



## DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE) WITH INDEPENDENT CODE CONSULTANTS, INC.

### 1. **PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and Independent Code Consultants, Inc. (“Consultant”), a Corporation for Building and Public Works plan review services for the Vallco Town Center project (“Project”), and is effective on the last date signed below (“Effective Date”).

### 2. **SERVICES**

Contractor agrees to provide the services and perform the tasks (“Services”) set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**.

### 3. **TIME OF PERFORMANCE**

**3.1 Term.** This Agreement begins on the Effective Date and ends on June 30, 2023, unless terminated earlier as provided herein (“Contract Time”). The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

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

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

### 4. **COMPENSATION**

**4.1 Maximum Compensation.** City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$13,500,000 (“Contract Price”), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City.

**4.2 Invoices and Payments.** Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any

further payment or other obligations under the Agreement.

## **5. INDEPENDENT CONTRACTOR**

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

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

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

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

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

**5.6 Payment of Benefits and Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Consultant. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made. This Section 5.6 survives the expiration/termination of this Agreement.

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

## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

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

## **7. OWNERSHIP OF MATERIALS**

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

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

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

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

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

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

## **8. RECORDS**

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

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

## **9. ASSIGNMENT**

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

## **10. PUBLICITY / SIGNS**

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

## **11. INDEMNIFICATION**

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

**a. Indemnity for Design Professional Liability:** With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or

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willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually “Consultant”), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant’s indemnification and hold harmless obligation shall not exceed Consultant’s finally determined percentage of liability based upon the comparative fault of Consultant.

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

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

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

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

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

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



may deduct money from Consultant's payments to cover moneys due to City.

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

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

## **12. INSURANCE**

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

## **13. COMPLIANCE WITH LAWS**

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

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

**13.3 Discrimination Laws.** Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Consultant shall comply with all anti-discrimination laws, including Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited.

**13.4 Conflicts of Interest.** Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement in violation of California Government Code Section 1090 et seq. Consultant may be

required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

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

#### **14. PROJECT COORDINATION**

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

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

#### **15. ABANDONMENT OF PROJECT**

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant will be compensated for satisfactory Services performed through the date of abandonment and will be given reasonable time to assemble the work and close out the Services. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.

#### **16. TERMINATION**

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

#### **17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

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

**18. ATTORNEY FEES**

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

**19. THIRD PARTY BENEFICIARIES**

There are no intended third party beneficiaries of this Agreement.

**20. WAIVER**

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

**21. ENTIRE AGREEMENT**

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

**22. INSERTED PROVISIONS**

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

**23. HEADINGS**

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

**24. SEVERABILITY/PARTIAL INVALIDITY**



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

**25. SURVIVAL**

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

**26. NOTICES**

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

<p><b>To City of Cupertino:</b> 10300 Torre Avenue Cupertino, CA 95014</p> <p>Attention: Albert Salvador</p> <p>Email: alberts@cupertino.org</p>	<p><b>To Consultant:</b> Independent Code Consultants, Inc 6280 W. Las Positas Blvd., Suite 220 Pleasanton, CA 94588</p> <p>Attention: Abigail Obligation</p> <p>Email: aobligacion@independentcodeconsultants.com</p>
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**27. VALIDITY OF CONTRACT**

This Agreement is valid and enforceable only if it complies with the contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney’s Office.

**28. EXECUTION**

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

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

**CITY OF CUPERTINO**  
A Municipal Corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Tax I.D. No.: \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
HEATHER M. MINNER  
Cupertino City Attorney

**ATTEST:**

\_\_\_\_\_  
KIRSTEN SQUARCIA  
City Clerk  
DATE: \_\_\_\_\_

\_\_\_\_\_

# VALLCO TOWN CENTER

Cost Proposal for Plan Review Services

July 29, 2019

**SUBMITTED TO:**

City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014-3255

**Attention:**

Mr. Albert Salvador | CBO  
Mr. Chad Mosley | City Engineer

**SUBMITTED BY:**

Independent Code Consultants, Inc.  
6280 W. Las Positas Boulevard, Suite 220  
Pleasanton, CA 94588

