The landing outside the main entry needs to be re-done (not a "level landing") and the handicap parking stall(s) need to be updated. A path of travel to the City needs to be added.

The report that follows summarizes the site and building at the time of the inspection.

Building Summary

- Perimeter concrete foundation;
- Wood framed structure with a stucco exterior;
- Sloped clay tile (original) roof;
- Single-glazed windows;
- No Fire sprinklers, but the building does have a fire alarm monitoring system;
- Power consists of 600 amps of 120/208 volt power run through a single meter;
- Single paned windows;
- No handicap accessible, inside or out.

II SUMMARY OF FINDINGS

To summarize the site and building at 10455 Torre Ave in Cupertino, CA is to say that the building is in “fair” or “good” condition, and there are several areas of concern.

Areas of Concern:

- Handicap Accessibility: The building has not had any ADA modifications or upgrades for at least 20 years, and is not compliant inside or out;
- Pests & Rodents: Because the building is wood framed, and also since some termite was noted (we typically do not inspect for termites), we recommend a termite inspection. Also, two vents screens were noted to have openings large enough to allow rodents and other pests to enter;
- The HVAC units: The HVAC appears to be “adequate” but it is old. Two of the forced air units appear to be original, and at least one of the condensers is original. No service or maintenance records were noted;
- None of the lights are energy efficient; as note above, there have been no title-24 upgrades or modifications done at this building;
- There are no emergency lights in the building, none of the exit signs are working, and there are no currently tagged fire extinguishers in the building.

Plusses of the Building:

- The building is structurally intact and in good condition with no issues noted;
- There building has sufficient power run through a single meter;
- The building has sufficient parking for its size;
- The building is in a great location;

List of Non-Compliant Code or ADA items

- There is not a level landing at the entry;
- There is no compliant handicap parking stall or path of travel to the City sidewalk;
- Door hardware is not compliant;
- The restrooms and the break sinks are not compliant;
- Much of the door hardware still has “knob” hardware;
- There are no exit signs or emergency lights;
- There is no tactile signage at the restrooms or at the exits.

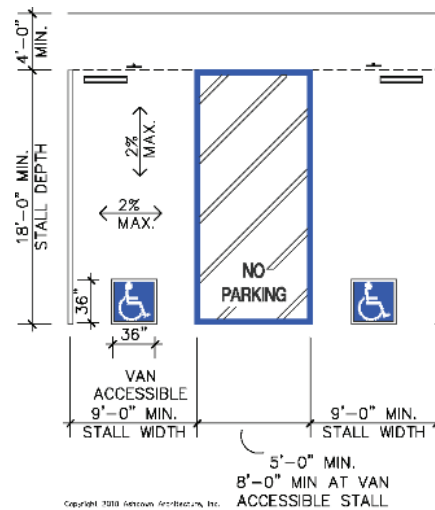
III SITE AND ACCESSIBILITY

A) Parking/Handicap Parking:

The parking lot is in fair condition with no failing asphalt areas noted. There is one striped handicap stall, which has a "Van Accessible" sign, but this set-up is no longer considered to be compliant as one cannot pass behind their own vehicle to access a ramp a new "curb-cut" ramp needs to be added. There is no path of travel to the City sidewalk. No truncated domes were noted.



Typical Curb Cut Photo



Typical handicap stall

B) HC Signage:

- There is Handicap signage on this site, which will likely need to be relocated once the Handicap stall has been updated..

C) Ramps and Sidewalks:

One of the requirements of ADA is that entry thresholds be less than 1/2" in height relative to the finish elevation on either side of the entrance. In this case, the thresholds leading into the front of the building are at or below 1/2" and are therefore compliant.

The main entrance doors into the suites of the building are wide enough for handicap access (3'0") but do not have the proper handicap panic hardware. All front entrance doors should have panic hardware where required by Code and be at least 36" wide.

Storefront doors need to have a 10" bottom rail or kick-plate that has the storefront fully comply with Accessibility standards. There also needs to be a "level landing" extending 72" out from the main entry, and that is not the case here.

III INTERIOR ACCESS

Restrooms

- The restrooms inspected in are not sized for ADA and Handicap accessibility;
- No tactile signage was noted at the restrooms or exits.

