



**CUPERTINO**

**CITY OF CUPERTINO**

**REQUEST FOR QUALIFICATIONS**

**FOR**

**CIVIL ENGINEERING AND/OR SURVEYING SERVICES**

**FOR**

**PUBLICLY BID AND BUILT PROJECTS**

June 25, 2015

OFFICE OF THE DIRECTOR OF PUBLIC WORKS

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

TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333

# REQUEST FOR QUALIFICATIONS CITY OF CUPERTINO

## TABLE OF CONTENTS

1. DESCRIPTION AND SCOPE
2. SUBCONSULTANTS
3. QUALIFICATIONS SUBMITTAL
4. CONSULTANT SELECTION
5. PRE-QUALIFIED LIST AND INTERVIEWS
6. PROFESSIONAL SERVICES PROPOSAL
7. CONTRACT REQUIREMENTS
8. ATTACHMENTS

Attachment A, SOQ Consultant Rating From

Attachment B, Sample Agreements for Civil Engineering and for Surveyor

## 1. DESCRIPTION AND SCOPE

The City of Cupertino invites qualifications submittals from qualified professionals to provide civil engineering and/or surveying services for publicly bid and built projects. The City is seeking to secure high quality firms to be included on pre-qualified lists of firms for civil engineering and/or surveying, for various types of projects that will be publicly bid and built. Project could include buildings, civil work such as parks, Right-of-Way (R-O-W) work, utilities, drainage, accessibility upgrades, medians, and other public funded projects. A firm is not required to be able to provide both civil engineering and surveying to be considered to be on one of the pre-qualified lists, the City will be preparing two separate list of pre-qualified firms and a firm may be on both or just one depending on qualifications.

**Firms must provide a separate qualification submittal to be considered for Civil Engineering services and one to be considered for Surveying Services. No combined qualifications submittals will be accepted.** Please ensure that your submittal is very clear marked regarding which service the qualifications cover.

**The types of civil engineering work may include but is not limited to:**

Drainage: Evaluate existing storm drainage systems performance, provide alternative for upgrades, prepare design and construction documents, prepare cost estimates, and perform construction administration and construction surveying; update the City's Master Storm Drainage Plan

To view a copy of the City of Cupertino current Capital Improvement Program and budget go to this web address: <http://www.cupertino.org/index.aspx?page=176>.

R-O-W Improvements:

- Street reconstruction
- Overlays, Slurry Seals and Cape Seals
- Widening
- Curb, gutter and sidewalk and driveways
- Accessibility improvements
- Bridge maintenance and improvements
- Median Islands

SWPPP: preparation and monitoring, must be certified as a Qualified SWPPP Developer (QSD) and/or Qualified SWPPP Practitioner (QSP)

**The types of surveying work may include but is not limited to:**

Topo, construction staking, property line survey, plan and profile

Parcel Map and Subdivision Map: reviewing and signing for City

The City intends to review qualifications received, and create two lists of firms that are deemed pre-qualified to provide any or all of the services included here. The listed firms will be considered pre-qualified to provide services for approximately two years.

## 2. SUBCONSULTANTS

The City has strong interest in the quality of subconsultants that the lead consultant may choose to hire for assistance on this project.

## 3. QUALIFICATIONS SUBMITTAL

Statement of Qualifications (SOQ) submittals are due by noon on Wednesday, July 22, 2015. Qualifications may be mailed or delivered to **City of Cupertino, City Hall, Public Works Department, 10300 Torre Avenue, Cupertino, CA 95014, Attention: Carmen Lynaugh, labeled: Civil Engineering or Surveying Services Request for Qualifications.** Please submit four (4) printed and bound copies (8 1/2"x11") and an electronic copy in pdf format. Two sided copies are acceptable and encouraged. **Late, emailed, or faxed submittals will be *immediately* considered non responsive without further review and eliminated from consideration.** Questions may be directed to Carmen Lynaugh, Public Works Project Manager, at 408-777-3354, or via email, [carmenl@cupertino.org](mailto:carmenl@cupertino.org)

The City reserves the right to reject any or all submittals, waive any irregularities, and select firms which, in its opinion, best serve the City's interests. **The Consultant is responsible for *all* costs associated with the Statement of Qualifications submission.**

The qualifications submittal shall not exceed fifteen (15) pages, excluding table of contents, cover letter, resumes for key personnel, and any promotional materials. The

City prefers a quality submission over quantity and succinct, responsive proposals are welcomed. **Submissions will not be returned.**

**All Consultant SOQ submissions shall provide the following general information:** Business type (corporation, partnership, sole proprietorship) firm's organization structure, background, general qualifications, licensed professionals, licensed sub consultants, and recent experience with public works project in California, particularly in the City of Cupertino and the San Francisco Bay area.