**Contact:**

Ms. Abigail Obligation | President  
T | 925.264.9559  
E | [aobligacion@independentcodeconsultants.com](mailto:aobligacion@independentcodeconsultants.com)

July 29, 2019

Mr. Albert Salvador | CBO  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

Mr. Chad Mosley | City Engineer  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

**Vallco Town Center | Cost Proposal for Plan Review Services**

Dear Mr. Salvador and Mr. Mosley:

Thank you for the opportunity for considering our team to assist you in providing building and public works plan review services for the Vallco Town Center project. Independent Code Consultants, Inc. (ICCI) has established a team of highly qualified professionals and our team is prepared to provide multi-discipline services to ensure the Vallco Town Center project is a success from demolition to certificate of occupancy.

The following pages outline our detailed cost proposal (including a not-to-exceed amount). We look forward to working with you and feel free to contact us with any questions.

Respectfully Submitted,



Abigail Obligation | President  
Independent Code Consultants, Inc.

# SUMMARY OF SERVICES

## PLAN REVIEW SERVICES

The following is a summary of plan review services to be provided.

### Building:

1. State and local laws and regulations
2. City of Cupertino Municipal Code and City of Cupertino's Conditions of Approval
3. Ensure drawings conform and comply with Title 24 California Code of Regulations
  - ▶ Fire and Life-Safety
  - ▶ Accessibility
  - ▶ Structural
  - ▶ Plumbing
  - ▶ Mechanical
  - ▶ Electrical
  - ▶ Energy
  - ▶ Green Building Standards
4. Substantiate structural plans meet recommendations made in the project geotechnical report
5. Ensure plans and details are consistent with product specifications and certification

### Public Works/Civil Engineering Aspects:

1. Review plans to ensure designs are consistent with State and local laws and regulations
2. Review plans to ensure designs are consistent with City of Cupertino standards, conditions of approval, and mitigation measures relating to civil design, including necessary demolition plans, street improvement plans, grading and storm drainage plans, utility plans, and related reports and civil calculations
3. Substantiate grading plans meet recommendations made in the project geotechnical report
4. Grading plan check to include a review of the topographic survey for the existing depths of manholes and catch basins and their relationship to the proposed improvements
5. Review the existing topography to the proposed slopes and walls
6. Review storm drains, sewer system and public improvements meet City requirements
7. Verify hydrology calculations match what is shown on the Improvement Plans and storm system is adequately sized for the design storm
8. Confirm stormwater treatment areas are adequately sized to Municipal Regional Permit (MRP) requirements (i.e. C.3)
9. Review green roof in respect to public works/civil engineering aspects
10. Verify work is consistent with on-site easements and related land use elements, and provide recommendations on any modifications, including abandonment, vacations or new easements necessary to facilitate the development
11. Confirm full trash capture requirements identified in MRP Section C.10 are effectively met
12. Review and evaluate the total project waste management plan including: estimated volumes generated, waste conveyance systems, storage capacities, and City waste hauler collection/circulation routes

**Other Tasks:**

1. Attendance of Design and Construction Meetings
2. Review and assist with technical problems that arise during construction
3. Will maintain a tracking system to document all plan reviews and reports, tracking of construction progress and processing of change orders, RFI's and deferred submittals
4. Transportation services related to transportation planning, traffic operations, freeway and corridor studies, traffic engineering design (including PS&E), intelligent transportation systems (ITS), traffic safety and multi-modal studies
5. Professional geotechnical related services

**BUILDING PLAN REVIEW COST PROPOSAL Exhibits B & C**

ICCI guarantees that turnaround times will meet or exceed all project deadlines. Expedited turnaround times will be subject to discussion by all concerned parties to ensure all milestones are completed on schedule.

