

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 6865

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
CUPERTINO RECOMMENDING APPROVAL OF A DEVELOPMENT
AGREEMENT WITH VALLCO PROPERTY OWNER, LLC

Based on the entirety of the record, the Planning Commission recommends that the City Council adopt an ordinance approving the proposed Development Agreement, in the form of the Draft Ordinance attached hereto as Exhibit DA, with the findings incorporated therein, with the following modifications:

1. Consider clarifying language regarding application of Section 9.3.4 in the event of litigation challenge.
 2. Consider adding a middle tier Development Program for Vallco Town Center in Section 3.4 beginning on page 3-14 that would include the same residential allocation as Tier 2 (2,923 available) but reduce the office allocation below 1,500,000 square feet, with a commensurate reduction in community benefits provided to qualify for a community benefits density bonus.
 3. The Planning Commission's recommended priority for community benefits, from most important to least important, is: (a) increased benefits to CUSD; (b) benefits to FUHSD; (c) 20% of residential units as Below Market Rate housing, with 40 units designated for Extremely Low Income Households; (d) transportation and traffic-related contributions; (e) City Hall; and (f) Performing Arts Center.
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PASSED AND ADOPTED this 4th day of September 2018, at a Special Meeting of the Planning Commission of the City of Cupertino by the following roll call vote:

AYES: COMMISSIONERS: Chair Paulsen, Vice Chair Takahashi, Sun, Fung

NOES: COMMISSIONERS: Liu

ABSTAIN: COMMISSIONERS: none

ABSENT: COMMISSIONERS: none

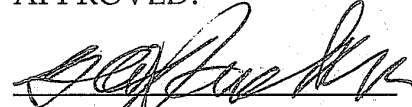
ATTEST:



Aarti Shrivastava

Assistant City Manager

APPROVED:



Geoff Paulsen

Chair, Planning Commission

ORDINANCE NO. 18-

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF CUPERTINO AND VALLCO PROPERTY OWNER, LLC
FOR THE DEVELOPMENT OF [TBD]

SECTION I: PROJECT DESCRIPTION

Application No: DA-2015-02

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105,
316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099,
316-20-100, 316-20-095

SECTION II: RECITALS

WHEREAS, Vallco Property Owner, LLC (“Vallco”) has a legal and equitable interest in certain real property consisting of approximately 50.82 acres located within the City and generally bordered by Perimeter Road on the north, Perimeter Road on the east, Vallco Parkway and Stevens Creek Boulevard on the south, and Perimeter Road on the west, as more particularly described in Exhibit DA-1, the Development Agreement (“Property”); and

WHEREAS, Government Code Sections 65864 through 68569.5 provide the statutory authority for development agreements between municipalities and parties with a fee or equitable interest in real property; and

WHEREAS, Chapter 19.144 of Cupertino Municipal Code (“CMC,”) establishes additional procedures for review and approval of proposed development agreements by the City of Cupertino (“City”); and

WHEREAS, in October 2017, Vallco requested that the City initiate the process for preparation and adoption of a specific plan for the Vallco Special Area; and

WHEREAS, the Vallco Special Area Specific Plan has been developed pursuant to City Council direction to initiate a project to prepare a specific plan for the Vallco Special Area, including any required changes to the adopted goals and objectives for the Special Area, in order to implement the Housing Element of the Cupertino General Plan and to plan for anticipated future development activity; and

WHEREAS, the Vallco Specific Plan sets forth two tiers of development capacity as follows: (1) Tier 1 sets forth a basic program of development of the Specific Plan area (750,000 square feet of office, 1,779 residential units, and a minimum of 600,000 square

feet of retail) without provision of above-standard community benefits; and (2) Tier 2 allows for a greater amount of office and residential development, as described in the Vallco Specific Plan, provided the Developer enters into a Development Agreement with the City which provides for certain above-standard community benefits (collectively, the “Project”); and

WHEREAS, Vallco has proposed to provide certain community benefits and to develop the Tier 2 program in accordance with the Specific Plan; and

WHEREAS, the City and Vallco have negotiated the terms of a Development Agreement to vest the Tier 2 program in consideration of the community benefits and provide limited vesting of the Tier 1 program; and

WHEREAS, the terms of the Development Agreement include the following community benefits to be provided by Vallco, which are described in more detail in the proposed Development Agreement:

- Performing Arts Center – Vallco would either, at City’s option: (i) build and lease to City a 60,000 square foot “warm shell” space suitable for a performing arts center (PAC), or (ii) pay the City a \$22,800,000 in lieu payment.
- City Hall – Vallco would either (i) demolish the existing City Hall building and then build and deliver to City a 40,000 square foot “warm shell” new City Hall including underground parking, substantially consistent with the City’s 2015 civic center master plan, or (ii) pay the City a \$30,000,000 in lieu payment.
- School District Benefits –
 - FUHSD - Vallco would commit to either (i) build and lease to FUHSD a 25,000 square foot “warm shell” space, or (ii) pay FUHSD a \$9,500,000 in lieu payment, with terms to be set forth in a separate agreement to be entered into between Developer and FUHSD.
 - CUSD – Vallco would make a payment to CUSD in the amount of \$9,500,000 pursuant to a separate agreement.
- Affordable Housing – Vallco would agree that 20% of the residential units would be provided as affordable housing at the following percentages: 15% at very low and low income levels and 5% at moderate income level.
- Transportation Benefits –
 - Vallco would implement a TDM Program.