Handicap Standards: A handicap accessible stall includes a low flush toilet with the centerline of the toilet at least 18" from the wall. The open side of the stall requires a minimum of 42". The stall itself shall be 56" from back to front for wall- mounted fixtures and 59" from back to front for floor mounted fixtures. Stall openings shall be at least 32" wide.

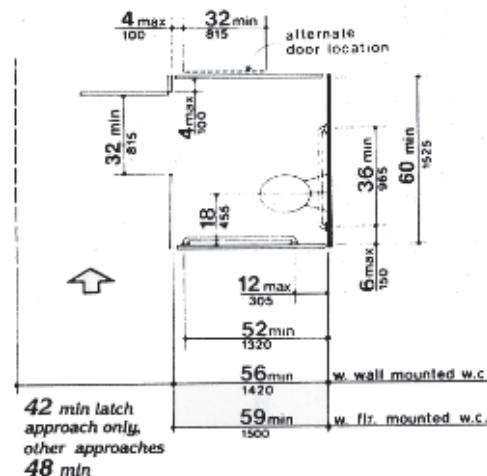
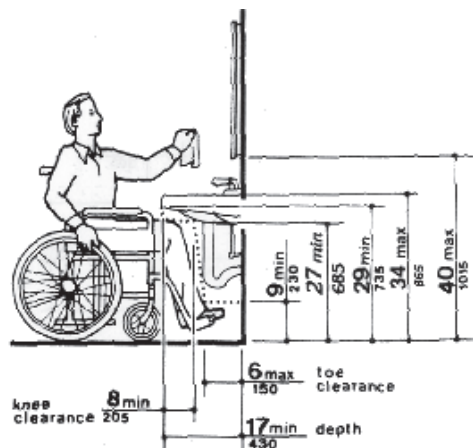
Lavatories must be at least 27" from the floor at the face and at least 17" deep. They must have a lever style faucet and there must be at least 9" from the floor to the lowest point of the trap, which must be wrapped to prevent injury.

The lavatory must have a minimum clearance of 29" from the bottom of the apron to the floor, and a maximum height of 34" to the rim or counter above the floor surface.

Bottom edge of the mirror should be a maximum of 40" from the floor and the top edge of the mirror should be a minimum of 74" above the floor.

All toilet accessories must be no higher than 48" above the floor (reachable from a wheelchair).

Urinals and water closets should not be higher than 17" and 17-19" respectively.



B) Corridors:

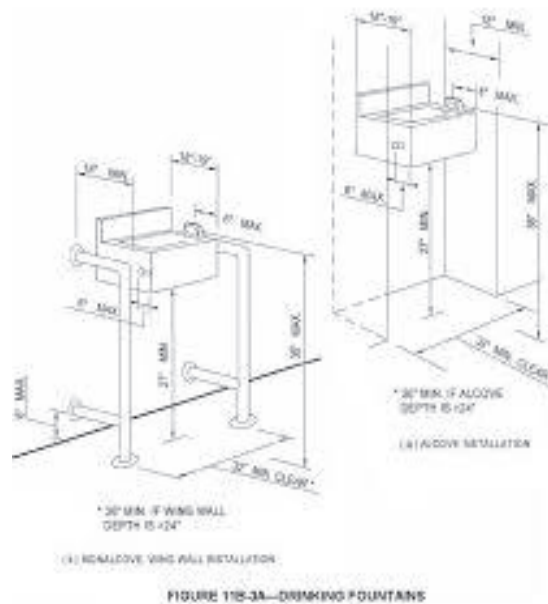
There are no corridors or other rated areas in this building.

C) Floors and Walls:

- The walls and ceiling and flooring all need to be replaced at best and painted as the worst;
- No moisture issues were noted in any of the resilient floor areas.

D) Drinking Fountains:

- No Hi-low drinking fountains were noted. The detail that follows is a “typical” high-low drinking fountain.



