



**APPROVED MINUTES
CUPERTINO CITY COUNCIL**

Monday, March 18, 2002

4:00 p.m.

CALL TO ORDER

At 4:05 p.m., Mayor Lowenthal called the meeting to order in the City Council Chambers.

ROLL CALL

City Council members present: Mayor Richard Lowenthal, Vice-Mayor Michael Chang, and Council members Sandra James, Patrick Kwok, and Dolly Sandoval. Council members absent: None.

Staff present: City Manager David Knapp, Administrative Services Director Carol Atwood, , Parks and Recreation Director Therese Smith, Public Works Director Ralph Qualls, City Attorney Charles Kilian, and City Clerk Kimberly Smith.

STUDY SESSION – 4:00 p.m. – Council Chambers

1. Discussion of feasibility and trail alignment of the Stevens Creek Trail.

Parks and Recreation Director Therese Smith handed out copies of a PowerPoint presentation and a document listing the community meeting schedule and the roster of the members of the Stevens Creek Trail task force.

Consultant Jana Sokale reviewed the PowerPoint slides and answered questions from City Council. The slides included photographs of other trails, the public notification that had been given, the trail planning process, the community meeting schedule, the key goals of the study, and identified the study areas. Area A is from Rancho San Antonio to Stevens Creek Boulevard, which is through county parklands. The remaining three areas along Stevens Creek are: Area B, Stevens Creek County Park to Linda Vista Park; Area C, Linda Vista Park through McClellan Ranch to Blackberry Farm; and Area D, McClellan Ranch through Blackberry Farm to Stevens Creek Boulevard. There would be a total of approximately 6.0 miles of trails, 0.75 miles of bicycle lanes, one new crosswalk at Stevens Creek Boulevard, and one new crosswalk or a new bridge with trail underpass at McClellan Road. The work products expected from this include a biological report, geo-technical report, operations and maintenance report, trail funding report, and trail feasibility report.

Robert Levy asked whether a hard surface on the trail was desirable, and whether it was appropriate for a nature study area.

David Scionti was opposed to the suggestion of doubling up the driveway, since the fumes from idling cars and buses were already very bad. He said the entrance should come from Stevens Creek Boulevard.

Debora Jamison, 21345 Rumford, handed out copies of Ordinance 1710, guidelines, and the master plan from 1993 and said those document the need to preserve the rural nature of McClellan Ranch. She was opposed to an asphalt trail, and felt the task force ignored the special requirements and restrictions of this site.

David Greenstein, Byrne Avenue, said he chaired the task force but was speaking tonight as a resident. He said this trail would be a benefit for children and families, and a hard surface is appropriate at some locations along the trail. It can also be an excellent alternative route to school other than by car.

Alex Tsai said the trail alignment should not be determined until the Blackberry Farm master plan is in place. He felt the trail should not disturb the grassy area where families sit to watch children in the pool. He asked that the entrance be redesigned because it is unsafe where pedestrians and vehicles share the road down the hill.

Susan Sievert provided a petition signed by Patricia Sievert opposing paved multi-use trails through the picnic grounds, golf course, nature preserve, and the Linda Vista neighborhood.

Jana Sokale and Therese Smith provided the following information in response to questions by Council:

- The route past the pool area was chosen to keep the trail separate from the fee area. Council may wish to change the fee structure and charge only for the pool and site reservations.
- McClellan Ranch was set up as a nature preserve and it will be Council's decision whether to allow a paved trail. The task force recommends a hard surface behind the garden and walnut orchard. A paved trail is less subject to rutting, and is wide enough for bicycles and skates. They recommend two feet of gravel on each side, which keeps weeds out and can be used by joggers.
- Options regarding a new entrance will be discussed in the master plan process. A crosswalk and/or signal at Phar Lap Drive has yet to go through traffic analysis.

RECESS – Council recessed from 5:48 p.m. to 6:48 p.m.

PLEDGE OF ALLEGIANCE

At 6:48 p.m. Mayor Lowenthal called the meeting to order in the Council Chambers, 10300 Torre Avenue, Cupertino, California, and led the Pledge of Allegiance.

ROLL CALL

City Council members present: Mayor Richard Lowenthal, Vice-Mayor Michael Chang, and Council members Sandra James, Patrick Kwok, and Dolly Sandoval. Council members absent: None.

Staff present: City Manager David Knapp, Administrative Services Director Carol Atwood, Community Development Director Steve Piasecki, Associate Planner Peter Gilli, Parks and Recreation Director Therese Smith, Public Works Director Ralph Qualls, City Attorney Charles Kilian, and City Clerk Kimberly Smith.

CEREMONIAL MATTERS – PRESENTATIONS - None**POSTPONEMENTS**

Item number 18 was continued to April 15 at the request of the applicant.

WRITTEN COMMUNICATIONS - None**ORAL COMMUNICATIONS**

Robert Levy was opposed to the proposed Stevens Creek Trail route where it passed along the fence at Blackberry Farm. He also referred to comments by a Council member who unthinkingly said that there should be more Asians on staff, but that could be a violation of Proposition 209. Skin color and background are differences that should not matter in employment.

CONSENT CALENDAR

Sandoval/James moved to approve the items on the Consent Calendar as recommended, with the exception of items 2, 11, and 14, which were pulled for discussion.

Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

3. Accounts Payable: March 1 and 8, Resolution Nos. 02-041 and 02-042.
4. Payroll: March 1 and March 15, Resolution Nos. 02-043 and 02-044.
5. Treasurer's Budget Report – January 2002.
6. Mid-year Budget Adjustment Report.
7. Approve application for Alcoholic Beverage License: Glass Gecko, 10031 Judy Avenue.

8. Annexation: Setting date for consideration of reorganization of area designated "Orange Avenue 02-01", property located on the west side of Orange Avenue between Granada Avenue and Hermosa Avenue; approximately 0.219 acre, Lukzadeh, Javanmard, and Asgari (APN 357-16-029), Resolution No. 02-045.
9. Approve request to waive fees:
 - Cupertino Symphonic Band for use of the Quinlan Center on Sunday, April 14, 2002 for a free public concert; amount requesting to be waived is \$317.50
 - California Grand Jurors' for use of the Quinlan Center for several meetings March through August 2002; amount requesting to be waived is \$150.00
10. Accept improvements: PG&E Berm, The O'Brien Group (Oak Valley). (No documentation).
12. Grant of easement, roadway, Bagher Navid, 10950 Stevens Canyon Road, APN 356-01-011, Resolution No. 02-047.
13. Grant of easement, drainage, Hanson Permanente Inc., property located on the west side of Stevens Canyon Road, approximately 500 feet south of Ricardo Road, APN 351-10-023, Resolution No. 02-048.

ITEMS REMOVED FROM THE CONSENT CALENDAR (above)

2. Approve minutes: March 4, 2002.

The minutes were corrected to show that Sandoval was not present during the commission interviews, to show that Frances Seward was appointed by a 4-0 vote, and to correct the spelling of Sally Lieber's name.

James/Kwok moved to approve the minutes as corrected. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

11. Authorize the City Manager to execute a Temporary Access Agreement for construction between Tom McNair, 22261 McClellan Road, and the City of Cupertino, Resolution No. 02-046.

Public Works Director Ralph Qualls said that there had been no concerns raised by the renters, only questions, for which staff was able to provide answers.

Kwok/James moved to adopt Resolution No. 02-046. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

14. Approve designation of permit parking on Phar Lap Drive between Clearcreek Court and Oakdell Place, Resolution No. 02-049.

Public Works Director Ralph Qualls said he pulled this item because City Council preferred to discuss any permit parking requests under new business.

James/Kwok moved to adopt Resolution No. 02-049. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None

PUBLIC HEARINGS

15. Use of the 2001/02 Local Law Enforcement Block Grant Funds.

Administrative Services Director Carol Atwood stated that the City has received \$22,636 in Block Grant Funds for 2001-02 from the Bureau of Justice Administration. The grant requires a local match of 10%, or \$2,515. This year's allocation will be used to provide community outreach to youth and "at-risk" counseling, including \$7,500 to Social Advocates for Youth. The Public Dialog Consortium will continue to meet with students and the Sheriff's Department for Phase II of the "Kids with Cops" program.

The Mayor asked for public comments. There were none, and Council concurred to receive the report.

Mayor Lowenthal directed that items 16 and 17 be considered at the same time.

16. Application No. 05-GPA-01, 15-EA-01: City-initiated General Plan Amendment to determine possible amendments to, or deletion of, Policy 2-80 as it relates to quasi-public uses. A Negative Declaration is recommended, and this item is recommended for approval, Resolution No. 02-050.

17. Z-2001-04, U-2001-03, DA-2001-01, EA-2001-04; Appeal of the Director of Community Development's decision to stop processing the Canyon Heights Academy application and environmental impact report due to inconsistencies with the hillside and neighborhood protection policies in the Cupertino General Plan; Southeast side of Stevens Canyon Road, approximately 100 feet south of Ricardo Road (formerly McDonald-Dorsa quarry); Appealed by a representative of the Canyon Heights Academy.

