



**CUPERTINO**

**CITY OF CUPERTINO**

**REQUEST FOR QUALIFICATIONS**

**FOR**

**MATERIALS TESTING AND SPECIAL  
INSPECTION SERVICES FOR  
CITY PROJECTS**

November 20, 2015

**OFFICE OF THE DIRECTOR OF PUBLIC WORKS**  
CITY HALL • 10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
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# REQUEST FOR QUALIFICATIONS CITY OF CUPERTINO

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## 1. DESCRIPTION

The City of Cupertino invites Statements of Qualifications (SOQ) submittals from qualified professional firms to provide material (soils, aggregate, asphalt, concrete, masonry, etc.) testing and special inspection services on various new construction and facility improvement projects for the City. Environmental testing services may be required occasionally.

Potential projects where testing and inspection may be required are listed below, which are in the City's current Capital Improvement Program, and/or other City projects as they arise. Projects noted below are funded capital projects whose construction is anticipated to take place within the next two years. To view a copy of the City of Cupertino's current Capital Improvement Program and budget go to this web address:

<http://www.cupertino.org/index.aspx?page=176>.

- Blackberry Farm – Splash Pad
- Blackberry Farm Golf Course Renovation
- Lawrence-Mitty Park
- McClellan Ranch Community Garden Improvements
- McClellan Rd. Sidewalk Improvements – Phase 2
- Memorial Park Tennis Court Restroom Replacement
- Pasadena Avenue Public Improvements (between Granada & Olive)
- Sidewalk Improvements – Orange & Byrne
- Sports Center – Exterior Upgrades
- Tennis Court Resurfacing
- Paving Projects

### **Project Descriptions:**

#### **Blackberry Farm – Splash Pad (21979 San Fernando Ave.)**

This project installs a splash pad to enhance the aquatic amenities that already exist at Blackberry Farm currently.

#### **Blackberry Farm Golf Course Irrigation Upgrades (22100 Stevens Creek Blvd.)**

This project replaces the existing outdated and failing golf course irrigation system at the City-owned 9-hole course. The anticipated construction timing is early fall 2013.

#### **Lawrence – Mitty Park (Lawrence Expressway at Mitty)**

This project will develop a neighborhood park on several acres of land adjacent to Saratoga Creek, near the intersection of Lawrence Expressway and Mitty. Currently the land is owned by the County and used as a storage area.

**McClellan Ranch Community Garden Improvements (22221 McClellan Rd.)**

Replace existing fencing and upgrade the irrigation system to serve up to 80 garden plots.

**McClellan Road Sidewalk Improvements – Phase 2 (Orange to San Leandro Ave.)**

This project will construct sidewalk improvement along McClellan Road between Orange Avenue and San Leandro Avenue.

**Memorial Park Tennis Court Restroom Replacement (21251 Stevens Creek Blvd.)**

Replacement of existing restroom facility.

**Pasadena Avenue Public Improvements (Granada & Olive)**

This project will construct infill of curb, gutter and sidewalk improvement where gaps occur along Pasadena Avenue between Granada and Olive.

**Sidewalk Improvements – Orange & Byrne**

Install sidewalks along Orange Avenue and Byrne Avenue.

**Sports Center - Exterior Upgrades (21111 Stevens Creek Blvd.)**

Upgrades could include painting the building, including a mural, landscape upgrades, aesthetic treatment to the outside decking and possible installation of electronic monument sign.

**Tennis Court Resurfacing (various park locations)**

Resurfacing of tennis courts at Sports Center, Memorial Park, Varian Park and Monta Vista Park.

**Paving Projects (various locations)**

Resurfacing with asphalt, slurry seal, chip seal and cape seal

*The City intends to review qualifications received, and create a list 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. The City is committed to securing high quality services provided by experienced, capable testing and inspection practitioners that will ensure success during the construction phase.

### 3. SCOPE OF SERVICES

The City seeking to create an on-call list of Consultants to provide material testing and construction special inspection services for various facilities improvement project, on an as needed basis. On occasion environmental testing services may be needed. The projects may involve new construction, modernizations or reconstruction projects, infrastructure projects, alterations or maintenance projects as listed above. A detailed scope of services will be developed with the selected consultant team on a project-by-project basis. Typical tasks may include:

- 1) Special Inspections. The services may include but are not limited to the following, as may be required by the individual projects.
  - a. Earth work/soils inspection
  - b. Asphaltic concrete plant inspection
  - c. Asphaltic concrete placement inspection
  - d. Concrete batch plant inspection
  - e. Concrete placement inspection and sampling
  - f. Structural masonry inspection
  - g. Structural steel shop fabrication inspection
  - h. Structural steel assembly inspection
  - i. Structural steel ultrasonic testing
  - j. Fireproofing material application inspection
  - k. Roofing Inspection
  
- 2) Material Testing and Sampling. The services may include but are not limited to performing the following tests. The testing shall be performed in accordance with ASTM test methods and California test methods as appropriate.
  - a. Soil, Aggregate and Asphalt
    - 1) Maximum Dry Density
    - 2) Expansion Index
    - 3) R-Value
    - 4) Sand Equivalent
    - 5) Sieve Analysis
    - 6) Hveem Stability
    - 7) Asphalt Extraction
    - 8) Hardness and Abrasion
    - 9) Sampling
  - b. Concrete
    - 1) Cylinder Compression Strength

- 2) Anchor Pull-Out
- 3) Core Extraction
- 4) Slump
- 5) Air Testing
- 6) Concrete Cylinder Sampling/Fabrication
- c. Reinforcing Steel
  - 1) Tensile Strength
  - 2) Bend Test
  - 3) Sample and tag Specimens
- d. Masonry
  - 1) Grouted Prism
  - 2) Mortar Compression
  - 3) Grout Compression
  - 4) Anchor Pull-Out
- e. Masonry Block Conformance Testing
  - 1) Block Compression
  - 2) Block Measurement
  - 3) Block Moisture/Absorption
  - 4) Shrinkage
  - 5) Effloresce
- f. Structural Steel
  - 1) Bolt and Washer Hardness
  - 2) Fireproofing Density
  - 3) Bolt Bend/Tensile
- 3) Environmental Testing
  - a. Soil
  - b. Water
  - c. Building/Facilities

#### 4. SELECTION PROCESS

The City qualifications review panel will assess each SOQ submission according to Attachment B, Consultant Rating Form. **Consultants with total scores over eighty (80) points will be included on the prequalified list of Material Testing and Special Inspection Services Consultants.**

## 5. SELECTION CRITERIA

Some of the criteria for selection of the consultant team for this project are listed below, not necessarily in order of importance:

- Prior experience performing similar work
- Qualifications of key staff persons who will carry out the work
- Work program for carrying out the assignments and ability to adhere to schedules and budgets
- Ability to provide a range of desired services
- Ability to meet the City's schedule for the project
- Special knowledge material to the project and its execution
- Experience in working successfully with agencies and regulators having jurisdiction over the projects
- Experience in Cupertino and the south San Francisco Bay area
- Firm organization and location
- Ability to accept the City's Hold Harmless Indemnity requirement and to provide general and professional liability insurance in the required amounts, both as specified in the sample agreement
- References and recommendations

## 6. QALIFICATIONS SUBMITTAL, INSTRUCTIONS AND FORMAT

Statements of Qualifications (SOQ) submittals are due by noon on Thursday, December 17, 2015. Qualifications may be mailed or delivered to **City of Cupertino, City Hall, Public Works Department, 10300 Torre Avenue, Cupertino, CA 95014, Attention: John Raaymakers, labeled: Material Testing and Special Inspection Services Request for Qualifications.** Please submit two (2) printed and bound copies (8 1/2"x11") and an electronic copy in pdf format. No e-mail or faxed submittals will be accepted. 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 John Raaymakers, Public Works Project Manager, at 408-777-3354, or via email, [johnr@cupertino.org](mailto:johnr@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) sheets of paper (30 pages double sided), 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 subconsultants, and recent experience with public works projects in California, particularly in the City of Cupertino and the San Francisco Bay Area.

### **Additional specific required information:**

- a. **An original, wet signed cover letter of interest with overview of qualifications, point of contact, phone number, e-mail, and including 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(s). 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 scope of services, firm project manager, subconsultants, 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.** Information regarding the project location, project scope, firm scope of services, firm project manager, subconsultants, 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. Provide current labor category rate schedule valid for the approx. two year qualification period.
- i. Confirmation that the required City standard /insurance levels are acceptable.

Prior to negotiating a contract with the selected firm for a particular project assignment, City will ask the proposer to submit the expected level of services to be provided by each subconsultant, broken down by task or phase and the corresponding fees.

## 7. 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 of Cupertino for any work within City limits.

## 8. 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 subconsultant 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.