**Additional specific information required:**

- a. **An original, wet signed cover letter of interest with overview of qualifications, point of contact, phone number, e-mail, and a statement that the Consultant accepts the attached City of Cupertino standard consultant agreement, including specifically listing City's Hold Harmless Indemnity requirements and insurance coverage requirements, without modification.**
- b. Location of the office(s) where the services are performed
- c. Special firm knowledge or capabilities
- d. Principal staff involved in public projects, role of each, and key personnel resumes including license number. Relevant information includes related public sector experience; dates, approximate project cost and project duties/responsibilities. Firm personnel shall be referenced to personnel resume included in an appendix.
- e. Provide a minimum of (5) project examples in the past three (3) years that best represent the firm's qualifications and capabilities. Information regarding the project location, short description, firm project manager, sub consultants, project budget, and final construction cost is required along with a single client contact for each.
- f. Provide a minimum of (3) public sector projects in California, ideally, in the San Francisco Bay Area, over the past three (3) years that best represent the firm's qualification and capabilities. **Note: Public sector experience stated here may be used to satisfy three of the project required (E) above.** Provide Information

regarding the project location, project scope, firm scope of services, firm project manager, sub consultants, project budget, and final construction cost is required along with a single client contact for each.

- g. Provide a list of Subconsultants used in the public projects in (F) above along with the firm resume, principal licensed staff, and qualifications relative to their individual discipline.
- h. Current labor category rate schedule valid for the two year qualification period.

#### 4. CONSULTANT SELECTION

The City qualifications review panel will assess each SOQ submission according to Attachment A, Consultant Rating Form. **Consultants with total scores over eighty (80) points will be ranked according to score and included on the prequalified list of Civil Engineer and/or Surveyors consultants.**

#### 5. PER-QUALIFIED LIST and INTERVIEWS

Selected Consultants shall remain on the City's pre-qualified list for approximately a two year period. The City, *at its sole discretion*, will select Consultants from the list based on (1) the best fit for a particular project (2) volume of existing City work, and (3) past performance on City/public projects.

In certain cases, the City may request that several firms on the prequalified list participate in a project specific interview to better determine the "best fit" among firms with similar qualifications. The City will provide interview invitations and selection information on a project specific basis as the need occurs. **All consultant costs associated with the project interview are the consultant's responsibility.**

The City reserves the right to reject any and all consultants.

The City reserves the right to issue a master services agreement with one or more pre-qualified firms.

Business License Requirements: The consultant and their subconsultants must hold or obtain business licenses in the City for any work within City limits.

## 6. PROFESSIONAL SERVICES PROPOSAL

Consultants selected for *specific projects* shall submit a professional services proposal in response to a City Request for Proposal. Each consultant proposal shall include a **detailed cost breakdown of the total proposed fee, including any sub consultant work, by proposed hours and rates, broken down by task, and any additional costs anticipated to complete the project.** The proposal shall be based on project fact finding with the City and the final scope of services definition. The final consultant project scope and fee shall be a negotiated agreement using the Consultant's professional services proposal as the basis of estimate (BOE).

If the City starts negotiations with a firm and are unsuccessful within 10 working days to negotiate an agreement, the City may initiate negotiations with another firm as needed.

## 7. CONTRACT REQUIREMENTS

Once project scope and fee are negotiated, the Consultant shall execute a standard City of Cupertino professional consultant services contract defining basic contractual relationships with attachments that specify the scope of services, compensation schedule, and deliverable schedule. A sample City contract is attached to this RFQ as Attachment B. Please note that insurance requirements are identified in the contract. **The Consultant must specifically agree, in writing, to accept the standard form of consultant agreement, without modification, in the SOQ submission cover letter (3A). Firms failing to provide this statement shall be considered 'non responsive' and eliminated from further consideration.**

## 8. ATTACHMENTS

The following attachments are provided with the RFQ package:

- 1) Attachment A, SOQ Consultant Rating Form
- 2) Attachment B, two City of Cupertino Standard Consultant Agreement with general Exhibits A, B, and C.

END OF REQUEST FOR QUALIFICATIONS



**CITY OF CUPERTINO**  
**Attachment A Consultant Rating Form**  
**PROFESSIONAL CIVIL ENGINEERING OR SURVEYING SERVICES**

Consultant: \_\_\_\_\_

Review Date: \_\_\_\_\_

Final Ranking:

Panel Member: \_\_\_\_\_

**Evaluation Criteria**

**Score**

<b>1</b>	Consultant SOQ responsive to submission criteria. (0-10)	<input style="width: 40px; height: 30px;" type="text"/>
<b>2</b>	Consultant provided an original, wet signed, cover letter of interest with all required information. (0 or 5)	<input style="width: 40px; height: 30px;" type="text"/>
<b>3</b>	Consultant has qualified personnel available to perform the scope of services. (0-15)	<input style="width: 40px; height: 30px;" type="text"/>
<b>4</b>	Consultant has experience directly related to the potential scope of services. (0-15)	<input style="width: 40px; height: 30px;" type="text"/>
<b>5</b>	Consultant provided (5) representative project examples within the past three (3) years with required information. (0-15)	<input style="width: 40px; height: 30px;" type="text"/>
<b>6</b>	Consultant provided (3) public sector projects in California/San Francisco Bay Area within the past three (3) years and provided the required information. (0-15)	<input style="width: 40px; height: 30px;" type="text"/>
<b>7</b>	Consultant has qualified sub consultants available to perform the scope of services and provided the required information. (0-10)	<input style="width: 40px; height: 30px;" type="text"/>
<b>8</b>	Consultant provided labor rate schedules valid for the two year qualification period. (0 or 10)	<input style="width: 40px; height: 30px;" type="text"/>
<b>9</b>	Consultant accepts the City of Cupertino standard form consultant agreement, including hold harmless indemnity and insurance requirements and general attachments, <b>without modification. Note: a zero score shall eliminate the consultant from further consideration.</b> (0 or 5)	<input style="width: 40px; height: 30px;" type="text"/>
<b>Total Score (x/100)</b>		<input style="width: 60px; height: 50px;" type="text"/>



