



CUPERTINO

CITY OF CUPERTINO

REQUEST FOR PROPOSAL

FOR

TRAFFIC IMPACT FEE AND NEXUS STUDY

Proposal Due Date:

Wednesday, June 1, 2016

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

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ATTACHMENT A: Sample City of Cupertino Agreement

I. INVITATION

The City of Cupertino Public Works Department (hereinafter “City”) is soliciting Proposals from qualified firms (hereinafter “Consultant”) through this Request for Proposal (RFP) for the development of a Nexus Study to support a Traffic Impact Fee (TIF) and develop a TIF program for the City to adopt.

II. CONTACT PERSON

Inquiries relating to this Request for Proposals should be directed to:

Julie Chiu, P.E.
Associate Civil Engineer
Telephone: (408) 777-7710
Fax: (408) 777-3333
E-mail: juliec@cupertino.org

III. PROJECT DESCRIPTION

On December 4, 2014, the City Council formally adopted an amended General Plan for Cupertino now known as "General Plan: Community Vision 2015 - 2040." As a part of the Mitigation Measures for the newly adopted General Plan, City has committed to preparing and implementing a TIF Program to guarantee funding for roadway infrastructure improvements that are necessary to mitigate impacts from future projects based on the then current City standards. To support the TIF, the City will prepare a Nexus Study that will serve as the basis for requiring development impact fees under AB 1600 legislation, as codified by California Code Government Section 66000 et seq. The established procedures under AB 1600 require that a "reasonable relationship", or nexus, exist between the traffic infrastructure improvements required to mitigate the traffic impacts and the proposed development project.

IV. PROJECT GOALS AND OBJECTIVES

The City seeks the services of a qualified consultant to develop a Nexus Study to support a City TIF program. The TIF program would exact a fee upon new development to fund improvements that address the cumulative impacts associated with the new development. The study shall:

- Identify the purpose of the fee.
- Identify the use to which the fee will be put.
- Determine that there is a reasonable relationship between the fee’s use and the type of development on which the fee is to be imposed.
- Identify reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

V. SCOPE OF WORK

Basic service will consist of developing a Nexus Study to support a TIF program

SCOPE OF SERVICES

Task 1: Meetings

- Lead Project Kick Off Meeting in person. Kick Off Meeting shall clarify project scope, background, objectives, schedule and responsibilities.
- Lead workshops for the development of Tasks 2-6 with City Staff and Stakeholder groups to present fee program work products, answer questions, and collect feedback. At least six (6) meetings are anticipated.
- Participation in person or by phone in team meetings to review project status and work products. At least ten (10) meetings are anticipated.
- Lead and prepare presentation materials for public workshops. At least two (2) workshops are anticipated.
- Present Nexus Study at City Council meeting and draft Ordinance to be adopted by City. At least one (1) City Council meeting is anticipated.

Deliverable

- *Final project scope and schedule* from Project Kickoff Meeting
- *Meeting materials (including agenda) and meeting notes* for City Staff and Stakeholder Group Meetings
- *Meeting Notes* from Project Status and Working Product Meeting
- *Presentation Materials, meeting materials (including agenda) and meeting notes* for Public Workshops
- *Presentation Material and draft ordinance* to be adopted by City Council at City Council Meetings

Task 2: Define the Project Criteria and City Development Impact Fee System Network

- Confirm a citywide benefit zone for the fee program analysis and provide fee calculation(s).
- Confirm the criteria for capital improvement projects that will be used to develop the TIF.
- Confirm the proposed citywide network and transit facilities to be further analyzed based on City's plans and studies including but not limited to the General Plan: Community Vision 2015 - 2040, Master Plans (South Vallco Master Plan and North Vallco Master Plan), Conceptual Plans (North De Anza Blvd, South De Anza Blvd, South Vallco Connectivity Plan), Draft Bicycle Transportation Plan, and Pedestrian Transportation Plan.

Deliverable

- *Written confirmation of citywide benefit zone*
- *Criteria Memo* summarizing criteria for capital improvement projects used to develop TIF
- *System Map* depicting the preliminary set of projects to be considered in this study.