Community Development Director Steve Piasecki reviewed both items. Associate Planner Peter Gilli reviewed the Planning Commission recommendations for General Plan Policy 2-80, including the current site plan. He reviewed a PowerPoint presentation, which compared the allowable General Plan residential development to the Canyon Heights Academy proposal for a school. Conflicts with the General Plan include traffic impacts, noise impacts, visual impacts, and hillside protection. He also reviewed a flow chart showing processing options and decision points.

Andy Faber, land use attorney, asked that City Council not change the rules in the middle of the game. He said that the applicant's money was spent in good faith, and they want to continue with the application process. He said he thought it was premature to say that the school had to figure out how to solve every potential problem at this stage and that everything would be analyzed in the Environmental Impact Report (EIR). He said that it was ultimately up to Council to decide to accept the application or not and that there was

nothing in the City code that says staff has the right to stop processing an application. He said they are only asking for fairness, not to have the rules changed mid-stream, and to let them proceed and have Council eventually decide to approve or deny the project.

Paul Parker, principal of Canyon Heights Academy, echoed the sentiments of Andy Faber and talked about fairness and fair play. He thought it only fair that the application be allowed to move through the process and that the rules and procedures be consistent throughout. He asked that Council allow the application to be moved to the next step of the process, which would be the completion of the EIR and the scheduling of public hearings. He said he realized that moving forward does not guarantee that the school will be approved, but wanted the Council to be able to make that decision at a later date.

The following individuals asked that Council uphold the appeal:

- Dr. Carl Litak, 22535 Salem Avenue, Cupertino
- Charles Corbalis, 19357 Zinfandel Ct., Saratoga
- Virginia Fanelli, 5958 Dry Oak Dr., San Jose
- Trisha Carbajal, 10681 Johnson Ave., Cupertino
- Mary Ellen Tanberg, 5868 Chebro Ave., San Jose
- Father Patrick Langan, 310 Eazy Street, Mountain View
- Jan Pendergast, 11700 Upland Way, Cupertino
- Takung Wang, 6392 Vicanna Dr., San Jose
- Dieter Statezni, 18701 Hanna Dr., Cupertino
- Mark Casper, 927 Blandford Ave., Redwood City

The following individuals requested that Council deny the appeal:

- Jay Anderson, 22384 Riverside Dr., Cupertino
- John Kolski, 12100 Stevens Canyon Rd., Cupertino (oral and handout)
- Sharon Blaine, 22284 De Anza Circle, Cupertino
- Steve Faust, 11033 Canyon Vista Dr., Cupertino
- Ken Brown, 22475 Mc Clellan Rd., Cupertino
- Robert J. Levy, 10802 Wilkinson Ave., Cupertino
- Frank Harrison, 22325 Rancho Deep Cliff Dr., Cupertino
- Donna Poggi, 22384 Riverside Dr., Cupertino
- Jim and Marti Klug (email and handout)

The following individuals asked that Council deny the appeal and delete Policy 2-80:

- Chris Wendt, 22600 Ricardo Rd., Cupertino
- Roger Costa, 10932 Canyon Vista Dr., Cupertino
- Shirley Poitras, 22415 Rancho Deep Cliff, Cupertino
- Craig K. Breon, Executive Director of the Santa Clara Audobon Society
- Jay Glicksman, 11052 Canyon Vista Dr., Cupertino
- Paul Roberts, 22363 St. Andrews Ave., Cupertino
- Jack Goodman, 10374 San Fernando Ave., Cupertino
- Bruce Nilo, 22389 Balustrol Ct., Cupertino

- Alan Miller, 11042 Canyon Vista Dr., Cupertino
- Ignatius Y. Ding, 10397 Avenida Lane, Cupertino
- Domenic and Sheila Falcone (email and handout)

Anne Dor, 22525 Balboa Rd., Cupertino, said she was a successful developer of hillside property in Cupertino, and that the developer did not seem to be listening to the advice given by the Planning staff, who was trying to help them create a successful project.

Council discussion followed. Michael Chang preferred the changes proposed by staff for Policy 2-80 rather than deletion of the policy as proposed by the Planning Commission. Dolly Sandoval felt that any change or deletion of policy 2-80 should be considered when General Plan update was discussed. Sandra James and Patrick Kwok said they would support either deletion or modification of the policy. Richard Lowenthal was in favor of deletion.

The Council members were concerned about the land use proposed for this site and the impacts it would have. They specifically listed concerns with the impacts from density, school population, traffic, and the need to protect the riparian habitat and preserve open space.

Chang/James moved to deny the appeal and uphold the Community Development Director's decision. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

Chang/Kwok moved that this project would not be granted pipeline status.
Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

Chang moved to table the decision on Policy 2-80 and let it be decided during the General Plan update. The motion failed for lack of a second.

Chang/Sandoval moved to retain Policy 2-80 and direct staff to study the matter and address it during the General Plan update. Motion failed by the following vote: Ayes: Chang, Sandoval. Noes: James, Kwok, Lowenthal.

James/Kwok moved to delete Policy 2-80. Vote: Ayes: James, Kwok, Lowenthal. Noes: Chang, Sandoval. Sandoval asked that the record show she voted no because taking part of the policy out of the General Plan discussion in total is not the way to do business.

James/Kwok moved to grant a Negative Declaration. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

PLANNING APPLICATIONS - None

UNFINISHED BUSINESS - None

NEW BUSINESS

18. Petition for reconsideration of the City Council denial of Application 09-U-01, regarding a use permit for the continued use of a shopping center parking lot for car storage at 10071 S. Blaney Avenue (APN 369-03-014). The appeal was filed by the applicant, Gary Schmidt (continued to April 15 at the request of the applicant).

This item was continued to April 15 at the request of the applicant.

19. First reading of Ordinance No. 1893: "An Ordinance of the City Council of the City of Cupertino amending Chapter 3.25, Sale of Surplus Supplies and Equipment."

The City Clerk read the title of the ordinance. James/Sandoval moved to read the ordinance by title only, and that the City Clerk's reading would constitute the first reading thereof. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

20. Consider joint use of the Cupertino High School pool pending city financial participation in the renovation project for a one-time cost of \$400,000 plus ongoing utility expenses.

Parks and Recreation Director Therese Smith handed out a staff report for this item and explained there does not appear to be a design option within the district's budget that would meet summer program needs. District staff would allow the city to purchase additional shallow water areas, but staff recommends against this because of the cost. There would be a capital investment cost of \$266,000 plus an annual operating cost of \$20,000 to \$27,000.

The City Council received the report and agreed that it was unfortunate that the proposal did not work out.

21. Award contract for Blackberry Farm Golf Course Maintenance, Project No. 2001-2008.

James/Kwok moved to award the yearly maintenance contract for Blackberry Farm Golf Course Maintenance, Project 2001-08, to the low bidder, Spot Water Management, in the amount of \$175,599.96. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

ORDINANCES

22. Second reading of Ordinance No. 1892: "An Ordinance of the City Council of the City of Cupertino Amending chapter 2.86 Housing Committee of the Cupertino Municipal Code Concerning Renaming the Housing Committee."

The City Clerk read the title of the ordinance. James/Sandoval moved to read the ordinance by title only, and that the City Clerk's reading would constitute the second reading thereof. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

James/Sandoval moved to enact Ordinance No. 1892. Vote: Ayes: Chang, James, Kwok, Lowenthal, Sandoval. Noes: None.

STAFF REPORTS

23. Revenue and expenditure status report.

Administrative Services Director Carol Atwood said that revenues were down in sales tax by 12%, down in transient occupancy tax by 38%, and down in property tax by 58%. Expenditures are down 9% from last year.

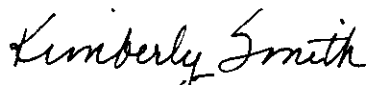
Council received the report.

COUNCIL REPORTS - None

CLOSED SESSION - None

ADJOURNMENT

At 11:08 p.m. the meeting was adjourned to a joint study session with the Library Steering Committee at the Cupertino Senior Center, 21251 Stevens Creek Boulevard, on March 19 from 5:00 p.m. to 6:30 p.m.


Kimberly Smith, City Clerk

For more information: Staff reports, backup materials, and items distributed at the meeting are available for review at the City Clerk's Office, 777-3223.

Televised Council meetings may be viewed live on Cable Channel 26, and may also be viewed live or on demand at www.cupertino.org. Videotapes of the televised meetings are available at the Cupertino Library, or may be purchased from the Cupertino City Channel, 777-2364.

Both the study session and regular business meeting of March 18 were televised.

72-0600

AGREEMENT

THIS AGREEMENT, made and entered into this 27 day of March, 2002, by and between the **CITY OF CUPERTINO**, a municipal corporation of California, hereinafter referred to as "**CITY**", and **SPOT WATER MANAGEMENT**, a Contractor with offices at 1272 Lincoln Ave., San Jose, CA 95125, hereinafter referred to as "**CONTRACTOR**";

WITNESSETH:

WHEREAS, CITY desires to retain the CONTRACTOR for Blackberry Farm Golf Course Maintenance; and

WHEREAS, CITY desires to engage CONTRACTOR to provide these services by reason of its qualifications and experience for performing such services, and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein;

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. DEFINITIONS.