**Attachment B**

**AGREEMENT TO BE USED FOR CIVIL ENGINEERING SERVICES**

**Sample City of Cupertino Agreement**

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND \_\_\_\_\_ FOR CONSULTANT SERVICES FOR \_\_\_\_\_**

THIS AGREEMENT, for reference dated \_\_\_\_\_, 20\_\_, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), and \_\_\_\_\_, a (California corporation, partnership, sole proprietor, individual) whose address is \_\_\_\_\_(hereinafter referred to as "Consultant"), and is made with reference to the following:

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Consultant desire to enter into an agreement for \_\_\_\_\_ upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

**TERM:**

The term of this Agreement shall commence on the date this agreement is executed and shall terminate on \_\_\_\_\_, 20\_\_, unless terminated earlier as set forth herein.

**SERVICES TO BE PERFORMED:**

Consultant shall perform each and every service set forth in Exhibit "A". titled "Scope of Services" which is attached hereto and incorporated herein by this reference.

**SCHEDULE OF PERFORMANCE:**

The Services of Consultant are to be completed according to the schedule set out in Exhibit B, titled "Schedule of Performance ", which is attached hereto and incorporated herein by this reference.

**COMPENSATION TO CONSULTANT:**

The maximum compensation to be paid to Consultant under this agreement shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The rate of payment is set out in Exhibit C, titled "Compensation", which is attached hereto and incorporated herein.

Consultant shall furnish to City a detailed statement of the work performed for compensation during the term of this Agreement. Consultant may submit monthly invoices for interim progress payments during the course of each phase, clearly stating as a minimum the total Contract amount, amount paid to date, percent complete and amount due.

**TIME IS OF THE ESSENCE:**

Consultant and City agree that time is of the essence regarding the performance of this Agreement.

**STANDARD OF CARE:**

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

**INDEPENDENT PARTIES:**

City and Consultant intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by City to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

**IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Consultant assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Consultant shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

**NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**PROJECT COORDINATION**

CITY: Director of Public Works shall be representative of City for all purposes under this Agreement. \_\_\_\_\_, is hereby designated as the Director of Public Works' designee and Project Manager, and shall supervise the progress and execution of this Agreement.

CONSULTANT: Consultant shall assign a single Consultant Project Manager to have overall responsibility for the progress and execution of this Agreement for Consultant. Should circumstances or conditions subsequent to the execution of the Agreement require a substitute Consultant Project Manager for any reason, the Consultant Project Manager designee shall be subject to the prior written acceptance and approval of the City Project Manager. The designated Consultant Project Manager shall be \_\_\_\_\_.

**HOLD HARMLESS:**

A. Indemnity Obligations Subject to Civil Code Section 2782.8.

1. Where the law establishes a standard of care for Consultant's professional services, and to the extent the Consultant breaches or fails to meet such established standard of care, or is alleged to have breached or failed to meet such standard of care, Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be obligated under this Agreement to indemnify City to

the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.

2. Notwithstanding the foregoing, the Consultant has no duty to provide or to pay for an up-front defense against unproven claims or allegations, but shall pay or reimburse the City for its reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation to the extent caused by the negligence, recklessness, or willful misconduct of Consultant or its employees, officers, officials, agents or independent contractors. However, the Consultant shall provide its immediate and active cooperation and assistance to the City, at no additional cost to the City, in analyzing, defending, and resolving such claims.

B. Claims for Other Liability. For all liabilities other than those included within paragraph A. above, Consultant shall, to the fullest extent allowed by law, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers against any and all liability, claims, actions, causes of action or demands whatsoever from and against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the performance of this Agreement by Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.

C. Claims involving intellectual property. In addition to the obligations set forth in (A) and (B) above, Consultant shall indemnify, defend, and hold the City, its elected and appointed officers, employees, and volunteers, harmless from and against any Claim in which a violation of intellectual property rights, including but not limited to copyright or patent rights, is alleged that arises out of, pertains to, or relates to Consultant's negligence, recklessness or willful misconduct under this Agreement. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation.

## **INSURANCE:**

On or before the commencement of the term of this Agreement, Consultant shall furnish City with certificates showing the type, amount, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 12A, B, C, D and E. Such certificates, which do not limit Consultant's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino, Attention: City Manager." It is agreed that Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and authorized to do insurance business in the State of California. Endorsements naming the City as additional insured in relation to the commercial general liability and commercial automobile liability policies shall be submitted with the insurance certificates.

A. **COVERAGE:**

Consultant shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$500,000

each occurrence

\$1,000,000

aggregate - all other

Property Damage: \$100,000 each occurrence

\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Commercial automotive liability coverage in the following minimum limits:

Bodily Injury: \$500,000 each occurrence

Property Damage: \$100,000 each occurrence

or

Combined Single Limit: \$500,000 each accident

(4) **Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000 per claim and in the aggregate.