Task 3: Update the City Travel Demand Model Analysis and Growth Projections

- Review methodology, performance standards, and future “no-build” assumptions.
- Update and rerun City’s Travel Demand Model (Santa Clara Valley Transportation Authority model developed in Cube software and ArcGIS software) to identify growth projections, levels of service, performance deficiencies and identify City of Cupertino project locations.
- In addition to development of a base model for the entire City for AM and PM peak hours, the firm may consider developing the following additional model capabilities and features listed below:
 1. A weekend mid-day assessment (Saturday model)
 2. Greenhouse gas emissions analysis capability
 3. Walking and bicycling demand by street segment
 4. The relationship between different levels of transit investment and how it affects how many people take transit
 5. Trip generation rates by different types of land uses and geographic characteristics
 6. Performance measures such as relative travel time by mode, level of service by mode, and vehicle miles traveled
 7. Information regarding regional pass-through versus locally-generated traffic on City streets
 8. Additional “horizon year” model runs to address possible phasing scenarios; and various graphical displays of the results

Deliverable

- *System Performance Evaluation* including list of roadway segments and maps depicting existing and future performance levels of service for projects identified in the System Map.

Task 4: Formulate Draft Project List

- Identify proposed capital improvement projects based on deficiency analysis results from Task 3 and defined project selection criteria from Task 2.
- Develop Project Cost Estimate and proposed timing for the need project.

Deliverable

- The results of this Task will be a *Draft Project List with Estimated Costs and timing requirements*.

Task 5: Travel Demand Model Analysis

- Conduct select link analysis of specific project locations to identify new trips subject to calculation of fees.
- Optional select link iteration based on the City and stakeholders.

Deliverable

- *Travel Demand Model Analysis.*

Task 6: City of Cupertino Fee Calculation Scenarios

- Calculate draft fee options based on select link the *Travel Demand Model Analysis*, optional benefit zone structures, and optional fees structures to be evaluated for various land uses.
- Adjust fees based on City and Stakeholders input.

Deliverable

- The results of this Task will be a report identifying a *Fee Calculation*.

Task 7: Fee Revenue Estimation

- Growth forecasts will be used in combination with projected areas of congestion (from Task 3) and the project list (from Task 4) to develop an estimation of overall fee revenues.

Deliverable

- Report identifying the *Fee Revenue Estimation*.

Task 8: Nexus Study

The purpose of this task is to allocate the expected unfunded costs of the transportation improvement projects in the draft project list by land use type. A portion of each project's cost must be allocated to the correction of existing deficiencies (if appropriate) and to growth in through trips. There are four sub-steps required to formulate an equitable allocation of the costs:

1. Separate the cost of remedying existing deficiencies from the cost of accommodating growth;
2. Give credit to new development for dedications, exactions, special assessments, use fees, or other in-lieu payments toward its share of new capacity;
3. Identify the share of costs and benefits attributable to traffic that neither originates nor has a destination in the City of Cupertino, and
4. Distribute the net costs for the projects among different types of development (i.e., residential, retail, office, and industrial) and across geographical areas.

Once the project list is refined (in Task 4) the allocated project costs will be used to construct a fee schedule by land use type. Recommendations will be provided on different strategies for allocating the fees among residential, retail, and other commercial development, and across geographic boundaries.

Deliverable

- *Technical Memorandum entitled “Nexus and Burden Analysis”* which will document the analysis methods, summarized quantification of the nexus and burden, proposed fee schedule, and an assessment of the relative economic burden imposed by the preliminary fee schedule on local residential and commercial markets.