(a) The word "City" as used in this agreement shall mean and include all the territory lying within the municipal boundaries of the City of Cupertino, California, as presently existing, plus all territory which may be added thereto during the term of this agreement by annexation or otherwise.

(b) The term "City Manager" shall mean the duly appointed City Manager of the City of Cupertino, California, or his designated representative.

2. PROJECT COORDINATION.

(a) City. The City Manager shall be representative of CITY for all purposes under this agreement. The Recreation supervisor for Blackberry Farm hereby is designated as the PROJECT MANAGER for the City Manager, and shall supervise the progress and execution of this agreement.

(b) Contractor. CONTRACTOR shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this agreement for CONTRACTOR. Andy Slack is hereby designated as the PROJECT DIRECTOR for CONTRACTOR. Should circumstances or conditions subsequent to the execution of this agreement require a substitute PROJECT DIRECTOR for any reason, the PROJECT DIRECTOR designee shall be subject to the prior written acceptance and approval of the PROJECT MANAGER.

3. DUTIES OF CONTRACTOR. Services to be furnished in accordance with EXHIBIT "A" BID PROPOSAL and contract specifications.

(a) Laws to be Observed. CONTRACTOR shall:

(1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incident to the due and lawful prosecution of the services to be performed by CONTRACTOR under this agreement;

(2) Keep itself fully informed of all existing and future federal, state, and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this agreement, any materials used in CONTRACTOR's performance under this agreement, or the conduct of the services under this agreement;

(3) At all times, observe and comply with, and cause all of its subcontractors and employees, if any, to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(4) Immediately report to the PROJECT MANAGER in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this agreement.

4. COMPENSATION. For the performance of the services described herein by CONTRACTOR, CITY shall pay CONTRACTOR the sum of \$14,583.33 per month, less any deductions for liquidated damages, plus any soil samples collected and tested for the month, payable upon submission by CONTRACTOR of itemized billings in triplicate; provided, however, that the total sum payable to CONTRACTOR shall not exceed \$175,599.96 per year.

5. LIQUIDATED DAMAGES. The CONTRACTOR shall diligently prosecute the work to completion as scheduled in the Technical Provisions. The CONTRACTOR further understands that he shall pay liquidated damages to the City of Cupertino in the sum of one hundred fifty dollars (\$150.00) for each and every day that services are not completed as required.

6. TERM. The term of this agreement shall be one (1) year from the date of execution of this agreement by the parties, hereto, provided, however, the CITY retains the option to extend the term of the contract on a year to year basis not exceeding two years from the expiration of the original term.

Any such renewal shall be accomplished by the City providing a written notice of renewal to CONTRACTOR at least 30 days prior to expiration of the term. Any such renewal shall contain the same provisions as the original contract, provided however that the parties may agree to an increase or decrease in compensation paid to the CONTRACTOR.

Any increases or decreases in the previous contract price shall be based on the Consumer Price Index (CPI). The CPI shall be the San Francisco/Oakland Consumer Price Index for all urban wage earners. The adjusted (whether increased or decreased) unit prices shall be computed as follows:

Divide the differences between the CPI on the anniversary date of the agreement and the CPI on the date of the agreement by the CPI on the date of the agreement and multiply by the unit prices specified in the agreement.

7. TEMPORARY SUSPENSION. The City Manager shall have the authority to suspend this agreement, wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the CONTRACTOR to perform any provision of this agreement.

8. SUSPENSION; TERMINATION.

(a) Right to Suspend or Terminate. The CITY may suspend or terminate this agreement for any reason by giving thirty (30) days' written notice. Upon receipt of such notice CONTRACTOR shall immediately discontinue his performance under this agreement.

(b) Payment. Upon such suspension or termination, CONTRACTOR shall be paid for all services actually rendered to CITY to the date of such suspension or termination; provided, however, if this agreement is suspended or terminated for fault of CONTRACTOR, CITY shall be obligated to compensate CONTRACTOR only for that portion of CONTRACTOR's services which are of benefit to CITY.

9. INSPECTION. CONTRACTOR shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONTRACTOR are being performed in accordance with the requirements and intentions of this agreement. All work done and all materials furnished, if any, shall be subject to the PROJECT MANAGER's inspection and approval. The inspection of such work shall not relieve CONTRACTOR of any of its obligations to fulfill its agreement as prescribed.

10. ASSIGNMENT; EMPLOYEES. Both parties shall give their personal attention to the faithful performance of this agreement and shall not assign, transfer, convey, or otherwise dispose of this agreement or any right, title, or interest in or to the same or any part thereof without the prior written consent of the other party, and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such approval shall be void, and, at the option of the other party, shall terminate this agreement and any license or privilege granted herein. This agreement and any interest herein shall not be assignable by operation of law without the prior written consent of the other party.

11. NOTICES. All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

TO CITY: Office of the City Clerk

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

TO CONTRACTOR: Attention of the PROJECT
DIRECTOR at the address of
CONTRACTOR recited above.

12. INTEREST OF CONTRACTOR. CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this agreement, no subcontractor or person having such an interest shall be employed. CONTRACTOR certifies that no one who has or will have any financial interest under this agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, CONTRACTOR shall at all times be deemed an independent contractor and not an agent or employee of CITY.

13. INDEMNITY. CONTRACTOR hereby agrees to indemnify, hold harmless and assume the defense of , in any actions at law or in equity, the CITY, its officers, employees, agents, and elective and appointive boards from:

(a) Any and all claims and demands which may be made CITY, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any person or corporation caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of CONTRACTOR or any subcontractor under this agreement or of CONTRACTOR's or any subcontractor's employees or agents;

(b) Any and all damage to or destruction of the property of CITY, its officers, agents, or employees occupied or used by or in the care, custody, or control of CONTRACTOR, or in proximity to the site of CONTRACTOR's work, caused by any act or omission, negligent or otherwise, of CONTRACTOR, or any subcontractor under this agreement or of CONTRACTOR's or any subcontractor's employees or agents;

(c) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any employee or agent of CONTRACTOR or any subcontractor under this agreement, however caused, excepting however, any such claims and demands which are the result of the sole negligence or willful misconduct of CITY, its officers, agents, or employees;

(d) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or claims caused or alleged to have been caused by the use of any apparatus, appliance, or materials furnished by CONTRACTOR or any subcontractor under this agreement; and

(e) Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit.

CONTRACTOR, at its own cost, expense, and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third persons against CITY, its officers, agents, or employees on any of the above claims or demands of such third persons, or to enforce any of the above penalties, and pay and satisfy any judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action, or other legal proceedings.

14. WORKERS' COMPENSATION. CONTRACTOR certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Labor Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this agreement.

15. INSURANCE. CONTRACTOR, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this agreement, the insurance coverage of at least an "A", Class VII rating as determined in accordance with the insurance industry standard, insuring not only CONTRACTOR, but also (with the exception of workers' compensation and employer's liability insurance), CITY, its officers, agents, and employees, and each of them with respect to activities and services performed by CONTRACTOR for or on behalf of CITY under the provisions of this agreement.

Certificates of such insurance, on the forms provided by CITY, shall be filed with CITY concurrently with the execution of this agreement or, with CITY's approval, within ten (10) days thereafter. Said certificates shall be subject to the approval of the City Attorney and shall contain an endorsement stating that said insurance is primary coverage, and will not be canceled or altered by the insurer except after filing with the City Clerk thirty (30) days' written notice of such cancellation or alteration, and that the City of Cupertino is named as an additional insured. Current certificates of such insurance shall be kept on file at all times during the term of this agreement with the City Clerk.

16. CONTRACT SECURITY. The CONTRACTOR shall furnish a surety bond in an amount equal to four months of the contract price as security for the faithful performance of this Contract.

17. AGREEMENT BINDING. The terms, covenants, and conditions of this agreement shall apply to, and shall bind the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

18. WAIVERS. The waiver by either party of any breach or violation of any term, covenant, or condition of this agreement or any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.

The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the

other party of any term, covenant, or condition of this agreement or of any applicable law or ordinance.

19. COSTS AND ATTORNEYS' FEES. The prevailing party in any action brought to enforce the terms of this agreement or arising out of this agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

20. NONDISCRIMINATION. No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, ancestry, religion, or sex of such person. If the value of this agreement is, or may be, Five Thousand Dollars (\$5,000) or more, CONTRACTOR agrees to meet all requirements of the Cupertino Municipal Code pertaining to nondiscrimination in employment and to submit the "Compliance Report-Nondiscrimination Provisions of City of Cupertino Contracts."