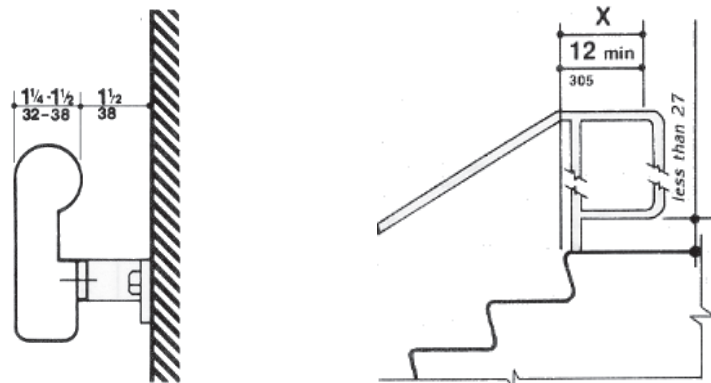
E) Signage

As noted above, this building is adequately marked on the outside with Handicap accessibility signs. Additionally, no “Tactile” signs at the exits were noted. This is the newest requirement of ADA accessibility standards in most Cities.

F) Elevator

Single story building – Not applicable;

G) Handrails: the handrails on the stairs leading to the attic and conference room are not compliant. The details below are suggestive of how the handrails need to be configured.



IV INTERIOR IMPROVEMENTS

A) Restroom Compliance:

As mentioned above, the restrooms in the building toured do not meet current Handicap ADA requirements for overall size and accessibility. As a general rule, all buildings must have at least one restroom that is in compliance with ADA. A restroom that is ADA compliant will have a five-foot diameter circle where a wheelchair can turn around. Lavatories must meet height clearance standards and toilet stalls must be large enough and have the proper handicap grab bars.

B) Door Hardware:

As a general rule, all interior doors must have lever-type handles. None of the doors at this site are compliant.

C) Suspended Ceilings:

Current codes specify that all suspended ceilings have “compression posts” to prevent the ceiling from falling in the event of an earthquake. Most ceilings installed after 1994 were installed with compression posts, while ceilings built before 1994 were not.

- There are no compression posts in any of the drop ceiling areas in this building;
- Each of the offices or conference rooms has a T-bar ceiling that is unique to the room.

D) Roofing / Spotting Roof Leaks

The building has a pitched (mostly original) clay tile roof. The roof itself was not inspected due to no access being available and the conditions for access to the roof were not safe (wet, windy).

Once section of the roofing at the corner of Pacifica and Torre was noted to have been replaced, as the tiles do not match the rest of the roof. There are no gutters at this building.

Notes on the Condition of the Roof:

- Several of the roof tiles were noted to be slightly askew;
- The skylights need to be replaced;
- There are a number of small piles of leaves on the roof;
- Some general roof clean up is required.

E) Fire Sprinklers/Fire Extinguishers/Smoke Detectors

- The building does not have an automatic fire sprinkler system;
- The building does have a smoke detection system, run through a Fire Alarm monitoring panel the panel was silent but was in “trouble mode” at the time of the inspection, leading us to wonder if the building is currently being monitored;
- No currently tagged Fire Extinguishers were noted;

- Buyer should make sure to obtain all of the Fire alarm account information.

F) Emergency Lighting/Exit Signs:

- There are no exit signs or emergency lights in this building.

G) Title-24 Compliance:

Title 24 mandates that buildings comply with energy usage standards. Among the most typical improvements to be incorporated under Title 24 are lighting and switching. Any office or room over 120 SF should have double switching (also known as “A/B switching”).

- The majority of the lights are T-8 fluorescents. Many offices do not have “A/B” switching;
- The building is not Compliant for Title-24 and for energy compliance with regard to switching.
- Lighting upgrades will need to be done, especially in conjunction with any planned tenant improvements;
- The building is not compliant to the most recent Title-24 mandates that went into effect in July of 2014.

V SUMMARY OF MAJOR SYSTEMS

A) Structural/Seismic

The building was originally constructed in the late 1970's, which means that it was not built to the most recent Codes. No evidence of a seismic upgrade was noted. No structural issues were noted.

B) Mechanical/HVAC:

HVAC System

The HVAC system consists of “Forced Air Units” (FAU's). A forced air unit is very much like the furnace in your house. There is a gas-fired furnace with a cooling coil served by a remote condenser. Each FAU serves an area or zone and is controlled by a wall-mounted thermostat.

In this case, the one of the forced air units are located above the rear restroom area where a mechanical mezzanine was built. There are two four ton units, one three-ton and one five to systems. The condensers are located inside a wooden fenced in area near the large tree near the parking lot.