Task 9: Draft Nexus Study Report

- Based on input from the public workshops and further consultation with City, Stakeholders and Technical Working Group prepare draft and final reports including the following topics:
 1. A brief statement of the need for and purpose of a transportation impact fee.
 2. A description of the decision making and public input process used to arrive at the recommended fee program.
 3. A brief summary of the state rules and regulations for impact fees and how they have been complied with for the TIF fee program.
 4. The list of projects, their costs, their implementation schedule, and the rationale and need for including them in the TIF program.
 5. An estimate of the current balance in fee revenues available for these projects.
 6. Estimates of the non-fee revenues that may be available for these projects,
 7. Tabulation of the unfunded shortfall that must be covered by impact fees.
 8. The estimated growth (after allowing for vested development rights) that would be subject to the fee.
 9. The nexus analysis allocating the unfunded project costs to new development by land use category and justifying the “proportionality” of the fee.
 10. An assessment of the ability of the local residential and commercial markets to absorb a fee increase (economic burden analysis)
 11. Summary of proposed procedures for collecting, administering and expending fee revenues.
 12. Recommended policies for granting exemptions and credits
 13. Recommended Strategic Expenditure Plan & Fee Schedule
 14. Recommendations regarding financing and cash flow.

Deliverable

- *Draft Nexus Study Report*

Task 10: Final Report

- Submit a final report and make a formal presentation of the Nexus Study findings and recommendations to City Staff, stakeholders groups and City Council.
- Final Report will include a recommended Operating Agreement and any other appropriate instruments to formally implement the recommended TIF program by the City of Cupertino.

Deliverable

- The results of this Task will be a Final *Nexus Study Report*.

Task 11: Additional Services

Consultant shall include in the proposal, as a separate line item, a section for Additional Services. These work items are optional depending on the City budget and will be paid upon the completion of such service as set forth in *Part VIII-B, Budget-Additional Services*.

VI. CITY'S RESPONSIBILITIES

To support the work, the City will:

- Designate a Project Manager for the project.
- Provide relevant and readily available information from City records.
- Assist with scheduling meetings and presentations with internal stakeholder groups, City management, Commissions, and City decision-making bodies, and participate in presentations.
- Perform timely reviews of consultant submittals.
- Prepare, execute, and manage the contracts with the consultant and construction contractor.

VII. SCHEDULE

Within ten (10) working days of the Kick-Off Meeting, the Consultant shall prepare a finalized scope of work, schedule, and budget for all work required to ensure timely completion of project activities as described in this RFP for review and approval by the City. The submitted document shall conform to the scope of work, maximum budget, and schedule milestones indicated in Sections VII-Schedule, VIII-Budget & IX-Proposal Content of this RFP. Consultant shall keep all project stakeholders updated on changes to the project schedule throughout the duration of the project.

Table 1: Deliverable/Task Schedule

1	Approve contract	June 2016
2	(Task 2) Define the Project Criteria and City Development Impact Fee System Network & (Task 4) Formulate Draft Project List	July 2016
3	(Task 3) City Travel Demand Model Analysis and Growth Projections	September 2016

4	(Task 4) Draft Project List with Estimated Cost and Timing Requirements & (Task 5) Travel Demand Model Analysis	October 2016
5	(Task 6) City of Cupertino Fee Calculation Scenarios & (Task 7) Fee Revenue Estimation & (Task 8) Nexus and Burden Analysis	November 2016
6	(Task 9) Draft Nexus Study Report	December 2016
7	(Task 10) Final Report & City to Adopt Nexus Study and TIF Program	January 2017
8	Execute Nexus Study	February 2017

VIII. BUDGET

A. Additional Services

The payment schedule for the Additional Services is based on the level of effort to complete these tasks and is negotiated by the City. Any approved additional services shall be included in the final SSB with the description of the work, schedule, approved budget and payment schedule.

B. Compensation and Method of Payment

Consultant shall be paid, as full compensation for the satisfactory completion of the work described in Part V, Scope of Work, the Consultant fixed sum of agreed upon amount, which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, equipment, materials and supplies.

Consultant shall submit one invoice per month to the City for all the deliverables completed in a calendar month. Any exceptions would require the approval of the City Project Manager. The payment shall be approved once the City approves the deliverable.

IX. PROPOSAL CONTENT

The RFPs are due by 3:00 p.m. on Wednesday, June 1, 2016. Proposals may be mailed or delivered to:

Public Works Department
City of Cupertino, City Hall,
10300 Torre Avenue, Cupertino, CA 95014

Attention: Julie Chiu, Associate Civil Engineer

Proposal submittals of 3 bound hard copies (max. 8 ½" x 11") and an electronic pdf copy are required. Late, mailed, or faxed submittals will be immediately considered non responsive

without further review and eliminated from consideration. Questions regarding the project may be directed to the contact person in Section II of this RFP.