If CONTRACTOR is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this agreement, it shall thereby be found in material breach of this agreement. Thereupon, CITY shall have the power to cancel or suspend this agreement, in whole or in part, or to deduct from the amount payable to CONTRACTOR the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which said person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If CONTRACTOR is found in violation of the nondiscrimination provisions of this agreement or the applicable affirmative action guidelines pertaining to this agreement, CONTRACTOR shall be found in material breach of this agreement. Thereupon, CITY shall have the power to cancel or suspend this agreement, in whole or in part, or to deduct from the amount payable to CONTRACTOR the sum of Two Hundred Fifty Dollars (\$250) for each calendar day during which CONTRACTOR is found to have been in such noncompliance as damages for said breach of contract, or both.

21. AGREEMENT CONTAINS ALL UNDERSTANDINGS. This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONTRACTOR. All provisions of this agreement are expressly made conditions. This agreement shall be governed by the laws of the State of California.

P.O. No. _____

IN WITNESS WHEREOF, the parties have executed this Contract, in duplicate, the day and year first hereinabove written.

CITY OF CUPERTINO:

By: [Signature]
Mayor

Attest: Kimberly Smith
City Clerk

Date: April 3, 2002
City Clerk

CONTRACTOR:

Spot Water Management
Andy Slack
By: [Signature]

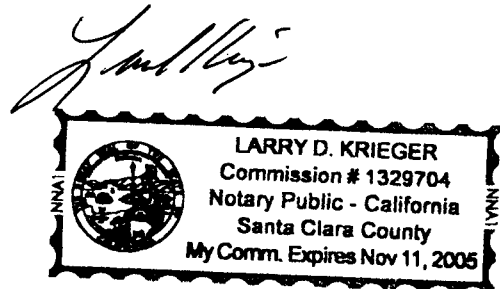
Notary acknowledgment is required. If a corporation, corporate seal and corporate notary acknowledgment and Federal Tax I.D. are required. If not a corporation, a Social Security No. is required.

304-40-978 91-1947914
Social Security # Federal Tax I.D. #

Contractor's License No. 771953

APPROVED AS TO FORM:

[Signature]
City Attorney



Project Name & Number: BLACKBERRY FARM GOLF COURSE MAINTENANCE
Project No. 2001-08

Contractor Name & Address: SPOT WATER MANAGEMENT
1272 LINCOLN AVE.
SAN JOSE, CA 95125

Contract Amount: \$175,599.96

Account Number: 560-6640-7014

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Santa Clara

SS.

On

3-27-02

Date

before me,

Larry D. Krieger

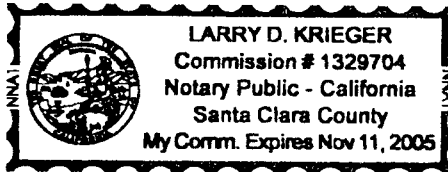
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Andy Slack

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Contract

Document Date:

3-27-02

Number of Pages:

Signer(s) Other Than Named Above:

—

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

C. BID PROPOSAL
BLACKBERRY FARM GOLF COURSE MAINTENANCE, PROJECT NO. 2001-08

TO: THE DIRECTOR OF PUBLIC WORKS, CITY OF CUPERTINO, STATE OF CALIFORNIA

Dear Sir:

In compliance with the plans and specifications furnished for the work of the **BLACKBERRY FARM GOLF COURSE MAINTENANCE**, the City of Cupertino, **PROJECT 2001-08**, the undersigned, hereby declare that I have read the proposal requirement, visited the sites, and examined the specifications. I, the undersigned, hereby propose to do all work required to complete the work in accordance with the plans and specifications for the prices set forth in the following schedule. I further understand that said prices include all costs including, but not limited to, local, state and federal taxes, and transportation costs.

I, the undersigned, also understand that the quantities shown below are estimated estimates only, being given as a basis for comparison of bids. The City of Cupertino does not state that the actual amount of work will correspond but reserves the right to increase or decrease the amount of any class or portion of the work or to omit items or portions of work deemed unnecessary by the Engineer.

The City of Cupertino reserves the right to unilaterally determine and award the contract to the lowest responsible bidder except as otherwise provided in chapter 3.23 of the City Municipal Code. Which allows for rejection of any and all bids, or to waive any irregularities in the procedures.

The work to be done consists of furnishing all labor, methods of process, tools, machinery and material required to complete the **BLACKBERRY FARM GOLF COURSE MAINTENANCE, PROJECT NO. 2001-08** as described in the Special Provisions.

In the event of discrepancies between the written unit price and the numerical unit price, the written unit price shall govern.

I, the undersigned, shall diligently prosecute the work to completion as specified in the Special Provisions. I further understand that I shall pay liquidated damages to the City of Cupertino in the sum specified in the Special Provisions.

This amount of liquidated damages shall be deducted by the City from monies due from the Contractor hereunder, or the Contractor's assigned, successors, and sureties shall be liable to the City for any excess.

B. BID DOCUMENTS (continued)

All bids received will be reported to the City Council of the City of Cupertino at which time the City Council will review and act upon the bids submitted. Award, if any, will be made to the lowest responsible bidder except as otherwise provided in chapter 3.23 of the City Municipal Code.

The City of Cupertino reserves the right to award the contract to any qualified bidder based on the proposal that is most advantageous to the City. The City also reserves the right to reject any or all bids or to waive any irregularities in the bidding procedures, provided the variance cannot have affected the amount of the bid or cannot have given a bidder an advantage or benefit not allowed other bidders.

The Contractor shall furnish to the City a Faithful Performance Bond and a Labor and Material Bond as required in the specifications.

It shall be mandatory upon the Contractor to whom the contract is awarded, and upon all subcontractors, to pay no less than the general prevailing wage rates to all workers employed in the execution of the contract as provided for in Section 7-1.01A of the Standard Specifications.

Payments to the Contractor will be made in cash by said City upon submission by the Contractor and approval by the Engineer of a progress billing which reflects the value of the work completed. The progress payments made as work progresses will be payments on account and will not be considered as an acceptance of any part of the material or workmanship required by the contract.

Pursuant to Section 22300 of the California Public Contract Code, the Contractor will be permitted, upon request and its sole expense, to substitute securities for any moneys withheld by the City to ensure performance under the contract. Said securities will be deposited either with the City or with a state or federally chartered bank as escrow agent.

Securities eligible for this substitution are those listed in Section 16430 of the California Government Code, or bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

CITY OF CUPERTINO

By: Kimberly Smith
City Clerk

Dated: Jan 29, 2002

To Be Published: Feb. 13, 2002

ESTIMATED QUANTITIES

The bid unit prices for this project shall be as outlined below.

<u>Bid Item</u>	<u>Est.Qty. Unit</u>	<u>Item</u>	<u>Unit Price</u>	<u>Total</u>
1.	12 Month	Provide Maintenance at Blackberry Farm Golf Course <u>Fourteen Thousand Five Hundred Eighty Three Dollars and Thirty Three Cents</u> Per Month	\$ <u>14,583.33</u> /MO.	\$ <u>175,000.00</u>
2.	12 Each	Soil Sample Collection and Testing <u>Fifty Dollars and Zero Cents</u> Per Each	\$ <u>50.00</u> /EA.	\$ <u>600.00</u>
TOTAL BID				\$ <u>175,600.00</u>

I, the undersigned, agree that if this proposal is accepted, I will enter into a contract with the City of Cupertino to provide all necessary machinery, tools, apparatus, and other means of construction and to do all the work specified in the contract in the manner and time specified.

I, the undersigned, declare that this bid is made without connection with any person, firm, or corporation making a bid for the same work, and is in all respects fair, and without collusion or fraud.

I, the undersigned, recognize that the Director of Public Works of the City of Cupertino will reserve the right to establish the priority of one job over another and each starting date where conflict of construction schedules occur.

Attached hereto is the required certified check or bid bond in the amount of \$ 19,000.00, as required by law and the Notice to Bidders. (10% of bid amount)

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID**

I, the undersigned, being first duly sworn, depose and say that I am

Owner of Spot Water Management
(Business Title) (Business Name)

the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract. All statements contained in the bid are true and, further, the bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

BIDDER QUALIFICATION FORM

In further compliance with the specifications furnished, I, the undersigned, submit the following statements as to my experience and qualifications to perform this work as a part of this proposal.

We have been in business under the present name for Six(6) years.

Our experience in work comparable with that required by the proposal contract is Twenty plus (20+) years operating under the following different name(s).

Spot Water Management
Sierra Pacific Turf Supply, Naumann Turf Consulting
Mike Basile - Golf Course Superintendent

My California Contractor's License Number is 771953.

The classification of my Contractor's License is C-27.

The expiration date for my Contractor's License is 11/30/2003.

- * (This Section for City use only) Current & Active
- * The above information has been verified by Nancy Lee
on 3/5/02.
- * Contractors State License Board (800) 321-2752 or (408) 277-1244.

Where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of the State of California, however, at the time the contract is awarded the contractor shall be properly licensed.

BIDDER HISTORY OF WORK

The following is an example of work similar in character to that required in the proposed contract which our organization or personnel in our organization has completed within the past three (3) years.