The age of the equipment is not known, as no mechanical records were reviewed. The FAU unit above the restrooms is belt-driven, which indicates that this is likely and original unit.

Notes on Mechanical System:

- All of the units appear to be in operational condition;

- The insulation on the refrigerant lines needs to be replaced;
- All of the units likely need to be serviced and one or more are likely due for replacement;
- No other mechanical issues were noted.

C) Electrical

The main electrical service is located in a small wooden enclosure facing the parking lot. The building is served by a 600-amp 120/208 volt service run through a single meter.

Notes on Electrical System:

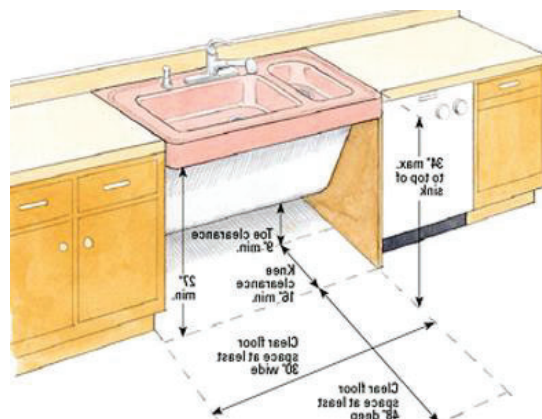
- None of the lights are energy efficient;
- None of the outlets or switches;
- Some exposed electrical junction boxes were noted;
- No exit signs or emergency lights were noted.

D) Plumbing

As noted above, none of the plumbing meets the Accessibility standards as set forth by the ADA. The water meter is located in the City sidewalk along Ave near the main entry. An break sink is shown below.

Notes on Plumbing System:

- The water heater needs to be properly braced;
- All of the sinks and toilets tested worked properly;
- Pressure and “flushing” activity is OK;
- None of the fixtures are “low flush”
- No hot water lines are insulated
- None of the restrooms or sinks are accessible;
- The building has a single water meter;
- No other plumbing issues were noted.



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Please note that this inspection does not include inspection for asbestos or any other hazardous material contamination. Buildings built before 1979 are known to have had asbestos used in their construction.

The ADA mandates that certain items take priority in compliance. First and foremost is handicap parking and accessibility to the building and site. Second is handicap accessibility inside the common areas and restrooms. Less critical, but still required are items such as door hardware and emergency and exit lighting.

Landlord/Tenant Relationships

Section 36.201 of the ADA states that as a general principle, the owner of the building (“landlord”) and/or management company, as well as the existing tenant, are all subject to the requirements. Although the statutory language could be interpreted as placing the responsibility on all concerned, the question now arises as to who is ultimately responsible for making alterations to existing facilities. In most cases it would be the landlord; however, various clauses in lease agreements dictate differing of responsibility on the tenant. For example, many leases contain a “compliance clause” that allocates responsibility to a particular party for compliance with all relevant federal, state and local laws.

To address various concerns, the ADA does not list specific allocations to specific parties but, rather, leaves allocation of responsibilities to the lease negotiations. The ADA was not intended to change existing landlord/tenant responsibilities as set forth in the lease.

Therefore, between the landlord and the tenant, the responsibility for particular obligations will have to be determined by the lease agreement.

Commercial Real Estate Transactions

The ADA requires that sellers in a commercial building transaction “fully disclose to the buyer any material defects” and that the buyer also be aware that a “buyer beware” policy also exists. This report seeks to bring to light the material deficiencies of the subject building and site, and does not purport to include every deficiency or upgrade required under the ADA.

Please also note that this report does not include any inspection of the structure itself, as this contractor is not licensed to provide that type of service. The information contained herein was collected by visual inspection by a licensed general contractor and while it is deemed to be accurate, is not exhaustive.

Please feel free to contact our office if you should have any questions whatsoever, or if you would like to have the costs associated with upgrading these areas of deficiency.

General Disclosure

This report is a general overview of the building and visible structural components and major systems of the subject building. It is not intended to be technically exhaustive in any one field. If further information is desired, specialists in the relevant fields should be retained to perform additional inspections.