The proposal shall be limited to 15 pages double sided (for a total of 30 pages), excluding table of contents, cover letter, biographies of staff proposed for the project, and any promotional materials.

While the City is interested in gaining a comprehensive and relevant understanding of the Consultant through information gained by the points below, concise responses are acceptable and encouraged. The following items are required for a complete response to this RFP.

A. Cover Transmittal Letter

A transmittal letter signed by a partner or officer of the firm authorized to solicit business and enter into contracts for the firm indicating your firm's interest to be considered for this RFP. The transmittal letter should include the name and telephone number of a primary contact person, if different from the authorizing official. The letter should indicate whether there are any conflicts of interest that would limit the Consultant's ability to provide the services requested in this RFP.

B. Title Page

Title page showing the RFP name, the name of the Consultant's firm, address, telephone number, fax, name and email of contact person, and the date.

C. Consultant Qualifications and Experience

Provide a brief summary describing the Consultant's qualifications and experience relevant to the work described in Part V, Scope of Work. The company profile should include the firm size and number of local qualified engineers in the firm who would be available to work on the Project.

Consultant's organizational structure identifying the Principal-In-Charge (PIC)/Quality Controller (if applicable), Project Manager (PM), Lead Staff, and Subconsultants.

D. Staff Qualifications and Experience

Provide a brief summary of the qualifications and experience of the project team with emphasis on the proposed PM, Lead Staff and Technical Support Staff and Subconsultants.

Provide a table/chart showing each team member, their assigned role, for the Project and their applicable skills and/or areas of expertise.

Staff resumes highlighting their experience and skills relevant to the services requested in this RFP.

Provide a list of key personnel that shall be dedicated to the project for the entire project duration. The City, at its discretion, may allow substitutions in the event the employee leaves the Consultant or is otherwise unable to perform the job duties.

E. Subconsultants

The City has strong interest in the quality, qualification and experience of Subconsultants that the lead Consultant may choose to hire for specialized professional services which may be required for the services noted above. City may conduct reasonable investigations and reference checks of proposed Subconsultants as City deems necessary to assist in the evaluation of any Subconsultant qualifications to perform and furnish the work to the City's satisfaction. Submission of a Proposal constitutes Consultant's consent to the foregoing. City shall have the right to consider information provided by sources other than the Consultant.

F. Similar Projects

Provide a brief summary of at least two (2) similar projects completed by the PM and the lead staff within the last five (5) years. Project summaries must include details on the project client, services, schedule, budget, challenges, project status, and contact information of the client manager who may be contacted as a reference.

G. References from Similar Projects

Provide three (3) references, along with contact information, attesting to the proposed PM's previous experience in performing work substantially similar or related to the services being requested. At the discretion of the City, these references may be contacted at any time during the RFP evaluation process.

H. Disclosure(s)

A complete disclosure of any prior or ongoing incidents as to which it is alleged that the Consultant has defaulted or failed to perform which has led to the other party terminating the contract. Identify the parties involved and the circumstances of the default or termination. Also describe any civil or criminal litigation or investigation pending which involves Consultant or in which Consultant has been judged guilty or liable.

I. Project Approach

The Proposal shall give an introduction and overview of the project's principal elements and challenges, demonstrates an understanding of the project's objectives and describes the approach to accomplish the required scope of services.

Develop a detailed approach to the scope of work by breaking the project into specific tasks that is clearly associated with the scope of this RFP, including procedures, methodologies, measures of effectiveness, organization and staff schedule. The Project Approach shall include a proposed plan for quality and cost control to enhance the service and responsiveness to the City.

Provide an explanation of the Consultant's approach with respect to technical and institutional challenges in the Bay Area, including some of the additional services listed in *Section V, Scope of Work*.

The Consultant may recommend any optional services that are not included in the listed scope of work by including a description of these services in this section.