[illegible]

SUBCONTRACTOR'S FORM

The subcontractor(s), as defined in the General Provisions and in Section 7026 of the California Business and Professions Code, that I propose to hire to perform any of the work for this project in an amount in excess of one-half of one percent (0.5%) of the total bid are listed below. Only those listed below shall perform work on this project and each of them has been provided with a full and complete set of plans and specifications for this project by the bidder.

1. Name _____ Contractor's License No. _____

Address & phone no. _____

Work to be Performed _____

2. Name _____ Contractor's License No. _____

Address & phone no. _____

Work to be performed _____

3. Name _____ Contractor's License No. _____

Address & phone no. _____

Work to be performed _____

4. Name _____ Contractor's License No. _____

Address & phone no. _____

Work to be performed _____

5. Name _____ Contractor's License No. _____

Address & phone no. _____

Work to be performed _____

6. Name _____ Contractor's License No. _____

Address & phone no. _____

Work to be performed _____

BIDDER'S SIGNATURE FORM

IF YOU ARE AN INDIVIDUAL, SO STATE. IF YOU ARE A COMPANY OR A CO-PARTNERSHIP, STATE THE COMPANY NAME AND LIST THE NAMES OF ALL INDIVIDUAL CO-PARTNERS COMPOSING THE COMPANY. IF YOU ARE A CORPORATION, STATE THE LEGAL NAME OF THE CORPORATION AND THE NAMES OF THE PRESIDENT, SECRETARY-TREASURER, AND MANAGER. THE CORPORATE SEAL MUST BE AFFIXED TO THIS FORM. ENTER THE NAME OF YOUR BUSINESS ON THE LINE OPPOSITE THE APPROPRIATE BUSINESS TYPE.

TYPE OF
BUSINESS Sole Proprietor

NAME OF
BUSINESS Spot Water Management

CORPORATION: _____

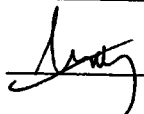
CO-PARTNERSHIP: _____

INDIVIDUAL: Andy Slack

JOINT VENTURE: _____

OTHER: _____
(Describe)

Name and Signature of Bidder: Andy Slack

 22
(Print or type name)

Date: March 4, 2002

Address (mailing & location): 1272 Lincoln Ave.

San Jose, CA 95125

Telephone Number: (408) 288-8153

Acknowledgment of all addenda received is required by circling each addendum number.

1 2 3 4 5 6 7 8 9 10

INSURANCE FORMS INSTRUCTIONS

FOR ITEMS 3, 4, 5 AND 6, THE FORMS PROVIDED BY THE CITY OF CUPERTINO MUST BE USED. FORMS OTHER THAN THESE WILL NOT BE ACCEPTED.

ALL DOCUMENTS MUST BE ORIGINALS - SUBMIT IN TRIPLICATE

1. Insurance Agreement - **Must** be signed by Contractor.
2. Certificate of Insurance to the City of Cupertino - **must** be completed by the insurance agent or **must** provide a certificate on the company's form. They **must** contain the same information.
3. Endorsement of Primary Insurance - **must** be signed by the insurance agent for general liability and automobile liability only.
4. Additional insured endorsement - **must** be signed by the insurance agent for general liability and automobile liability only.
5. Comprehensive general liability/commercial general liability endorsement of aggregate limits of insurance per project - **must** be signed by the insurance agent for general liability only.
6. Waiver of subrogation endorsement worker's compensation insurance - **must** be signed by the insurance agent for worker's compensation only.
7. Notice of policy cancellation endorsement - **must** be signed by the insurance agent or **must** be on the company's certificate of insurance form for all insurances.



INSURANCE AGREEMENT

A. Contractor is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.

B. Contractor and all subcontractors will carry worker's compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the City, the City's officers, agents and employees and shall issue an endorsement to the policy evidencing same.

C. Contractor shall carry at all times, on all operations hereunder, commercial or comprehensive general liability insurance, automobile liability insurance and builder's all risk insurance. All insurance coverage shall be in amounts required by the City and shall be evidenced by the issuance of a certificate in a form prescribed by the City and shall be underwritten by insurance companies satisfactory to the City for all operations, sub-contract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the Contractor, excepting worker's compensation coverage, shall name the City, its engineer, and each of its directors, officers, agents and employees, as determined by the City, as additional insureds on said policies. Insurers must be licensed to do business in the State of California. The Insurers must also have an "A" policyholder's rating and a financial rating of at least Class VII in accordance with the current Best's Guide Rating.

D. Before Contractor performs any work at, or prepares or delivers materials to, the site of construction, Contractor shall furnish certificates of insurance evidencing the foregoing insurance coverages and such certificates shall provide the name and policy number of each carrier and policy and that the insurance is in force and will not be canceled or modified without thirty (30) days written notice to the City. Contractor shall maintain all of the foregoing insurance coverages in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of the City by Contractor under this Contract and for the duration of the warranty period. Notwithstanding nor diminishing the obligations of Contractor with respect to the foregoing, Contractor shall maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company admitted in California and having a Best's Guide Rating of A, Class VII or better.

Worker's Compensation Liability

In accordance with the Worker's Compensation Act of the State of California - \$1,000,000 per occurrence.

Public Liability - either commercial general liability or comprehensive general liability; including provisions for contractual liability, personal injury, independent contractors and property damage coverages.

Combined single limit of \$1.0 million per occurrence; \$2.0 million in the aggregate.

Automobile Liability - comprehensive covering owned, non-owned and hired automobiles.

Combined single limit of \$1.0 million per occurrence.

Consultants only: Errors and Omissions liability.

\$1.0 million per occurrence.

Spot Water Management
(Contractor's Name)

By: [Signature]

Dated: Mar 27 2002



ENDORSEMENT OF PRIMARY INSURANCE

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

The insurance afforded by this policy is primary insurance, and no additional insurance held or owned by the designated additional insured(s) shall be called upon to cover a loss under said additional policy.

POLICY INFORMATION

1. Insurance Company: Farmers Insurance
2. Insurance Policy Number: 100152-04-1010
3. Effective Date of this Endorsement: April 01, 2002
4. Insured: Andy Slack DBA Spot Water Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, Ron Merz (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: [Signature]
(Original signature required on all Endorsements furnished to the District)

Name of
Agent/Agency: Ron Merz

Title: Agent

Address: 12104 Lincoln Ave. Ste 100
San Jose, CA 95125

Telephone: 408 371 3000

Facsimile: 408 292 0612



ADDITIONAL INSURED ENDORSEMENT

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

The City of Cupertino ("City") and its directors, officers, engineers, agents and employees, and all public agencies from whom permits will be obtained and their directors, officers, engineers, agents and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of the Contractor at or upon any of the premises of the City in connection with the Contract with the City, or acts or omissions of the additional insureds in connection with, but limited to its general supervision or inspection of said operations.

POLICY INFORMATION

1. Insurance Company: Farmers Insurance
2. Insurance Policy Number: 1001520466
3. Effective Date of this Endorsement: April 01 20 02
4. Insured: Andy Slack DBA Spot Water Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, RON MERZ (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: [Signature]
(Original signature required on all Endorsements furnished to the District)

Names of
Agent/Agency: RON MERZ Title: Agent
Address: 1264 LINCOLN AVE. Ste 100 Telephone: 408 371 3000
SAN JOSE, CA 95125 Facsimile: 408 292 0612



**COMPREHENSIVE GENERAL LIABILITY
COMMERCIAL GENERAL LIABILITY
ENDORSEMENT OF AGGREGATE LIMITS OF
INSURANCE PER PROJECT**

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is as follows:

This Endorsement modifies the insurance provided under the General Liability Coverage part of the below-referenced policy of insurance.

The general aggregate limit under LIMITS OF INSURANCE applies separately to the project described as Blackberry Farm Golf Course Maintenance

POLICY INFORMATION

1. Insurance Company: Farmers Insurance
2. Insurance Policy Number: 00152 - 04 010
3. Effective Date of this Endorsement: April 01 20 02
4. Insured: Andy Slack DBA Spot Water Management
5. Additional Insured: City of Cupertino, its directors, officers, agents and employees.

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, Ron Mertz (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: [Signature]
(Original signature required on all Endorsements furnished to the District)

Names of
Agent/Agency: Ron Mertz
Address: 1264 Lincoln Ave. Ste 100
San Jose

Title: Agent
Telephone: 408 371 3000
Facsimile: 408 292 0102



WAIVER OF SUBROGATION ENDORSEMENT WORKER'S COMPENSATION INSURANCE

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

It is agreed that with respect to such insurance as is afforded by the policy, the Insurance Company waives any right of subrogation it may require against the City of Cupertino, and each of its directors, officers, agents, consultants and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above-referenced Contract.

POLICY INFORMATION

1. Insurance Company: State Fund
2. Insurance Policy Number: 1624342-02
3. Effective Date of this Endorsement: 3-01-02 2002
4. Insured: Andy Slack dba Spot Water Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, _____ (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: _____
(Original signature required on all Endorsements furnished to the District)

Names of
Agent/Agency: _____ Title: _____

Address: _____ Telephone: _____

Facsimile: _____

**STATE
COMPENSATION
INSURANCE
FUND**

P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

MARCH 22, 2002

POLICY NUMBER: 1824342-02
CERTIFICATE EXPIRES: 3-1-03

CITY OF CUPERTINO
ATTN: CARMEN LYNAUGH
10300 TORRE AVE
CUPERTINO CA 95014

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon ten days' advance written notice to the employer.