B. **SUBROGATION WAIVER:**

Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide commercial general and automotive liability insurance, Consultant shall look solely to his/her insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing commercial general and automotive liability insurance to either Consultant or City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE:**

If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any worker's compensation and professional liability insurance, required by this Agreement. An additional insured named herein shall

not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

**CONFLICT OF INTEREST:**

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

**PROHIBITION AGAINST TRANSFERS:**

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 without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

**SUBCONTRACTOR APPROVAL:**

Unless prior written consent from City is obtained, only those people and subcontractors whose names are included in this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**PERMITS AND LICENSES:**

Consultant, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

## **OWNERSHIP OF WORK:**

A. Any interest (including copyright interests) of Consultant and its subconsultants in each and every study, document, report, draft, memoranda, work product, map, record, plan, drawing, specification and other deliverable, in any medium prepared or created by Consultant or its subconsultants pursuant to or in connection with this Agreement, shall be the exclusive property of City. To the extent permitted by Title 17 of U.S. Code, all work product prepared or created under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of City. In the event that it is ever determined that any works prepared or created by Consultant or any subconsultant under this Agreement are not works for hire under U.S. law, Consultant hereby assigns to City all copyrights to such works when and as created. With Owner's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities and in its promotional materials. With respect to Consultant's standard details, Consultant may retain the copyright, but grants to City a perpetual non-exclusive license to use such details in connection with the Project.

B. Without limiting any other City right to any of the works prepared or created by Consultant or its subconsultants, all works may be used by City in execution or implementation of:

- (1) The original Project for which Consultant was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original project; and/or
- (4) Other City projects as appropriate.

C. Any City reuse of works shall be subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3 or 6735.4, if and to the extent applicable. Any City reuse of works for any purpose other than those in B(1) through B(3) above, and any modifications to any of the works, shall be at City's sole risk and expense.

D. Consultant shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

E. All written work required to be provided by this Agreement (other than large-scale architectural plans and similar items) shall be printed on recycled paper and shall be copied on both sides of the paper except for one original, which shall be single sided.

F. No work, information or other data given to or prepared created or assembled by Consultant or any of its subconsultants pursuant to this Agreement, shall be made available to any individual or organization by Consultant or any subconsultant without prior approval by City.

G. Electronic and hard copies of Consultant's work product shall constitute the Project deliverables. Plans shall be in CAD and PDF formats, and other documents shall be in Microsoft Word and PDF formats.

**RECORDS:**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts there from as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

**NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Consultant to City shall be addressed to City at:

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014  
Attention: \_\_\_\_\_

All notices, demands, requests, or approvals from City to Consultant shall be addressed to Consultant at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TERMINATION:**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If such default is not cured within the time specified after receipt by Consultant from City of

written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the Consultant written notice thereof.

City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Consultant as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

In the event of termination, Consultant shall deliver to City, copies of all reports, documents, and other work performed by Consultant under this Agreement.

**COMPLIANCES:**

Consultant shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

**CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. 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.)

Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Santa Clara, State of California.

**ADVERTISEMENT:**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

**WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Consultant.

**GIFTS:**

- A. Consultant is familiar with City’s prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in City Administrative Procedures.
  
- B. Consultant agrees not to offer any City officer or designated employee any gift prohibited by the Administrative Procedures.
  
- C. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Consultant. In addition to any other remedies, City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 19 of this Agreement.

**INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

**CAPTIONS:**

The captions 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.

P.O. No.: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

**CONSULTANT**

**CITY OF CUPERTINO**  
A Municipal Corporation

[Name of Consultant]

By \_\_\_\_\_

By \_\_\_\_\_

Timm Borden, Director of Public Works

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Tax I.D. No.: \_\_\_\_\_

APPROVED AS TO FORM:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Carol Korade, City Attorney

ATTEST:

\_\_\_\_\_  
Grace Schmidt, City Clerk

Contract Amount: \_\_\_\_\_

Account No. : \_\_\_\_\_

# **AGREEMENT TO BE USED FOR SURVEYING SERVICES**

## **Sample City of Cupertino Agreement**

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND \_\_\_\_\_ FOR  
CONSULTANT SERVICES FOR \_\_\_\_\_**

THIS AGREEMENT, for reference dated \_\_\_\_\_, 20\_\_, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), and \_\_\_\_\_, a (California corporation, partnership, sole proprietor, individual) whose address is \_\_\_\_\_(hereinafter referred to as "Consultant"), and is made with reference to the following:

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Consultant desire to enter into an agreement for \_\_\_\_\_ upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM:**

The term of this Agreement shall commence on the date this agreement is executed and shall terminate on \_\_\_\_\_, 20\_\_, unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED:**

Consultant shall perform each and every service set forth in Exhibit "A". titled "Scope of Services" which is attached hereto and incorporated herein by this reference.

**3. SCHEDULE OF PERFORMRANCE:**

The Services of Consultant are to be completed according to the schedule set out in Exhibit B, titled "Schedule of Performance ", which is attached hereto and incorporated herein by this reference.