**Time Frame:** Projected Plan Review Time Frame Not-To-Exceed 3 years after effective date of contract

Building Plan Review Services	Unit Rate	Unit
Building Plan Review Fee (first submittal plus one (1) additional subsequent submittal)	65% of Plan Review Fee	
Complete Plan Review Submittal Beyond the 2nd Submittal	\$125.00	Hour
Public Works / Transportation Plan Review Services	Unit Rate	Unit
Complete On-Site, Green Roof and Transportation Plan Review	\$185.00	Hour
Geotechnical Services	Unit Rate	Unit
Geotechnical Services	\$250.00	Hour
Support Staff	Unit Rate	Unit
Plan Review Engineer at Project Site	\$185.00	Hour
Project Coordinator	\$200.00	Hour
Basis of Charges	Unit Rate	
Work over 8 hours a day	Time and One-Half	
Work over 12 hours, Monday through Friday	Double Time	
Work on Saturdays	Time and One-Half	
Work over 8 hours on Saturday	Double Time	
Work on Sundays/Holidays	Double Time	
Reimbursables	Cost	
Building, Public Works, Transportation & Geotechnical Plan Review Contract Not-To-Exceed Amounts (Per Fiscal Year)		
Complete Building Plan Review per Fiscal Year	\$1,000,000.00	
Building Plan Review Engineer at Project Site per Fiscal Year	\$500,000.00	
On-Site   Off-Site Public Works, Green Roof & Transportation Plan Review per Fiscal Year	\$2,250,000.00	
Geotechnical Services	\$750,000.00	

**Note:** Plan review services are based on the assumption no significant design changes will be done during the initial plan review and subsequent plan review submittals. Major design changes incurred during the plan review stages will be charged as deemed appropriate and negotiated by all parties for building and public works plan review.



**EXHIBIT D**  
***Insurance Requirements***  
***Design Professionals & Consultants Contracts***

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

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

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

**OTHER INSURANCE PROVISIONS**

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

***Additional Insured Status***

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

***Primary Coverage***

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

***Notice of Cancellation***

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

***Waiver of Subrogation***

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

***Deductibles and Self-Insured Retentions***

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

***Acceptability of Insurers***

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

***Verification of Coverage***

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

***Subconsultants***

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

***Higher Insurance Limits***

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

***Adequacy of Coverage***

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



INDEP-2

OP ID: BMH

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>925-516-4700</b> <b>Discovery Bay Ins. Serv., Inc.</b> <b>1555 Riverlake Rd., Ste. F</b> <b>Discovery Bay, CA 94505</b> <b>Melissa Hoffman</b>	<b>CONTACT NAME:</b> <b>Melissa Hoffman</b> <b>PHONE (A/C, No, Ext):</b> <b>925-516-4700</b> <b>FAX (A/C, No):</b> <b>925-516-4202</b> <b>E-MAIL ADDRESS:</b> <b>melissa@discoverybayins.com</b>														
<b>INSURED</b> <b>Independent Code Consultants</b> <b>Abigail Obligation</b> <b>6280 W. Las Positas Blvd.</b> <b>Suite 220</b> <b>Pleasanton, CA 94588</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td><b>INSURER A:</b> <b>Evanston Insurance Company</b></td> <td><b>35378</b></td> </tr> <tr> <td><b>INSURER B:</b> <b>United Financial Casualty Co.</b></td> <td><b>11770</b></td> </tr> <tr> <td><b>INSURER C:</b> <b>State Compensation Ins Fund</b></td> <td><b>35076</b></td> </tr> <tr> <td><b>INSURER D:</b> <b>Landmark American Ins. Co.</b></td> <td><b>33138</b></td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A:</b> <b>Evanston Insurance Company</b>	<b>35378</b>	<b>INSURER B:</b> <b>United Financial Casualty Co.</b>	<b>11770</b>	<b>INSURER C:</b> <b>State Compensation Ins Fund</b>	<b>35076</b>	<b>INSURER D:</b> <b>Landmark American Ins. Co.</b>	<b>33138</b>	<b>INSURER E:</b>		<b>INSURER F:</b>	
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**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			<b>3AA371980</b>	<b>12/03/2019</b>	<b>12/03/2020</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>100,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b>
<b>B</b>	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			<b>06461327-2</b>	<b>01/11/2020</b>	<b>01/11/2021</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ <b>HNOA</b> \$ <b>100,000</b>
<b>A</b>	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ <b>10000</b>			<b>EZXS3017175</b>	<b>12/03/2019</b>	<b>12/03/2020</b>	EACH OCCURRENCE \$ <b>2,000,000</b> AGGREGATE \$ <b>2,000,000</b>
<b>C</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below			<b>9224300-20</b>	<b>01/11/2020</b>	<b>01/11/2021</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>D</b>	<b>Errors &amp; Omissions</b>			<b>LHR779417</b>	<b>01/10/2020</b>	<b>01/10/2021</b>	<b>E&amp;O</b> \$ <b>2,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are listed as additional insureds on General Liability per attached endorsement.