We will also give you TEN days' advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

Tom Hansen
AUTHORIZED REPRESENTATIVE

Kc Bollier
PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE

ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE
03/21/02 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.
THIRD PARTY NAME: CITY OF CUPERTINO

Andy Slack
EMPLOYER

ANDY SLACK
DEA: SPOT WATER MANAGEMENT
1272 LINCOLN AVE
SAN JOSE CA 95125

WAIVER OF SUBROGATION

**STATE
COMPENSATION
INSURANCE
FUND**

HOME OFFICE
SAN FRANCISCO

ENDORSEMENT AGREEMENT

1624342-02

ALL EFFECTIVE DATES ARE
AT 12:01 AM PACIFIC
STANDARD TIME OR THE
TIME INDICATED AT
PACIFIC STANDARD TIME

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING,
IT IS AGREED THAT THE STATE COMPENSATION INSURANCE FUND
WAIVES ANY RIGHT OF SUBROGATION AGAINST,

THE CITY OF CUPERTINO

WHICH MIGHT ARISE BY REASON OF ANY PAYMENT UNDER THIS
POLICY IN CONNECTION WITH WORK PERFORMED BY,

SLACK ANDY, SPOT WATER MANAGEMENT

IT IS FURTHER AGREED THAT THE INSURED SHALL MAINTAIN
PAYROLL RECORDS ACCURATELY SEGREGATING THE REMUNERATION
OF EMPLOYEES WHILE ENGAGED IN WORK FOR THE ABOVE
EMPLOYER.

IT IS FURTHER AGREED THAT PREMIUM ON THE EARNINGS OF SUCH
EMPLOYEES SHALL BE INCREASED BY 03%.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE
OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS, OR LIMITATIONS OF THIS
POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE
HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR
LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO:

2570

Thomas Hansen

Kenneth C. Bollier



NOTICE OF POLICY CANCELLATION ENDORSEMENT

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

Cancellation Notice. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, or materially altered, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Cupertino ("City"). Such notice shall be addressed to the City as indicated below.

POLICY INFORMATION

1. Insurance Company: Farmers Insurance
2. Insurance Policy Number: 60152-04-166
3. Effective Date of this Endorsement: April 01 20 02
4. Insured: Andy Slack, DBA SPOT WATERZ MANAGEMENT

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue, Cupertino, California 95014.

I, Ron Merz (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: [Signature]
(Original signature required on all Endorsements furnished to the District)

Names of
Agent/Agency: Ron Merz Title: AGENT
Address: 1264 LINCOLN AVE STE 100 Telephone: 408 371 3000
SAN JOSE, CA 95125 Facsimile: 408 292 0612



CERTIFICATE OF INSURANCE TO THE CITY OF CUPERTINO

This certifies to the City of Cupertino that the following described policies have been issued to the insured named below and are in force at this time.

Insured: ANDY SLICK DCA SPOT WATER MANAGEMENT
Address: 1272 LINCOLN AVE, STE 100
SAN JOSE, CA 95125

Description of operations/locations/products insured (show contract name and/or number, if any):

BLACK PERRY FARM GOLF COURSE MAINTENANCE
PROJECT # 1001-08

WORKER'S COMPENSATION

* Statutory Min.
* Employer's
Liability

(name of insurer)

\$ _____ \$ _____ \$ _____

Insurance Company's State License No. _____

Check Policy Type:

COMPREHENSIVE GENERAL LIABILITY

Each Occurrence

\$ 1,000,000

☒ Premises/Operations

General Aggregate
(if applicable)

\$ 2,000,000

☐ Owners & Contractors
Protective

Aggregate

\$ _____

☐ Contractual for Specific
Contract
\$ _____

Personal Injury

☐ Products Liability

☐ XCU Hazards

☐ Broad Form P.D.

Fire Damage (any one fire)

\$ _____

☐ Severability of Interest
Clause

☐ Personal Injury with
Employee Exclusion Removed
or

Medical Expense
(any one person)
Self-Insured

\$ _____

COMMERCIAL GENERAL LIABILITY

Retention

\$ _____

FARMERS INSURANCE

(name of insurer)

Policy No. 60152-01-66

Expiration Date 4-01-2003

AUTOMOTIVE/VEHICLE LIABILITY
Commercial Form
Liability Coverage

BODILY INJURY
Each Person

PROPERTY DAMAGE
Each Accident

\$ _____
Each Accident

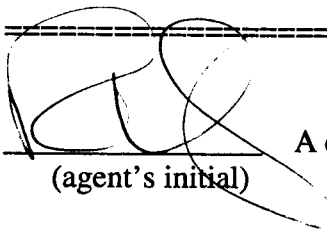
\$ _____

(name of insurer)

\$ _____ or

Combined Single Limit \$ _____

Policy No. _____ Expiration Date _____


(agent's initial)

NONE ATTACHED

A copy of all Endorsements to the policy(ies) which in any way
limit the above-listed types of coverage are attached to this

Certificate of Insurance.

This Certificate of Insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or any other document with respect to which this Certificate of Insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

IT IS HEREBY CERTIFIED that the above policy(ies) provide liability insurance as required by the Agreement between the City and the insured.

By:  _____

Dated: 4 - 1 2003

Attach Certificate of Insurance and Additional Insured Endorsement on company forms.

SUBSTITUTE AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of Jan., 2004, by and between the **CITY OF CUPERTINO**, a municipal corporation of California, hereinafter referred to as "**CITY**", and **PROFESSIONAL TURF MANAGEMENT**, a Contractor with offices at 1272 Lincoln Ave., San Jose, CA 95125, hereinafter referred to as "**CONTRACTOR**";

WITNESSETH:

WHEREAS, CITY desires to retain the CONTRACTOR for Blackberry Farm Golf Course Maintenance; and

WHEREAS, CITY desires to engage CONTRACTOR to provide these services by reason of its qualifications and experience for performing such services, and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein;

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. DEFINITIONS.

(a) The word "City" as used in this agreement shall mean and include all the territory lying within the municipal boundaries of the City of Cupertino, California, as presently existing, plus all territory which may be added thereto during the term of this agreement by annexation or otherwise.

(b) The term "City Manager" shall mean the duly appointed City Manager of the City of Cupertino, California, or his designated representative.

2. PROJECT COORDINATION.

(a) City. The City Manager shall be representative of CITY for all purposes under this agreement. The Recreation supervisor for Blackberry Farm hereby is designated as the PROJECT MANAGER for the City Manager, and shall supervise the progress and execution of this agreement.

(b) Contractor. CONTRACTOR shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this agreement for CONTRACTOR. Andy Slack is hereby designated as the PROJECT DIRECTOR for CONTRACTOR. Should circumstances or conditions subsequent to the execution of this agreement require a substitute PROJECT DIRECTOR for any reason, the PROJECT DIRECTOR designee shall be subject to the prior written acceptance and approval of the PROJECT MANAGER.

3. DUTIES OF CONTRACTOR. Services to be furnished in accordance with EXHIBIT "A" BID PROPOSAL and contract specifications.

(a) Laws to be Observed. CONTRACTOR shall:

(1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incident to the due and lawful prosecution of the services to be performed by CONTRACTOR under this agreement;

(2) Keep itself fully informed of all existing and future federal, state, and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this agreement, any materials used in CONTRACTOR's performance under this agreement, or the conduct of the services under this agreement;

(3) At all times, observe and comply with, and cause all of its subcontractors and employees, if any, to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(4) Immediately report to the PROJECT MANAGER in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this agreement.

4. COMPENSATION. For the performance of the services described herein by CONTRACTOR, CITY shall pay CONTRACTOR the sum of \$14,947.92 per month, less any deductions for liquidated damages, plus any soil samples collected and tested for the month, payable upon submission by CONTRACTOR of itemized billings in triplicate; provided, however, that the total sum payable to CONTRACTOR shall not exceed \$179,375.04 per year.

5. LIQUIDATED DAMAGES. The CONTRACTOR shall diligently prosecute the work to completion as scheduled in the Technical Provisions. The CONTRACTOR further understands that he shall pay liquidated damages to the City of Cupertino in the sum of one hundred fifty dollars (\$150.00) for each and every day that services are not completed as required.

6. TERM. The term of this agreement shall be until March 27, 2004, hereto, provided, however, the CITY retains the option to extend the term of the contract to March 27, 2005.

Any such renewal shall be accomplished by the City providing a written notice of renewal to CONTRACTOR at least 30 days prior to expiration of the term. Any such renewal shall contain the same provisions as the original contract, provided however that the parties may agree to an increase or decrease in compensation paid to the CONTRACTOR.