**4. COMPENSATION TO CONSULTANT:**

The maximum compensation to be paid to Consultant under this agreement shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The rate of payment is set out in Exhibit C, titled "Compensation", which is attached hereto and incorporated herein.

Consultant shall furnish to City a detailed statement of the work performed for compensation during the term of this Agreement. Consultant may submit monthly invoices for interim progress payments during the course of each phase, clearly stating as a minimum the total Contract amount, amount paid to date, percent complete and amount due.

**5. TIME IS OF THE ESSENCE:**

Consultant and City agree that time is of the essence regarding the performance of this Agreement.

**6. STANDARD OF CARE:**

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

**7. INDEPENDENT PARTIES:**

City and Consultant intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by City to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

**8. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Consultant assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Consultant shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

**9. NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**10. PROJECT COORDINATION**

CITY: Director of Public Works shall be representative of City for all purposes under this Agreement. \_\_\_\_\_ is hereby designated as the Director of Public Works' designee and Project Manager, and shall supervise the progress and execution of this Agreement.

CONSULTANT: Consultant shall assign a single Consultant Project Manager to have overall responsibility for the progress and execution of this Agreement for Consultant. Should circumstances or conditions subsequent to the execution of the Agreement require a substitute Consultant Project Manager for any reason, the Consultant Project Manager designee shall be subject to the prior written acceptance and approval of the City Project Manager. The designated Consultant Project Manager shall be \_\_\_\_\_.

**11. HOLD HARMLESS:**

Indemnification:

A. Claims for Professional Liability. Where the law establishes a standard of care for Consultant's professional services, and to the extent the Consultant breaches or fails to meet such established standard of care, or is alleged to have breached or failed to meet such standard of care, Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole negligence or willful misconduct of City, its agents or employees.

B. Claims for Other Liability. Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the performance of this Agreement by Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation.

## 12. INSURANCE:

On or before the commencement of the term of this Agreement, Consultant shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 12A, B, C, D and E. Such certificates, which do not limit Consultant's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino by certified mail, Attention: City Manager." It is agreed that Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

### A. COVERAGE:

Consultant shall maintain the following insurance coverage:

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$500,000

each occurrence

\$1,000,000

aggregate - all other

Property Damage: \$100,000 each occurrence

\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automotive liability coverage in the following minimum limits:

Bodily Injury: \$500,000 each occurrence

Property Damage: \$100,000 each occurrence

or

Combined Single Limit: \$500,000 each occurrence

(4) **Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.

**B. SUBROGATION WAIVER:**

Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

**C. FAILURE TO SECURE:**

If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

**D. ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**E. SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

**13. CONFLICT OF INTEREST:**

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

**14. PROHIBITION AGAINST TRANSFERS:**

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 without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

**15. SUBCONTRACTOR APPROVAL:**

Unless prior written consent from City is obtained, only those people and subcontractors whose names are included in this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**16. PERMITS AND LICENSES:**

Consultant, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

**17. REPORTS:**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of City. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to City the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of City, and all publication rights are reserved to City. Consultant may retain a copy of any report furnished to the City pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by City in execution or implementation of:

- (1) The original Project for which Consultant was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original project; and/or
- (4) Other City projects as appropriate.

C. Consultant shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by City.

F. Electronic and hard copies of Consultant's work product shall constitute the Project deliverables. Plans to be in CAD and PDF formats, and other documents to be in Microsoft Word and PDF formats. City holds Consultant harmless for any modifications to the documents.

**18. RECORDS:**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

**19. NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Consultant to City shall be addressed to City at:

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014  
Attention: \_\_\_\_\_

All notices, demands, requests, or approvals from City to Consultant shall be addressed to Consultant at:

---

---

---

---

**20. TERMINATION:**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If such default is not cured within the time specified after receipt by Consultant from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the Consultant written notice thereof.

City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Consultant as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

In the event of termination, Consultant shall deliver to City, copies of all reports, documents, and other work performed by Consultant under this Agreement.

**21. COMPLIANCES:**

Consultant shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

**22. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. 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.)

Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Santa Clara, State of California.

**23. ADVERTISEMENT:**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

**24. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**25. INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever

kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Consultant.

**26. GIFTS:**

- A. Consultant is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in City Administrative Procedures.
- B. Consultant agrees not to offer any City officer or designated employee any gift prohibited by the Administrative Procedures.
- C. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Consultant. In addition to any other remedies, City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 19 of this Agreement.

**27. INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

**28. CAPTIONS:**

The captions 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.

P.O. No.: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

**CONSULTANT**

**CITY OF CUPERTINO**  
A Municipal Corporation

[Name of Consultant]

By \_\_\_\_\_

By \_\_\_\_\_

Timm Borden, Director of Public Works

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Tax I.D. No.: \_\_\_\_\_

APPROVED AS TO FORM:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Carol Korade, City Attorney

ATTEST:

\_\_\_\_\_  
Grace Schmidt, City Clerk

Contract Amount: \_\_\_\_\_

Account No. : \_\_\_\_\_

# EXHIBIT "A"

## SAMPLE OF SCOPE OF SERVICES FOR A CIVIL ENGINEERING DESIGN, BID, BUILD PUBLIC WORKS PROJECT

This is an exhibit attached to, and made a part of, the Agreement between the City of Cupertino City”) and XXXXX (“Consultant”) for the provision of professional civil engineering services (“Services”).