J. Price Proposal

A cost proposal shall be submitted in a separate, sealed envelope. Include a statement confirming that the rates are valid for the duration of the contract, including all contract extensions and is a firm offer to enter into a contract to perform work related to this RFP for a period of one hundred twenty (120) days from the submission of the Proposal. The proposal shall include the level of service to be provided by each staff and/or Subconsultant, broken down by task or phase and the corresponding fees.

K. Review for Responsiveness

At the City's discretion, any Proposal that does not include enough information to permit the evaluators to rate the Proposal in any one of the evaluation factors listed above will be considered non-responsive and will not be evaluated.

X. **SELECTION CRITERIA**

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

- A. Prior experience performing similar work.
- B. Success and range of experience in previous projects of similar work.
- C. Qualifications of key staff persons who will carry out the project shall meet the minimum qualifications listed below.
 - 1. Project Manager (PM) must have at least eight (8) years of overall project management experience performing work similar to the described scope of work in *Section V, Scope of Work*.
 - 2. Lead Staff and Technical Staff must each have at least three (3) years of experience working on conducting Nexus Studies.
 - 3. PM and lead staff must be a licensed Civil or Traffic in the State of California.
- D. Ability to adapt to changes and factors that may affect the project outcome as described in the Project Approach.

- E. Special knowledge and expertise of PM and lead staff material to the project and its execution; such as experience with:
1. Conducting nexus studies, community facility studies, and the development of impact fees relating to transportation.
 2. Previous experience developing planning level cost estimates for transportation infrastructure including street improvements, bus and rail transit improvements, bicycle and pedestrian infrastructure, and traffic signal improvements.
 3. Utilizing travel demand models to assess impact of new development on infrastructure. Specific knowledge in use of travel demand models derived from the Santa Clara Valley Transportation Authority model developed in Cube software and ArcGIS software.
 4. Development community and knowledge of the possible effects of related fees to development within the City.
 5. Identifying alternative funding sources to facilitate the upgrading of the City's facilities in concert with the funding provided by development impact fees.
 6. Data collection and quality verification
- F. References and recommendations.
- G. Proposed work program for carrying out the assignment showing ability to meet the City's schedule.
- H. Understanding of the project assignment as described in *Section IX-I. Project Approach*.
- I. Organization of the consultant team and prior mutual experience of the team.
- J. Lead and Technical Staff located in the Bay Area.
- K. Adequate staff resources to perform Nexus Study, attend meetings and develop Nexus Report.

XI. SELECTION PROCESS/RECOMMENDATION OF AWARD

Written proposals will be evaluated by a team of City staff, with points being assigned based on the following criteria.

Item	Criteria	Possible Points
1	Technical approach/understanding of conducting the study	35
2	The Consultant's past record of performance on similar projects and special knowledge/experience	30
3	Experience of the Consultant, the Consultant's key personnel and their availability, and the Firm's consultants	20
4	Adequate Staff Resources and ability to deliver on Milestone.	10
5	Organization of the Consultant team and mutual prior mutual experience	5
	Total Points	100

A selection team from the City will evaluate the submitted qualifications and may contact persons involved in former or current projects done by the proposing Consultant including but not limited to reference contacts. Following evaluation of the written proposals, the top ranked Consultant teams may be invited for presentations and interviews. At the conclusion of the interview or presentation the evaluation committee will again rank the Consultant, and the most qualified Proposal teams will be identified.

The City reserves the right to accept or reject any and all submitted Proposals, to waive minor irregularities, to request additional information from the responsive Consultant at any stage of the evaluation, to not conduct oral interviews or presentations, and to choose the Consultant which in its opinion best serves its interests. Submissions from Consultant not chosen to perform the work will not be returned.

XII. EVALUATION OF COST PROPOSALS

After the evaluation of the written Proposals and the determination of the highest rated proposal, the sealed Cost Proposal of the Consultant will then be opened and negotiations will then commence with the top Consultant. The Cost Proposal submitted as part of this RFP shall be based on the Scope of Work outlined in Part V, Scope of Work, of this RFP. Any optional work recommended by Consultant, shall be listed under optional services in the Cost Proposal.