Any increases or decreases in the previous contract price shall be based on the Consumer Price Index (CPI). The CPI shall be the San Francisco/Oakland Consumer Price Index for all urban wage earners. The adjusted (whether increased or decreased) unit prices shall be computed as follows:

Divide the differences between the CPI on the anniversary date of the agreement and the CPI on the date of the agreement by the CPI on the date of the agreement and multiply by the unit prices specified in the agreement.

7. TEMPORARY SUSPENSION. The City Manager shall have the authority to suspend this agreement, wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the CONTRACTOR to perform any provision of this agreement.

8. SUSPENSION; TERMINATION.

(a) Right to Suspend or Terminate. The CITY may suspend or terminate this agreement for any reason by giving thirty (30) days' written notice. Upon receipt of such notice CONTRACTOR shall immediately discontinue his performance under this agreement.

(b) Payment. Upon such suspension or termination, CONTRACTOR shall be paid for all services actually rendered to CITY to the date of such suspension or termination; provided, however, if this agreement is suspended or terminated for fault of CONTRACTOR, CITY shall be obligated to compensate CONTRACTOR only for that portion of CONTRACTOR's services which are of benefit to CITY.

9. INSPECTION. CONTRACTOR shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONTRACTOR are being performed in accordance with the requirements and intentions of this agreement. All work done and all materials furnished, if any, shall be subject to the PROJECT MANAGER's inspection and approval. The inspection of such work shall not relieve CONTRACTOR of any of its obligations to fulfill its agreement as prescribed.

10. ASSIGNMENT; EMPLOYEES. Both parties shall give their personal attention to the faithful performance of this agreement and shall not assign, transfer, convey, or otherwise dispose of this agreement or any right, title, or interest in or to the same or any part thereof without the prior written consent of the other party, and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such approval shall be void, and, at the option of the other party, shall terminate this agreement and any license or privilege granted herein. This agreement and any interest herein shall not be assignable by operation of law without the prior written consent of the other party.

11. NOTICES. All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

TO CITY: Office of the City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

TO CONTRACTOR: Attention of the PROJECT
DIRECTOR at the address of
CONTRACTOR recited above.

12. INTEREST OF CONTRACTOR. CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this agreement, no subcontractor or person having such an interest shall be employed. CONTRACTOR certifies that no one who has or will have any financial interest under this agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, CONTRACTOR shall at all times be deemed an independent contractor and not an agent or employee of CITY.

13. INDEMNITY. CONTRACTOR hereby agrees to indemnify, hold harmless and assume the defense of , in any actions at law or in equity, the CITY, its officers, employees, agents, and elective and appointive boards from:

(a) Any and all claims and demands which may be made CITY, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any person or corporation caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of CONTRACTOR or any subcontractor under this agreement or of CONTRACTOR's or any subcontractor's employees or agents;

(b) Any and all damage to or destruction of the property of CITY, its officers, agents, or employees occupied or used by or in the care, custody, or control of CONTRACTOR, or in proximity to the site of CONTRACTOR's work, caused by any act or omission, negligent or otherwise, of CONTRACTOR, or any subcontractor under this agreement or of CONTRACTOR's or any subcontractor's employees or agents;

(c) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any employee or agent of CONTRACTOR or any subcontractor under this agreement, however caused, excepting however, any such claims and demands which are the result of the sole negligence or willful misconduct of CITY, its officers, agents, or employees;

(d) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or claims caused or alleged to have been caused by the use of any apparatus, appliance, or materials furnished by CONTRACTOR or any subcontractor under this agreement; and

(e) Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit.

CONTRACTOR, at its own cost, expense, and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third persons against CITY, its officers, agents, or employees on any of the above claims or demands of such third persons, or to enforce any of the above penalties, and pay and satisfy any judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action, or other legal proceedings.

14. WORKERS' COMPENSATION. CONTRACTOR certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Labor Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this agreement.

15. INSURANCE. CONTRACTOR, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this agreement, the insurance coverage of at least an "A", Class VII rating as determined in accordance with the insurance industry standard, insuring not only CONTRACTOR, but also (with the exception of workers' compensation and employer's liability insurance), CITY, its officers, agents, and employees, and each of them with respect to activities and services performed by CONTRACTOR for or on behalf of CITY under the provisions of this agreement.

Certificates of such insurance, on the forms provided by CITY, shall be filed with CITY concurrently with the execution of this agreement or, with CITY's approval, within ten (10) days thereafter. Said certificates shall be subject to the approval of the City Attorney and shall contain an endorsement stating that said insurance is primary coverage, and will not be canceled or altered by the insurer except after filing with the City Clerk thirty (30) days' written notice of such cancellation or alteration, and that the City of Cupertino is named as an additional insured. Current certificates of such insurance shall be kept on file at all times during the term of this agreement with the City Clerk.

16. CONTRACT SECURITY. The CONTRACTOR shall furnish a surety bond in an amount equal to four months of the contract price as security for the faithful performance of this Contract.

17. AGREEMENT BINDING. The terms, covenants, and conditions of this agreement shall apply to, and shall bind the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

18. WAIVERS. The waiver by either party of any breach or violation of any term, covenant, or condition of this agreement or any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.

The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this agreement or of any applicable law or ordinance.

19. COSTS AND ATTORNEYS' FEES. The prevailing party in any action brought to enforce the terms of this agreement or arising out of this agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

20. NONDISCRIMINATION. No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, ancestry, religion, or sex of such person. If the value of this agreement is, or may be, Five Thousand Dollars (\$5,000) or more, CONTRACTOR agrees to meet all requirements of the Cupertino Municipal Code pertaining to nondiscrimination in employment and to submit the "Compliance Report-Nondiscrimination Provisions of City of Cupertino Contracts."

If CONTRACTOR is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this agreement, it shall thereby be found in material breach of this agreement. Thereupon, CITY shall have the power to cancel or suspend this agreement, in whole or in part, or to deduct from the amount payable to CONTRACTOR the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which said person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If CONTRACTOR is found in violation of the nondiscrimination provisions of this agreement or the applicable affirmative action guidelines pertaining to this agreement, CONTRACTOR shall be found in material breach of this agreement. Thereupon, CITY shall have the power to cancel or suspend this agreement, in whole or in part, or to deduct from the amount payable to CONTRACTOR the sum of Two Hundred Fifty Dollars (\$250) for each calendar day during which CONTRACTOR is found to have been in such noncompliance as damages for said breach of contract, or both.

21. AGREEMENT CONTAINS ALL UNDERSTANDINGS. This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONTRACTOR. All provisions of this agreement are expressly made conditions. This agreement shall be governed by the laws of the State of California.

P.O. No. _____

IN WITNESS WHEREOF, the parties have executed this Contract, in duplicate, the day and year first hereinabove written.

CITY OF CUPERTINO:

By: *Shirley L. James*
Mayor

Attest: *Kimberly Smith*
City Clerk

Date: *Jan 5*, 2004
City Clerk

CONTRACTOR:

Professional Turf Management Inc.
By: *Andy Stark*

Notary acknowledgment is required. If a corporation, corporate seal and corporate notary acknowledgment and Federal Tax I.D. are required. If not a corporation, a Social Security No. is required.

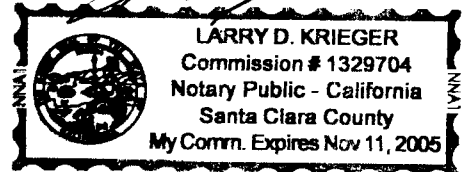
06-1669163
Social Security # Federal Tax I.D. #

Contractor's License No. *826508*

APPROVED AS TO FORM:

Charles Walker
City Attorney

ss } *State of California*
County of Santa Clara



Project Name & Number: **BLACKBERRY FARM GOLF COURSE MAINTENANCE**
Project No. 2001-08

Contractor Name & Address: **PROFESSIONAL TURF MANAGEMENT**
1272 LINCOLN AVE.
SAN JOSE, CA 95125

Contract Amount: \$179,375.04

Account Number: 560-6640-7014

File Nos: 92,054.11



INSURANCE AGREEMENT

A. Contractor is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.

B. Contractor and all subcontractors will carry worker's compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the City, the City's officers, agents and employees and shall issue an endorsement to the policy evidencing same.

C. Contractor shall carry at all times, on all operations hereunder, commercial or comprehensive general liability insurance, automobile liability insurance and builder's all risk insurance. All insurance coverage shall be in amounts required by the City and shall be evidenced by the issuance of a certificate in a form prescribed by the City and shall be underwritten by insurance companies satisfactory to the City for all operations, sub-contract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the Contractor, excepting worker's compensation coverage, shall name the City, its engineer, and each of its directors, officers, agents and employees, as determined by the City, as additional insureds on said policies. Insurers must be licensed to do business in the State of California. The Insurers must also have an "A" policyholder's rating and a financial rating of at least Class VII in accordance with the current Best's Guide Rating.