A determination as to the presence of animal pests, rodents, termites decay or other wood destroying organisms is beyond the scope of this inspection. A qualified pest control firm should be contacted with any questions concerning the presence or treatment of these organisms.

We do not take any responsibility for any “Conditional Use” which may have occurred in the building, at present or in the past. Buyers/tenants are responsible for verifying that the building may be used for their specific use.

Documents Reviewed as a part of this inspection:

- Google Earth;
- Offering Memorandum issued by Marcus & Millichap

Silicon Valley Building Inspections

Building Inspections, Code Compliance, Facilities Planning

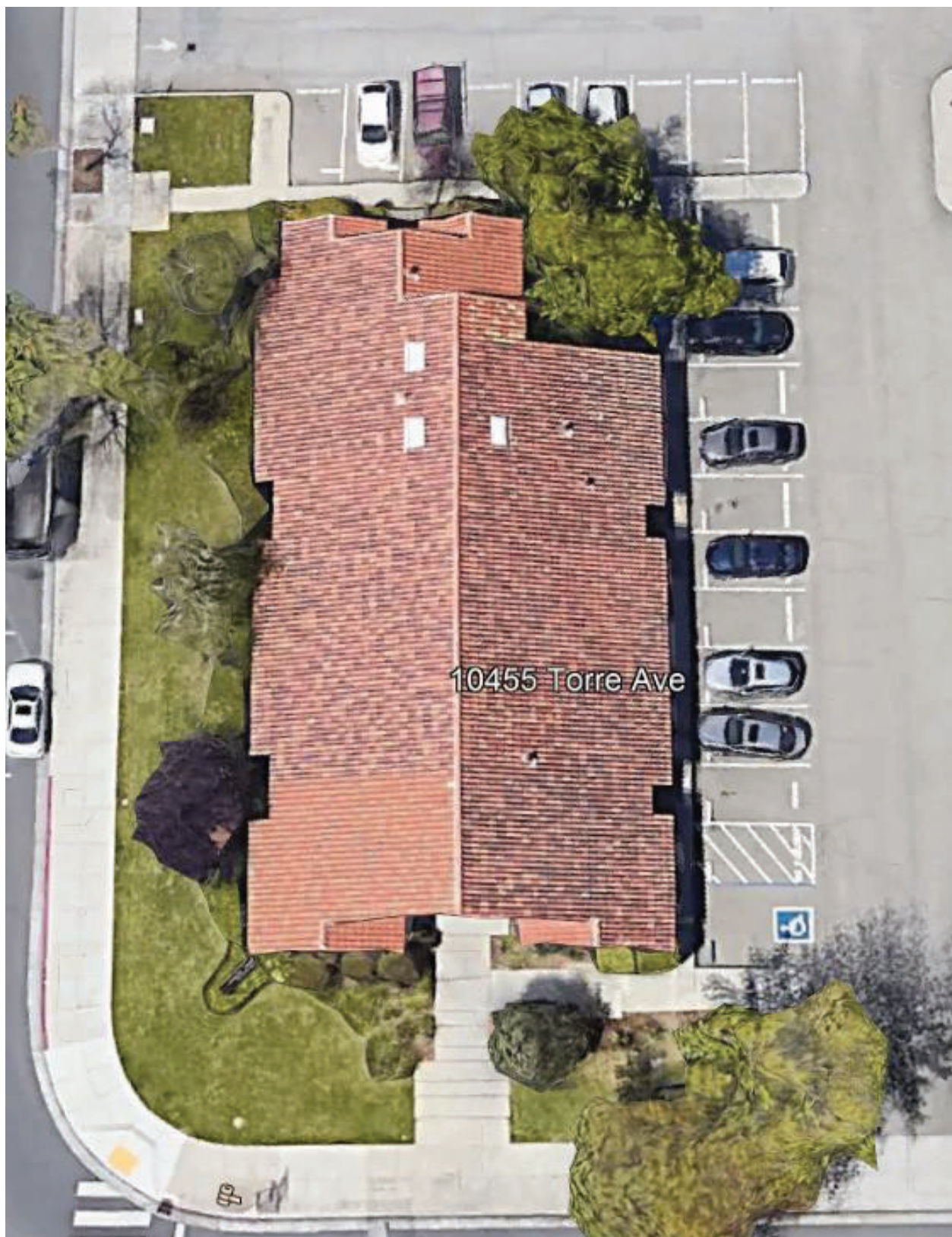
1180 Coleman Ave
San Jose, CA 95110
408 540-8984