## 9. 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 A". 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 including specifically the City's Hold Harmless Indemnity requirements and insurance coverage requirements, without modification, in the SOQ submission cover letter (6a). Firms failing to provide this statement shall be considered 'non responsive' and eliminated from further consideration.**

## 10. ATTACHMENTS

The following attachments are provided with the RFQ package:

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

## Attachment A

# 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 \_\_\_\_\_, 20\_\_, 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. The \_\_\_\_\_ 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.

A. **PREVAILING WAGES:** To the extent applicable, Contractor shall comply with the City's Labor Compliance Program and all other requirements set forth in Labor Code section 1770 et seq. Contractor shall pay prevailing wages. Contractor will submit monthly certified payroll records to the City for all employees and subcontractors in a preapproved format or a City provided form. Any delay in remitting certified payroll reports to the City upon request from the City will result in either delay and/or forfeit of outstanding payment to Contractor.

B. **WORKING DAY:** To the extent applicable, Contractor shall comply with California Labor Code Section 1810, et seq. which provides that work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, must be compensated as overtime, at not less than 1 ½ times the basic rate of pay.

C. **PAYROLL RECORDS:** To the extent applicable, Contractor shall comply with California Labor Code Section 1776 which requires certified payroll records be maintained with the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this Agreement. The Payroll Records shall be made available for inspection as provided in California Labor Code Section 1776.

D. **APPRENTICES:** To the extent applicable, Contractor shall comply with California Labor Code Section 1777.5 regarding apprentices.

**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.

**22. 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.

**25. 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.

**26. 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.

**27. 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**  
**SCOPE OF SERVICES**

CONSULTANT shall perform professional construction testing services as detailed in the following sections related to various construction projects in Cupertino.

**SECTION 1. GENERAL**

**A. General PROJECT Description:** The PROJECT involves providing testing services. Testing services may include but are not limited to XXXXXXXXXXXXXXXXXXXXXXXXXXXX on various CITY construction projects. The projects include: XXXXXXXXXXXXXXXXXXXXXXXX.

**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. CONSULTANT shall be responsible for coordinating the work of all consultants and contractors, as needed or as directed by the CITY. CONSULTANT shall schedule meetings and prepare meeting agendas and minutes for all PROJECT meetings during the execution of this agreement 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.
3. 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. CITY retains the right to reject team members assigned by CONSULTANT or require replacement of team members.
4. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. CONSULTANT shall consult with the CITY, research applicable information, and communicate with members of the PROJECT team.

**C.** CONSULTANT shall effectively manage the assigned testing services for the construction projects for the efficient, progressive, and proactive delivery of each construction project. For each assigned construction project, the CONSULTANT may perform any or all of the following tasks and subtasks under Section 2, as each specific project requires.

**SECTION 2.            TASKS**

**Task 1 –XXXXXXXXXXXXXXXXXXXX**

**Task 2 – XXXXXXXXXXXXXXXXXXXXXXX**

**Task 3 – Additional Services**

1. Services provided by CONSULTANT that are different from or in addition to those described herein are being included in the scope of Basic Services are referred to as “Additional Services”. No Additional Services shall be performed without the prior written authorization of the CITY. No compensation shall be due from the CITY to the CONSULTANT for any Additional Services provided or performed by the CONSULTANT without the prior written authorization of the CITY.
  
2. Compensation to the CONSULTANT for Additional Services directed and authorized by the CITY shall be on the basis of either: 1) actual and reasonable time of the CONSULTANT’s personnel necessary to complete the authorized Additional Service computed in accordance with the Rate Schedule attached to this Agreement; or 2) a fixed price mutually agreed upon by the CITY and the CONSULTANT. The forgoing notwithstanding, if Additional Services authorized by the CITY result from the neglect of CONSULTANT or CONSULTANT’s default under this Agreement, CONSULTANT shall complete Additional Services at no cost to the CITY.

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

CONSULTANT shall complete all work by XXXXX,XX.XXXX.

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 date set in this Exhibit.

**PROJECT No. 1: XXXXXXXXXXXXXXXXXXXXXXX**

Task #1:	XXXXXXXXXXXXXXXXXXXXXXXXXXXX	<b>NIC weeks</b> after Notice to Proceed (NTP) for this phase
Task#2	XXXXXXXXXXXXXXXXXXXXXXXXXXXX	<b>1 weeks</b> after Notice to Proceed (NTP) for this phase
Task #3:	Additional Services	When authorized to Proceed on task

**PROJECT No. 2: XXXXXXXXXXXXXXXXXXXXXXXX**

Task #1:	XXXXXXXXXXXXXXXXXXXXX:	<b>1 weeks</b> after Notice to Proceed (NTP) for this phase
Task#2	XXXXXXXXXXXXXXXXXXXXX:	<b>TBD weeks</b> after Notice to Proceed (NTP) for this phase
Task #3:	Additional Services	When authorized to Proceed on task

These are estimated start times for each task.