CONSULTANT shall perform professional services as detailed in the following sections related to the design, bidding and construction for a Public Works Project. (Hereafter referred to as “Project”)

### SECTION 1. GENERAL

- A. General PROJECT Description:** The PROJECT involves design development, construction document preparation, bid support, and construction administration services for the project. The project will be for the construction of XXXXX. The amount available for construction of the PROJECT, including contingencies for design, bidding and price escalations, but excluding compensation to CONSULTANT, construction management consultant is approximately (\$XXX,XXX) XXXXXXX THOUSAND DOLLARS (“CONSTRUCTION BUDGET”).
- B. General Performance Requirements:**
1. The performance of all services by CONSULTANT shall be to the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services and the standard of care provisions contained in this AGREEMENT.
  2. The CITY’s Department of Public Works shall manage the PROJECT and this AGREEMENT. CONSULTANT shall receive final direction from the CITY’s Director of Public Works or his/her authorized designee (hereinafter collectively “CITY”) only. The CITY shall resolve any conflicting direction from other groups, departments or agencies.
  3. CONSULTANT shall coordinate this scope of services with the CITY as well as with other CITY consultants and contractors, as needed or as directed by the CITY. CONSULTANT shall schedule meeting and prepare meeting agendas and minutes for all PROJECT meetings during the design phase under the scope of work. All minutes of meetings are due to the CITY within five (5) working days after the meeting. CONSULTANT shall provide copies of such documentation to the CITY, and as directed by the CITY, to other appropriate agencies and entities. CONSULTANT shall coordinate all responses to comments through the CITY.
  4. CONSULTANT shall designate and provide to the CITY the names of their team members for the PROJECT. The team members shall be satisfactory to the CITY.

CONSULTANT shall not substitute any team members without the prior approval of the CITY.

5. CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly process of the work. The schedule for the performance included in EXHIBIT B, may be adjusted by mutual agreement.
6. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. CONSULTANT shall consult with the CITY, research applicable design criteria, and communicate with members of the PROJECT team.
7. When the CITY determines that the PROJECT requirements have been sufficiently identified, CONSULTANT shall prepare and update a PROJECT schedule for the CITY at the beginning of each TASK as defined in SECTION 2 - "TASK" of this EXHIBIT A. The PROJECT schedule shall identify milestone dates for decisions required of the CITY, design services furnished by CONSULTANT and CONSULTANT's SUBCONSULTANTS, dates of reviews and approvals required by all governmental agencies that have jurisdiction over the PROJECT, deliverables to be furnished by CONSULTANT, completion of documentation provided by CONSULTANT, commencement of construction and substantial completion of the construction of the PROJECT, and as identified in the exhibits under this AGREEMENT.
8. CONSULTANT shall submit construction documents to the CITY, according to SECTION 2 - "TASKS", of this EXHIBIT A for purposes of evaluation and approval by the CITY. The CITY including the Department of Public Works Engineering and other City department as necessary will review the documents during each phase. CONSULTANT will meet with the CITY for progress review at various stages of the PROJECT. CONSULTANT will be responsible for causing the appropriate SUBCONSULTANT(S) to attend any meetings included in this SCOPE OF SERVICES. CONSULTANT shall make revisions to the construction documents as required for each task in a timely manner.
9. CONSULTANT shall assist the CITY, as requested by the CITY, in connection with the CITY's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the PROJECT, including submitting to the CITY's Building Department for a building permit if required.
10. CONSULTANT shall prepare and present to the CITY an Organization Chart, Directory, and Communication Flow Chart at the PROJECT Kick-Off Meeting. This meeting shall introduce team members, establish routes of communication, and discuss the participants' roles, responsibilities, and authority.

**C. Estimate of Probable Construction Cost:** CONSULTANT shall be responsible to design the PROJECT and provide an Estimate of Probable Construction Cost consistent with the following procedures and requirements.

1. CONSULTANT shall be responsible for designing the PROJECT so that the Estimate of Probable Construction Cost is less than or equal to the CONSTRUCTION BUDGET established by the CITY for the PROJECT. The Project

Construction Budget shall be provided by the CONSULTANT as a summary sheet with submittal of each required Estimate of Probable Construction Cost, showing comparisons of cost evolution for the PROJECT. As the design process progresses CONSULTANT shall update and refine the Estimate of Probable Construction Cost as required in SECTION 2 – “SCOPE OF SERVICES” of this EXHIBIT A. CONSULTANT shall advise the CITY in writing of any adjustments to previous Estimates of Probable Construction Cost indicated by changes in PROJECT requirements or general market conditions.