Recommendations

- Have a termite inspection completed and repair all items notified under “section 1”;
- Modify the sidewalk to accommodate a curb cut and install a handicap stall and lay down area;
- Install a path of travel to the City sidewalk;
- Modify the landing outside the main entry so that it is level;
- Modify the front doors with Code compliant hardware and restore them to full operation;
- Upgrade interior door hardware to lever” style;
- Repair closers on interior doors (3 noted) where they are broken;
- Modify the break room sink and cabinet so that they are handicap accessible;
- Modify the restrooms to bring them into handicap compliance. The handicap stalls need to be 5'0” wide and the vanity cabinets need to be removed and replaced;
- Replace all toilet fixtures;
- Trim back the trees to keep branches and leaves off of the roof. Clean up the leaves off of the roof;
- Replace the two skylights;
- Paint the underside of the roof where bare wood is exposed;
- Close up all of the vent screens that have holes in them to keep rodents and other pests out;
- Replace all of the interior lights, as they do not meet Title-24. Install motion sensors, lighting controls and new LED lights;
- Install exit signs and emergency lights;
- Install currently tagged extinguishers;
- Install tactile signage at the restrooms and exits;



This is the floor plan as noted on the wall in the main hallway.



Aerial view of the building showing no air conditioners and two (original) skylights. Also, the trees that hang over the edge of the roof should be trimmed back.



There are some new roof boards underneath this section of the newer portion of the roof.



This is the handicap ramp, which is not considered to be handicap compliant.



There has been some uplift on the sidewalks where some caulking and grinding have taken place.



The handicap stall is not compliant, as there is no lay down area and there needs to be a "curb cut" for access to the sidewalk.



The landing outside these entry doors is not level enough to be considered handicap accessible.



The sign on the walk suggests that this is a "van accessible" stall, but it is not.



The handicap stall is not wide enough to be considered accessible.



None of the noted fire extinguishers are currently tagged.



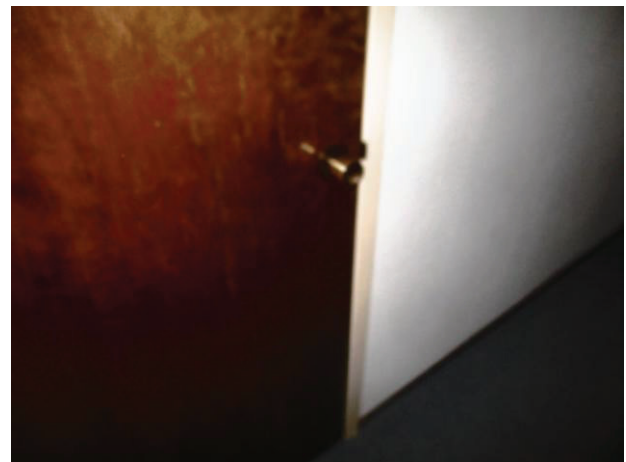
This is the "smaller toilet stall, with a non-low-flush toilet.



There is a water filtration system in the base cabinet in the break room.



There are vanity cabinets in bothers which are not handicap accessible.



All of the interior door hardware is the old "knob" style which is not considered to be handicap compliant.



The closer on this door is clearly broken and in need of replacement.



There is evidence of some moisture on this window sill.



Here is another door with a broken closer.



Here is another wood window sill with some evidence of moisture damage.



...and another door noted to be have a broken closer.



The building has no fire sprinklers but it does have a fire alarm monitoring system.



... here is another of the noted rat traps.



The cover on this smoke detector was noted to be missing.



This is a view of the condensers from the 2nd floor conference room window.



This is "egg crate" which is below one of the two skylights.



This is a shot of some of the roof insulation and ductwork as noted in the attic space.



Many of the interior walls are due for some minor patching and a coat of paint.



The carpeting through on the first floor was installed over the plywood sub-floor.



Each office or conference room has its own unique T-bar ceiling.



All of the thermostats are inside lockable covers.