**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 XXXXXXXXXXXXXXXXXXXX DOLLARS (\$ XXX,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 inclusive of reimbursable expenses, for the maximum not to exceed amount of XXXXXXXXXXXXXXXXXXXX DOLLARS (\$ XXX,XXX). The maximum amount of Additional Services are authorized under Section F of this EXHIBIT C is XXXXXXXXXXXXXXXXXXXX DOLLARS (\$ XX,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 task set forth below in the Payment Schedule for services performed, and reimbursable expenses incurred if applicable, in completing that task 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 the task completed, and it shall describe the work completed during the Invoice period in accordance with the Payment Schedule set forth below. The Invoice shall be broken out per project as listed on the Payment Schedule. The Invoice shall list work completed and reimbursable expenses if applicable, in accordance with the Payment Schedule set forth below. CONSULTANT also shall include supporting documents to verify completed work and for any reimbursable expenses. The Invoice shall include sufficient detail to satisfy grant requirements, funding agreements and financial audits. The Invoice shall also show the total to be paid for the Invoice period.

**C. Payment Schedule**

The Payment Schedule for this AGREEMENT shall be as follows:

**PROJECT No. 1: XXXXXXXXXXXXXXXXXXXXXXXX**

	<u>Task Description</u>	<u>Task Compensation</u>
Task #1:	XXXXXXXXXXXXXXXXXXXXX	\$ XXX
Task #2:	XXXXXXXXXXXXXXXXXXXXX	\$ XXX
Task #3:	Additional Services	\$ XXX
	<b>TOTAL</b>	<hr/> \$ XXXX

**PROJECT No. 2: XXXXXXXXXXXXXXXXXXXXXXXX**

	<u>Task Description</u>	<u>Task Compensation</u>
Task #1:	XXXXXXXXXXXXXXXXXXXXX	\$ XXX
Task #2:	XXXXXXXXXXXXXXXXXXXXX	\$ XXX
Task#3:	Additional Services	\$ XXX
	<b>TOTAL</b>	<hr/> \$ XXXX

**TOTAL OF PROJECTS:**

<b>Project No. &amp; Name</b>	<b>Total Per Project Compensation</b>
Project No. 1: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	\$ XXXX
Project No. 2: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	\$ XXXX
<b>TOTAL AGREEMENT AMOUNT</b>	<u>\$ XXXXX</u>

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 XXXXXXXXXXXX DOLLARS (\$ XXX,XXX).

**D. Subconsultant Services.**

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

**E. Reimbursable expenses.**

Reimbursable expenses are included in CONSULTANT's maximum compensation, including, but not limited to, any expenses related to CONSULTANT's tasks. There are no separate reimbursable expenses for Basic Services performed under any Task of EXHIBIT A.

**F. 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 XXXXXXXXXXXXXXXXXXXX DOLLARS (\$ XX,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**

Project Manager	\$XX
Technician	\$XX
Office Engineer	\$XX

**CITY OF CUPERTINO**  
**Attachment B Consultant Rating Form**  
**MATERIALS TESTING & SPECIAL INSPECTION 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: 25px;" type="text"/>
<b>2</b>	Consultant provided an original, wet signed, cover letter of interest with all required information. <b><i>Include statement accepting the City standard form consultant agreement, including hold harmless indemnity and insurance requirement.</i></b> (0 or 5)	<input style="width: 40px; height: 25px;" type="text"/>
<b>3</b>	Consultant has qualified personnel available to perform the scope of services. (0-15)	<input style="width: 40px; height: 25px;" type="text"/>
<b>4</b>	Consultant has experience directly related to the potential scope of services. (0-15)	<input style="width: 40px; height: 25px;" 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: 25px;" 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. May be same projects as No. 5 if they apply. (0-15)	<input style="width: 40px; height: 25px;" 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: 25px;" 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: 25px;" type="text"/>
<b>9</b>	<b><i>Consultant accepts the City of Cupertino standard form consultant agreement, including hold harmless indemnity and insurance requirements and general attachments, without modification. Note: a zero score shall eliminate the consultant from further consideration.</i></b> (0 or 5)	<input style="width: 40px; height: 25px;" type="text"/>
<b>Total Score</b>		<input style="width: 60px; height: 50px;" type="text"/>