2. Should the Estimate of Probable Construction Cost exceed the CONSTRUCTION BUDGET, CONSULTANT shall, during the design phases of the project, revise, without additional cost to the CITY, the design documents and/or Construction Documents incorporating scope and quality changes to reduce the estimated costs for construction, to within the CONSTRUCTION BUDGET. CONSULTANT shall make changes only as approved by the CITY in writing. Reductions in scope may be required to meet the CITY’s budget, and the CITY will not unreasonably withhold permission for such reductions in scope order for the CONSULTANTS to meet the budget. Notwithstanding the foregoing, to the extent the Estimate of Probable Construction Cost exceeds the CONSTRUCTION BUDGET due to any program, design or budget changes, initiated and authorized by the CITY which are beyond CONSULTANT’s control, any changes required in the design documents, shall be considered as Additional Services as noted in EXHIBIT C of this AGREEMENT.
3. In preparing the Estimate of Probable Construction Cost, CONSULTANT, in consultation with the CITY, shall do each of the following: (a) include contingencies for design, bidding, and price escalations to determine which materials, equipment, component systems and type of construction are to be included in the PROJECT, and (b) make reasonable adjustments and/or to value engineer various items in all required submittal cost estimates of the PROJECT, including alternate bids, in order to adjust the estimated construction cost to be less than or equal to the CONSTRUCTION BUDGET.
4. If bidding has not commenced within 90 days after CONSULTANT submits the Construction Documents to the CITY, CONSULTANT shall adjust the Estimate of Probable Construction Cost to reflect changes in the general level of prices in the construction industry. This will be an additional service.
5. CONSULTANT shall identify, develop and incorporate into the Construction Documents “Add or Deduct Alternate” construction cost elements that may be chosen to meet the City’s budget. Alternates shall be approved by the CITY before being incorporated into the Construction Documents.
6. Should the lowest responsive bid exceed the CONSTRUCTION BUDGET by more than ten percent (10%), CONSULTANT shall, if directed by the CITY, submit without additional cost to the CITY, revised Construction Documents reflecting changes, approved by the CITY, to reduce the Construction Costs to within the CONSTRUCTION BUDGET. The CITY acknowledges that the

CONSULTANT does not control market conditions and agrees that they may allow reductions in scope in order to meet the CITY's construction budget.

## **SECTION 2.            TASKS**

### **TASK #1: Design Development**

This task shall include the following items:

- Kickoff meeting with CITY (1 meeting)
- Review of background information and previous plans for park improvements
- Perform site visit
- Merge data from previous design and topographic survey on to CONSULTANTS format.
- Prepare up to three (3) conceptual project plans, including but not limited to grading and drainage alternative and develop conceptual cost estimate for each alternative. Grading and drainage to handle concerns of runoff to adjacent property, seek to retain stormwater on site.
- Prepare 35% PS&E including the following: cover sheet; topo survey sheet; demolition plan; grading/drainage/utility plan; site improvement plan; landscape/planting plan; irrigation plan; erosion control plan; BMP sheet (CITY supplied); Draft technical specifications outline; Estimate of Probable Construction Cost. Plan set shall be on 22" x 34" for full size and 11" x 17" scalable at 50%. Submittal shall be in a pdf format for the plans and specifications.
- Meets with CITY to discuss proposed improvements (2 meeting)

### **TASK #2: CONSTRUCTION DOCUMENTS:**

This task shall include the following items:

- Update and revise the 35% submittal of plans based on review comments from CITY and further developing of detailed design.
- Prepare pre-final technical specifications in CSI format for civil scope of work, CITY to prepare Div. 0 & 1.
- Prepare pre-final estimate of probable construction cost.
- Meeting with CITY to discuss pre-final review comments (1 meeting)
- Prepare final construction documents based on further design development and pre-final review comments. Provide CITY with on full size stamped and signed set of plan, also provide in a pdf and AutoCAD format electronic. Provide the specifications in MS Word and pdf electronic format.
- Prepare final estimate of probable construction cost, provide in MS Excel and pdf electronic format.

**TASK # 5: BID PERIOD AND CONSTRUCTION ADMINISTRATION SERVICES:**

This task shall include the following items:

- Respond to bidder’s question by assisting CITY with Addendum issuing.(X budgeted)
- Attend Pre-Bid Meeting, prepare notes
- Review Shop Drawings and Material Submittals (X budgeted)
- Respond to RFI’s (X budgeted)
- Assist in Change Order review and preparation (X budgeted)
- Attend job site meeting (X budgeted)
- Prepare Record Drawing from Contractor As-built mark up.

**ADDITIONAL SERVICES**

Consultant Services beyond the work in these tasks may be provided by CONSULTANT as Additional Services only if such Additional Services are authorized in writing by the CITY in advance. An Additional services amount of XXXXXXXXXX THOUSAND DOLLARS (\$ XX,XXX) is made a part of this agreement. Additional services may be paid for as a negotiated maximum not to exceed amount or by a time and materials cost accounting with a maximum not to exceed.

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

CONSULTANT shall complete all work by XXXXXXXX, XX, 20XX.

The following sets forth the distribution of CONSULTANT's Schedule of Performance for each project. The CITY may approve in writing the extension of any milestone date set in this Exhibit.