- Vallco would pay \$11 million to City to fund work in connection with the Wolfe Road/I-280 and the Junipero Serra Bike/Pedestrian Trail. This would decrease to \$5.5 million if there is a challenge to the Project.
- Vallco would fund up to \$1 Million for a 1-year pilot shuttle program and, if successful \$750,000 thereafter for 9 years, which would decrease if there is a challenge to the Project.
- Vallco would provide a mobility/bike hub within the project.
- Co-working/Incubator Space – Vallco would make good faith efforts to provide 40,000 square feet of co working or incubator space.

WHEREAS, the Development Agreement will be consistent with the City's General Plan land use map, proposed uses and surrounding uses as amended and the applicable zoning designations and the Vallco Special Area Specific Plan as adopted; and

WHEREAS, approval of the Development Agreement will provide Vallco with assurances that its development of the Property in connection with the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction and use of the development and promote the achievement of the private and public objectives of the development; and

WHEREAS, the Development Agreement is envisioned by and consistent with the Vallco Special Area Specific Plan, all as fully described and analyzed in the Final Environmental Impact Report for the Vallco Special Area Specific Plan Environmental Impact Report (State Clearinghouse No. 2018022021), which consists of the May 2018 Draft Environmental Impact Report ("Draft EIR"), the July 2018 Environmental Impact Report Amendment ("EIR Amendment"), the August 2018 Final EIR volume, and the August 2018 Supplemental Text Revisions to the Vallco Special Area Specific Plan Final Environmental Impact Report (together, the "Final EIR"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on September 4, 2018 to consider the Development Agreement; and

WHEREAS, the Final EIR was presented to the Environmental Review Committee ("ERC") for review and recommendation on August 31, 2018, and after considering the Final EIR, and Staff's presentation, the ERC recommended that the City Council certify the EIR; and

WHEREAS, based on substantial evidence in the administrative record, on September 4, 2018 the Planning Commission recommended that the City Council certify that the Final EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and reflects the independent judgment and analysis of the City, adopt the Findings and Statement of Overriding Considerations, and adopt and incorporate into the project all of the mitigation measures that are identified in the Final EIR, and implement all of the mitigation measures that are within the responsibility and jurisdiction of the City in substantially similar form to the Resolution presented (Resolution No. XXXX); and

WHEREAS, on September 4, 2018, the Planning Commission recommended on a X-X vote that the City Council adopt an ordinance approving the Development Agreement, in substantially similar form to the Resolution presented (Resolution no. _____); and

WHEREAS, on September 18, 2018, upon due notice, the City Council held a public hearing to consider the Development Agreement; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on September 18, 2018, the City Council adopted Resolution No. [####] certifying the Final EIR, adopting the Findings and a Statement of Overriding Considerations, adopting the Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment in carefully considering the information in the Final EIR and finds that the scope of this Ordinance falls within the certified Final EIR, in that the aspects of the Development Agreement proposed in this Ordinance that have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment have been examined in the Final EIR; therefore, no recirculation of the Final EIR is required; and

WHEREAS, after consideration of evidence contained in the entire administrative record, after the public hearing on September 18, 2018, the City Council adopted Resolution No. [####] certifying the Final EIR, adopting Findings and a Statement of Overriding Considerations, adopting Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, at a duly noticed public hearing on September 18, 2018, prior to consideration of the Development Agreement, the Council adopted Resolution No. XXX, approving a General Plan Amendment to Development Allocations, the General Plan

Land Use Map and development standards related to the Vallco Special Area, adopted Resolution No. XXX, approving the Vallco Special Area Specific Plan, and adopted an Ordinance Rezoning the parcels within the Vallco Special Area Specific Plan.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council, having considered the staff report to the City Council dated _____, 2018, evidence received at the public hearing duly noticed and held for the proposed Development Agreement, and all other facts, exhibits, testimony, information and other evidence submitted in this matter or in the record of this proceeding, finds as follows:

A. The proposed Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended.

B. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Project is located.

C. The proposed Development Agreement is in conformity with and will promote public convenience, general welfare, and good land use practice.

D. The proposed Development Agreement will not be detrimental to the health, safety, or general welfare.

E. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

F. The proposed Development Agreement will promote and encourage the development of the Project by providing a greater degree of requisite certainty.

Section 3. The City Council hereby approves the Development Agreement in the form attached subject to such minor technical conforming changes as may be approved by the City Attorney. This approval is based on the City Council's consideration of and reliance on the Final EIR and in accordance with the plans, details and descriptions contained therein, and in the Resolution certifying the Final EIR.

Section 4. The City Council hereby authorizes the City Manager to execute the Development Agreement on behalf of the City.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA guidelines.

Section 6. This Ordinance shall be effective thirty (30) days following its adoption.

INTRODUCED at a Regular Meeting of the City Council of the City of Cupertino the 18th day of September 2018, and ENACTED at a Regular Meeting of the City Council of the City of Cupertino the 2nd day of October, 2018, by the following vote:

Vote: Members of the City Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSE:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor, City of Cupertino