This drain pipe is suspended by "plumbers tape" which is not considered to be Code compliant.



None of the outlets or switches are currently labeled.



This is one of air handlers over the restrooms which is certainly original.



This is another view of insulation placed in the joists above the ceiling.



Here is a shot of some evidence of rodent activity.



Some minor damage was noted to his exhaust duct above the restrooms.



The building is served by a 600-amp 120/208 volt service, located in a cabinet on the exterior of the building.



Here is one section of ceiling above the restrooms where the insulation is missing.



These main breakers serve the various sub-panels located throughout.



As noted above, all of the vent screens need to be checked for holes.



This is the placard on one of the newer 3-ton condensing units.



All of the pipe penetrations into the building have been well-sealed.



This is one of the newer 4-ton condensing units.



The insulation on the refrigerant lines needs to be replaced for greater efficiency.



The placard on this (older) condenser was not legible, but likely serves the 5-ton FAU.



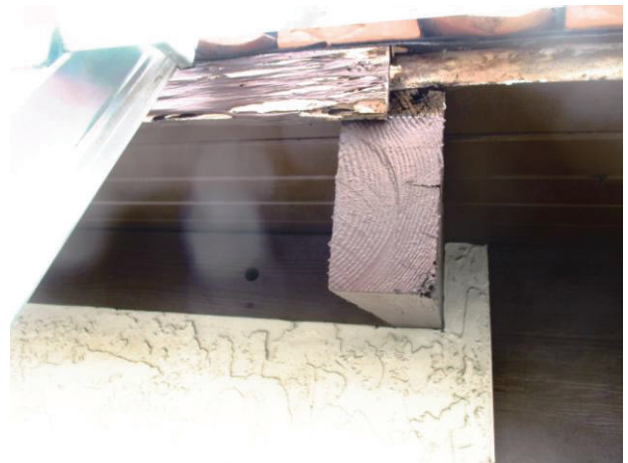
This is a view of the poor condition of the insulation on the refrigerant lines.



This is a another view of the poor condition of the insulation on the refrigerant lines.



This is a 3-ton condensing unit of unknown age.



Some termite damage was noted at the eaves. This should be removed.



The piles of leaves around the condensers need to be cleaned up.



The piles of leaves on the roof need to be cleaned up.



The sidewalks have shifted and then ground and caulked to prevent tripping



Here is a shot of several other roof tiles slightly askew.



The openings in this vent screen are large enough to allow most rodents or other pests to enter freely.



Several roof tiles were noted to be slightly askew in this shot.



All of the vent screens need to be checked and repaired as necessary.



The water meter is located in the City sidewalk opposite the main entry.



The PG&E transformer is located in the landscape area along Torre Ave.



The trees should be cut back where they hang over the edge of the roof.



The water backflow should be protected so it doesn't get hit.



Front entry is locked.

Appendix F

Documents Publicly Available from the City

The following relevant resources are publicly available:

- City of Cupertino [Civic Center Master Plan](#): 2015 final plan and [appendices](#)
- City of Cupertino [General Plan](#) (Community Vision 2015-2040)
- City of Cupertino [2014 Heart of the City Specific Plan](#)
- City of Cupertino [2016 Bicycle Transportation Plan](#)
- City of Cupertino [2018 Pedestrian Transportation Plan](#)
- City of Cupertino [Bicycle Map](#)
- City of Cupertino [Zoning Map](#)[s]
- City of Cupertino [Municipal Code](#), specifically Buildings and Construction Chapter 16
- City of Cupertino [Property Information](#), [Treeplotter Inventory](#), and [Cupertino DataHub](#)
- City of Cupertino [Department & Services](#) home page
- City of Cupertino [Business Resources: Building Forms & Fees](#) page
- City of Cupertino [Community Events](#)
- City of Cupertino [Climate Action Plan](#)
- City of Cupertino Storm Drain Master Plan and [Green Stormwater Infrastructure Plan](#)
- City of Cupertino [2015 ADA Self Evaluation and Transition Plan](#)
- City of Cupertino [Digital Archives](#), for public records

Appendix G

Asbestos and Lead Survey Report

See separate document uploaded with the RFQ package at:

<https://apps.cupertino.org/bidmanagement/index.aspx>