Task #1:	Design Development	<b>2 weeks</b> after Notice to Proceed (NTP) for this phase
Task#2	Construction Documents	<b>4 weeks</b> after Notice to Proceed (NTP) for this phase
Task #3:	Bid Period and Construction Administration Services	<b>7 week</b> after Notice to Proceed (NTP) for this phase

**EXHIBIT C**  
**COMPENSATION**

**A. Maximum Compensation.**

The CITY agrees to compensate CONSULTANT for professional services performed in accordance with the terms and conditions of this AGREEMENT. The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services, additional services and reimbursable expenses, shall not exceed XXXXXXXXXXXX THOUSAND DOLLARS (\$ XX,XXX). CONSULTANT agrees that it shall perform all of the services set forth in Exhibit A of this AGREEMENT, except for additional services required pursuant to Section 2, TASKS and inclusive of reimbursable expenses, for the maximum not to exceed amount of XXXXXXXXXXXX THOUSAND DOLLARS (\$ XX,XXX). The maximum amount of Additional Services are authorized under Section G of this EXHIBIT C is XXXXXXXXXXXX THOUSAND DOLLARS (\$ X,XXX).

**B. Method of Payment**

For Task Nos. 1 through 3 CONSULTANT shall, during the term of this AGREEMENT, invoice the CITY monthly based upon a percentage of completion of each milestone set forth below in the Payment Schedule (Schedule D below) for services performed, and reimbursable expenses incurred if applicable, in completing that milestone under this AGREEMENT. (Hereinafter "Invoice.") Provided CONSULTANT has completed the services and incurred the reimbursable expenses covered by the Invoice in accordance with the provisions of this AGREEMENT, as determined by the CITY, the CITY shall pay CONSULTANT the amount shown on the Invoice within thirty (30) working days of receipt of the Invoice.

The Invoice shall be based on the percentage of milestone completed, and it shall describe the topics and tasks completed during the Invoice period in accordance with the Budget Schedule and Payment Schedule set forth below. The Invoice shall list work completed and reimbursable expenses if applicable, in accordance with the Budget Schedule and Payment Schedule set forth below. CONSULTANT also shall include supporting documents for any reimbursable expenses. The Invoice shall also show the total to be paid for the Invoice period.

**C. Budget Schedule**

The Budget Schedule for this AGREEMENT shall be as follows:

<u>Task Description</u>	<u>Task Compensation</u>
Task #1: Design Development	\$ X,XXX
Task #2: Construction Documents	\$ X,XXX
Task #3: Bid Period and Construction Administration Services	\$ X,XXX
Additional Services	\$ X,XXX
<b>TOTAL</b>	<b>\$ XX,XXX</b>

CONSULTANT shall not exceed any of the specified budget amounts for any Task without prior written authorization from the CITY. The CITY may approve in writing the transfer of budget amounts between any of the Tasks listed above provided the total AGREEMENT amount does not exceed XXXXXXXXXX THOUSAND DOLLARS (\$ XX,XXX).

**D. Payment Schedule**

The Payment Schedule for this AGREEMENT shall be as follows:

<b>TASK</b>	<b>MILESTONE</b>	<b>PERCENT OF TASK COMPENSATION PAID UPON COMPLETION OF MILESTONE</b>
Task #1 – Design Development		
	Review and merging of plans	20%
	Drainage alternative preparation	30%
	35% PS&E and estimate of probable construction costs	50%
Task #2 - Construction Documents		
	Pre-final PS&E and estimate of probable construction costs	70%
	Final PS&E and estimate of probable construction costs	30%
Task #3 – Bid Period and Construction Administration Services		
	Award of Contract for construction	20%
	Construction completion	60%
	Completion of Record Drawings	20%
Additional Services		
		Paid Pursuant to Subsection G below

**E. Subconsultant Services.**

CONSULTANT is directly responsible for any payment for SUBCONSULTANT work on this PROJECT. SUBCONSULTANT work on this PROJECT is included in the Budget Schedule shown above and shall be billed to the CITY by CONSULTANT as part of the Basic Services.

**F. Reimbursable expenses.**

Reimbursable expenses are included in CONSULTANT’s lump sum compensation, including, but not limited to, any expenses related to CONSULTANT’s internal plan checks, CAD test prints, 8 1/2” x 11” copies or fax copies. Plotting and Printing for public distribution will be the responsibility of the CITY. There are no separate reimbursable expenses for Basic Services performed under Tasks 1-3 of EXHIBIT A.

**G. Additional Services.**

CONSULTANT shall not perform Additional Services without prior written authorization of the CITY. Additional Services shall be separately negotiated to be paid on a lump sum or a time and material basis at the rates set forth herein, as authorized by the CITY. The CITY has set aside the sum of XXXXXXXXX HUNDRED DOLLARS (\$ X,XXX.) for the payment of Additional Services. The CITY shall not authorize and CONSULTANT shall not perform any Additional Services that result in charges in excess of the above amount.

CONSULTANT shall submit an Invoice to the CITY for payment on a monthly basis for authorized Additional Services rendered during the previous month. In the event Additional Services are authorized, CONSULTANT shall submit Invoices in accordance with the CONSULTANT hourly rate schedule attached to this EXHIBIT C. The rates shown in the EXHIBIT C-1 shall stay in effect during the full term of the contract. The CITY shall pay Additional Services Invoices as provided in this EXHIBIT C.

**EXHIBIT C-1**

**CONSULTANT HOURLY RATES FOR ADDITIONAL SERVICES**

QC Manager	\$XXX
Project Manager	\$XXX
Project Engineer	\$XXX
Administrative Clerk	\$XX

**END OF EXHIBIT "A"**