**CERTIFICATE HOLDER****CANCELLATION**

<b>The City of Cupertino</b> <b>10300 Torre Avenue</b> <b>Cupertino, CA 95014</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <b>Melissa Hoffman</b> <i>Melissa Hoffman</i>
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## EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM

#### SCHEDULE

Additional Premium:    \$ 500 (Check box if fully earned. <input checked="" type="checkbox"/> )
---

- A.** Who Is An Insured is amended to include as an additional insured any person or entity to whom you are obligated by valid written contract to provide such coverage, but only with respect to negligent acts or omissions of the Named Insured and only with respect to any coverage not otherwise excluded in the policy.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

Our agreement to accept an additional insured provision in a contract is not an acceptance of any other provisions of the contract or the contract in total.

When coverage does not apply for the Named Insured, no coverage or defense will apply for the additional insured.

No coverage applies to such additional insured for injury or damage of any type to any "employee" of the Named Insured or to any obligation of the additional insured to indemnify another because of damages arising out of such injury or damage.

- B.** With respect to the insurance afforded to these additional insured, the following is added to limits of insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable limits of insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance shown in the Declarations.

All other terms and conditions remain unchanged.



## EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

#### SCHEDULE

**Name Of Person Or Organization:**

Any person(s) or organization(s) with whom the Named Insured agrees, in a written contract executed prior to the "occurrence", to waive rights of recovery

**Additional Premium:** \$ 250

The following is added to Condition **8**. Transfer Of Rights Of Recovery Against Others To Us under Section **IV** – Commercial General Liability Conditions:

We waive any right of recovery we may have against any person or organization shown in the Schedule of this endorsement. This waiver applies only to the person or organization shown in the Schedule of this endorsement.

All other terms and conditions remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.





ENDORSEMENT AGREEMENT  
WAIVER OF SUBROGATION  
BLANKET BASIS

**BROKER COPY**

HOME OFFICE  
SAN FRANCISCO

EFFECTIVE JANUARY 12, 2020 AT 12.01 A.M.  
AND EXPIRING JANUARY 12, 2021 AT 12.01 A.M.

9224300-20  
RENEWAL  
NA  
1-69-33-36  
PAGE 1 OF 1

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

INDEPENDENT CODE CONSULTANTS (A CO  
6280 W LAS POSITAS BLVD STE 220  
PLEASANTON, CA 94588

WE HAVE THE RIGHT TO RECOVER OUR PAYMENTS FROM ANYONE  
LIABLE FOR AN INJURY COVERED BY THIS POLICY. WE WILL  
NOT ENFORCE OUR RIGHT AGAINST THE PERSON OR  
ORGANIZATION NAMED IN THE SCHEDULE.

THIS AGREEMENT APPLIES ONLY TO THE EXTENT THAT YOU  
PERFORM WORK UNDER A WRITTEN CONTRACT THAT REQUIRES YOU  
TO OBTAIN THIS AGREEMENT FROM US.

THE ADDITIONAL PREMIUM FOR THIS ENDORSEMENT SHALL BE  
2.00% OF THE TOTAL POLICY PREMIUM.

SCHEDULE

<u>PERSON OR ORGANIZATION</u>	<u>JOB DESCRIPTION</u>
ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER	BLANKET WAIVER OF SUBROGATION

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

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO: **JANUARY 2, 2020**

  
AUTHORIZED REPRESENTATIVE

  
PRESIDENT AND CEO