D. Before Contractor performs any work at, or prepares or delivers materials to, the site of construction, Contractor shall furnish certificates of insurance evidencing the foregoing insurance coverages and such certificates shall provide the name and policy number of each carrier and policy and that the insurance is in force and will not be canceled or modified without thirty (30) days written notice to the City. Contractor shall maintain all of the foregoing insurance coverages in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of the City by Contractor under this Contract and for the duration of the warranty period. Notwithstanding nor diminishing the obligations of Contractor with respect to the foregoing, Contractor shall maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company admitted in California and having a Best's Guide Rating of A, Class VII or better.

Worker's Compensation Liability

In accordance with the Worker's Compensation Act of the State of California - \$1,000,000 per occurrence.

Public Liability - either commercial general liability or comprehensive general liability; including provisions for contractual liability, personal injury, independent contractors and property damage coverages.

Combined single limit of \$1.0 million per occurrence; \$2.0 million in the aggregate.

Automobile Liability - comprehensive covering owned, non-owned and hired automobiles.

Combined single limit of \$1.0 million per occurrence.

Consultants only: Errors and Omissions liability. \$1.0 million per occurrence.

Professional Turf Management, Inc. By: [Signature]
(Contractor's Name)

Dated: 11/20 2003

CITY OF
CUPERTINO

CERTIFICATE OF INSURANCE TO THE CITY OF CUPERTINO

This certifies to the City of Cupertino that the following described policies have been issued to the insured named below and are in force at this time.

Insured: Professional Turf ManagementAddress: 1272 Lincoln AvenueSan Jose, CA 95125

Description of operations/locations/products insured (show contract name and/or number, if any):

Provides golf course maintenance (mowing, leaf blowing, raking)
and an employee who is certified to do pesticide spraying.

WORKER'S COMPENSATION

* Statutory Min.

* Employer's

Liability

Granite State Insurance

(name of insurer) Company

\$ 1,000,000\$ 1,000,000\$ 1,000,000

Insurance Company's State License No. _____

Check Policy Type:

Each Occurrence

\$ 1,000,000COMPREHENSIVE GENERAL
LIABILITY[☒] Premises/OperationsGeneral Aggregate
(if applicable)\$ 2,000,000[☒] Owners & Contractors
Protective

Aggregate

\$ 1,000,000[☒] Contractual for Specific
Contract

Personal Injury

\$ _____

[☒] Products Liability[☒] XCU Hazards[☒] Broad Form P.D.Fire Damage (any one fire) \$ 100,000[☒] Severability of Interest
Clause[☒] Personal Injury with
Employee Exclusion Removed
orMedical Expense
(any one person)
Self-Insured\$ 5,000

COMMERCIAL GENERAL LIABILITY

Retention

\$ 500Scottsdale Insurance Company

(name of insurer)

Policy No. CLS0910972Expiration Date 4/1/04

AUTOMOTIVE/VEHICLE LIABILITY
Commercial Form
Liability Coverage**BODILY INJURY**
Each Person**PROPERTY DAMAGE**
Each Accident\$ N/A
Each Accident\$ N/AN/A
(name of insurer)\$ N/A

or

Combined Single Limit \$ N/APolicy No. N/A Expiration Date N/A

(agent's initial)

A copy of all Endorsements to the policy(ies) which in any way
limit the above-listed types of coverage are attached to this

Certificate of Insurance.

This Certificate of Insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or any other document with respect to which this Certificate of Insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

IT IS HEREBY CERTIFIED that the above policy(ies) provide liability insurance as required by the Agreement between the City and the insured.

By: Kelly J. VolzDated: 10/31 2003

Attach Certificate of Insurance and Additional Insured Endorsement on company forms.

**ENDORSEMENT OF PRIMARY INSURANCE**

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

The insurance afforded by this policy is primary insurance, and no additional insurance held or owned by the designated additional insured(s) shall be called upon to cover a loss under said additional policy.

POLICY INFORMATION

1. Insurance Company: Scottsdale Insurance Company
2. Insurance Policy Number: CLS0910972
3. Effective Date of this Endorsement: October 30, 2003
4. Insured: Professional Turf Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, Kelly J. Volpatti (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: Kelly J. Volpatti
(Original signature required on all Endorsements furnished to the District)

Name of
Agent/Agency: Volpatti Insurance Services Title: owner

Address: 39350 Civic Center Dr. #411

Telephone: 510-505-9077

Fremont, CA 94538

Facsimile: 510-505-0284

**ADDITIONAL INSURED ENDORSEMENT**

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

The City of Cupertino ("City") and its directors, officers, engineers, agents and employees, and all public agencies from whom permits will be obtained and their directors, officers, engineers, agents and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of the Contractor at or upon any of the premises of the City in connection with the Contract with the City, or acts or omissions of the additional insureds in connection with, but limited to its general supervision or inspection of said operations

POLICY INFORMATION

1. Insurance Company: Scottsdale Insurance Company
2. Insurance Policy Number: CLS0910972
3. Effective Date of this Endorsement: October 30 20 03
4. Insured: Professional Turf Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue, Cupertino, California 95014.

I, Kelly J. Volpatti (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: Kelly J. Volpatti
(Original signature required on all Endorsements furnished to the District)

Names of

Agent/Agency: Volpatti Insurance Services Title: owner

Address: 39350 Civic Center Dr. #411 Telephone: 510-505-9077

Fremont, CA 94538 Facsimile: 510-505-0284



**COMPREHENSIVE GENERAL LIABILITY
COMMERCIAL GENERAL LIABILITY
ENDORSEMENT OF AGGREGATE LIMITS OF
INSURANCE PER PROJECT**

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is as follows:

This Endorsement modifies the insurance provided under the General Liability Coverage part of the below-referenced policy of insurance.

The general aggregate limit under LIMITS OF INSURANCE applies separately to the project described as Blackberry Farms Golf Course

POLICY INFORMATION

1. Insurance Company: Scottsdale Insurance Company
2. Insurance Policy Number: CLS 0910972
3. Effective Date of this Endorsement: October 30 20 03
4. Insured: Professional Turf Management
5. Additional Insured: City of Cupertino, its directors, officers, agents and employees.

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, Kelly J. Volpatti (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: Kelly J. Volpatti
(Original signature required on all Endorsements furnished to the District)

Names of

Agent/Agency: Volpatti Insurance Services Title: owner

Address: 39350 Civic Center Dr. #411

Telephone: 510-505-9077

Fremont, CA 94538

Facsimile: 510-505-0284



WAIVER OF SUBROGATION ENDORSEMENT WORKER'S COMPENSATION INSURANCE

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

It is agreed that with respect to such insurance as is afforded by the policy, the Insurance Company waives any right of subrogation it may require against the City of Cupertino, and each of its directors, officers, agents, consultants and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above-referenced Contract.

POLICY INFORMATION

1. Insurance Company: Granite State Insurance Company
2. Insurance Policy Number: WC 099-60-37
3. Effective Date of this Endorsement: October 30 2003
4. Insured: Professional Turf Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, Kelly J. Volpatti (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: Kelly J. Volpatti
(Original signature required on all Endorsements furnished to the District)

Names of
Agent/Agency: Volpatti Insurance Services Title: owner

Address: 39350 Civic Center Dr. #411 Telephone: 510-505-9077
Fremont, CA 94538 Facsimile: 510-505-0284



NOTICE OF POLICY CANCELLATION ENDORSEMENT

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

Cancellation Notice. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, or materially altered, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Cupertino ("City"). Such notice shall be addressed to the City as indicated below.

POLICY INFORMATION

1. Insurance Company: Scottsdale Insurance Company
2. Insurance Policy Number: CLS0910972
3. Effective Date of this Endorsement: October 30 2003
4. Insured: Professional Turf Management

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Additional Insured Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, Kelly J. Volpatti (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: Kelly J. Volpatti
(Original signature required on all Endorsements furnished to the District)

Names of

Agent/Agency: Volpatti Insurance Services Title: Owner

Address: 39350 Civic Center Dr. #411
Fremont, CA 94538

Telephone: 510-505-9077
Facsimile: 510-505-0284

STATE OF CALIFORNIA

Contractors State License Board

Pursuant to Chapter 9 of Division 3 of the Business and Professions Code
and the Rules and Regulations of the Contractors State License Board,
the Registrar of Contractors does hereby issue this license to:

PROFESSIONAL TURF MANAGEMENT

to engage in the business or act in the capacity of a contractor
in the following classification(s):

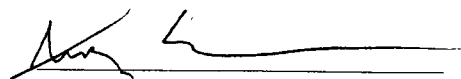
C27 - LANDSCAPING
HIC - HOME IMPROVEMENT CERTIFICATION

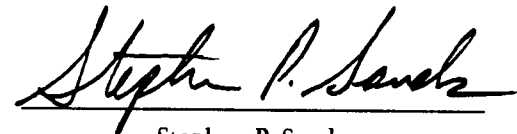
Witness my hand and seal this day,

October 24, 2003

Issued October 23, 2003


SIGNATURE OF LICENSEE


SIGNATURE OF LICENSE QUALIFIER


Stephen P. Sands
Registrar of Contractors

This license is the property of the Registrar of Contractors,
is not transferrable, and shall be returned to the Registrar
upon demand when suspended, revoked, or invalidated
for any reason. It becomes void if not renewed.

826508

License Number