The City reserves the right to decline to enter into a contract with a Consultant whose rates are unreasonable in the City's sole discretion, and to negotiate with the next ranked Consultant.

XIII. CONFLICT OF INTEREST

By submitting an RFP, the Consultants represent and warrant that no Commissioner, officer or employee of the City is in any manner interested directly or indirectly in the RFP or in the contract that may result from this RFP or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090. Consultants further warrant and represent that they presently have no interest and agree that they will not acquire any interest, that would present a conflict of interest under California Government Code Sections 1090 et seq. or 87100 et seq. during the performance of services under any contract resulting from this RFP and that they will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

XIV. PROCEDURE FOR SUBMITTING QUESTIONS, INQUIRIES, AND OBJECTIONS

Consultants must direct all questions about the meaning or intent of the RFP to the City, as specified in Section II. Contact Person, in writing. Letters, faxes or emails are acceptable forms of written questions. Interpretations or clarifications considered necessary by City in response to such questions will be issued by Addenda mailed, faxed, or delivered to all "Consultant List" parties invited to submit a proposal for this project. Addenda will be written and will be issued

to each Consultant to the address, e-mail, or fax number supplied to City by Consultant. City may not answer questions received less than five (5) days prior to the due date of the RFP. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda may be issued to modify the RFP Documents as deemed advisable by City.

XV. CONTRACT AND OTHER REQUIRED DOCUMENTS

Contract documents will consist of this Request for Proposals; its attachment(s) and addenda, if any; the successful Consultant's completed proposal and signed cover letter; the successful Consultant's proof of insurance coverage; and an executed Consultant Services Agreement (Sample at Attachment B).

Consultant will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in the attached Consultant Agreement and be willing to sign the attached Consultant agreement without changes in wording. Failure to meet these requirements will be grounds for disqualification.

XVI. BUSINESS LICENSE

The successful Consultant and their Subconsultants must either possess a current, valid Cupertino business license or must have submitted a Cupertino business license application and fee at the time of contract award.

XVII. PUBLIC RECORDS ACT REQUESTS

This RFP and any material submitted by a Consultant in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. RFPs will remain confidential until the City has authorized award. Other than proprietary information or other information exempt from disclosure by law, the content of the RFPs submitted to City will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Consultant believes any communication contains trade secrets or other proprietary information that the Consultant believes would cause substantial injury to the Consultant's competitive position if disclosed, the Consultant shall require that City withhold from disclosure such proprietary materials by marking each page containing propriety information as confidential and shall include the following notice at the front of its RFP:

“The data on the following pages of this RFP, contain technical or financial information which are trade secrets and/or which, if disclosed, would cause substantial injury to the Consultant's competitive position. The Consultant requests that such data be used for review by City only, but understands that exemption from disclosure will be limited by City's obligations under the California Public Records Act. If a contract is awarded to the Consultant submitting this RFP, City shall have the right to use or disclose the data to the extent it is incorporated into the contract, unless otherwise provided by law. [List pages]”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire RFP confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Consultant may not designate any required RFP Forms or the cost proposal as confidential.**

In the event properly marked data is requested pursuant to the California Public Records Act, the Consultant will be advised of the request and given the opportunity to provide to City a detailed statement indicating the reasons it believes the information should be withheld from discussion. City complies with the Consultant’s request, the Consultant shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend City and hold it harmless from and against all damages (including but not limited to attorneys’ fees that may be awarded to the party requesting such Consultant information) and pay any and all costs and expenses relating to the withholding of the Consultant information.

If the Consultant does not request that City withhold information marked as confidential and requested under the California Public Records Act, City shall have no obligation to withhold the information from disclosure, and the Consultant shall not have a right to make a claim or maintain any legal action against City or its Commissioners, officers, employees, or agents in connection with such disclosure.

ATTACHMENT A

**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 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.

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 specially-trained 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 an 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:**

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.

12. 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 paragraph 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.

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. 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.

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 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.

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 20 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: _____

Randolph Stevenson Hom, City Attorney

ATTEST:

Grace Schmidt, City Clerk

Contract Amount: _____

Account No. : _____