

Request for Proposals

Orchard Management Services
City of Cupertino

The City of Cupertino is seeking proposals from interested and qualified orchard management/landscape firms to provide orchard management services to the City of Cupertino. The City is seeking high quality firms to provide services including annual pruning of trees, annual dormant spraying of fruit trees, weed control in the orchard, removal and replacement of dead or diseased trees and minor irrigation repairs.

Interested firms should obtain a full copy of the RFP from the City's web site at <http://www.cupertino.org>.

Please contact the Department of Public Works/Service Center for additional information at 408-777-3269.

Proposals are due at the City of Cupertino Service Center (10555 Mary Ave. Cupertino, CA 95014) no later than noon on Thursday, August 4, 2016



CUPERTINO

**City of Cupertino
Public Works Department
Grounds Division**

**Request for Proposal (RFP) Number _____
For Professional Services**

Orchard Management Services

Pre-Proposal Site Meeting: 7-25-2016
(Attendance is Mandatory)

RFP Submittal Deadline: 8-4-2016

Contract Administrator: Brian Gathers

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REQUEST FOR PROPOSALS

For

Varian Park Orchard Management Services

CITY OF CUPERTINO
DEPARTMENT OF PUBLIC WORKS

Introduction

The City of Cupertino is requesting proposals from professional orchard management/landscape companies for the management of the orchard at Varian Park in Cupertino.

General Project Scope

The City of Cupertino has an apricot orchard located adjacent to Varian Park in Cupertino, located at the end of Varian Way near Ainsworth Drive. Services are to include:

- Annual pruning of fruit trees
- Annual dormant spraying of fruit trees
- Weed control in the orchard (Quarterly)
- Removal and replacement of dead or diseased fruit trees (at contractors expense)
- Minor repairs of irrigation system

Work hours shall be: 9:00 a. m. to 4:00 p. m., Monday to Friday. No weekend or Holiday work is allowed.

There are no restroom facilities available on site.

Irrigation system management shall be coordinated with the city's Grounds Division Supervisor. Clippings as a result of pruning must be removed from site within one week of pruning. Clippings may be disposed of at the City of Cupertino Service Center (10555 Mary Ave. Cupertino, CA 95014) in the Yard Waste dump area.

Term of Contract

This is to be a three (3) year contract with the City having the option to extend in two (2) one (1) year extensions for a total of five (5) years.

Required Experience and Expertise

Qualified parties must have a minimum ten (10) years' experience in orchard management/landscape management with demonstrated experience in fruit tree pruning, spraying, weed control and arboriculture practices. Arborist certification and California DPR (Department of Pesticide Regulation) QAC (Qualified Applicator Certificate) or QAL (Qualified Applicator License) Category B and California State Contractor's license (C-27) is required. (Copies to be submitted with proposal)

The proposer shall include a brief description of the proposer's qualifications and previous experience on similar or related projects.

Selection Process

The City will review all responses to the Request for Proposals (RFP) and evaluate them against the criteria stated below. A list of candidates, determined by the City at the City's sole discretion to be the most qualified, will be established.

A qualifications/cost based method will be used by the City to establish a list of no less than three prospective candidates. The City's standard agreement will form the basis of the contract between the parties, following selection and mutually agreeable fee negotiations.

Evaluation Criteria:

- a. Quality and completeness of proposal
- b. Qualifications & experience of proposer
- c. Similar experience and expertise in the type of work required
- d. Demonstrated understanding of the scope of services requested
- e. The cost to the City

Application Procedure and Deadline

Proposals may be submitted either in paper form at the address listed below or in electronic (PDF) format to the email address listed below. Submittals will not be returned.

A Pre-Proposal Site Meeting is Required

Three copies of the proposal should be addressed and delivered to:

Attention:
City of Cupertino
Chris Mertens, Service Center Superintendent
10555 Mary Ave.
Cupertino, CA 95014

Or: servicecentercrm@cupertino.org

Deadline: 12:00 p.m., 8-4-2016. Late deliveries will be disqualified.

Please address any questions related to this RFP, or requests for site access, to Chris Mertens at 408-777-3344 or servicecentercrm@cupertino.org

<u>Tentative Proposal and Selection Schedule</u>	<u>Dates</u>
Issue Request for Proposals	7-13-2016
Pre-Proposal Site Meeting	7-25-2016
Proposals Due at Cupertino Service Center	8-4-2016
Establish List of Qualified Candidates	8-9-2016
Selection of Successful Candidate	8-10-2016
Award of Contract	8-15-2016

Attachments

- A. City Standard agreement form
- B. List of Restricted Chemicals/IPM Requirements
- C. Services to be Provided

AGREEMENT BETWEEN THE CITY OF CUPERTINO AND

THIS AGREEMENT, for reference dated enter date, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), and _____ a California corporation whose address is _____ hereinafter called the Contractor, 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. City and Contractor desire to enter into an agreement for monthly maintenance of the Varian Park Orchard to include weed control, pruning of orchard trees and dormant spraying of trees. Clippings as a result of pruning must be removed by Contractor within one week of pruning. Clippings may be disposed of at the City of Cupertino Service Center in the Yard Waste dump area in accordance with the proposal dated "proposal date", hereinafter referred to as "Exhibit A".

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

1. **TERM:**

The Contractor shall begin work within thirty (30) calendar days after receiving notice from the "Brian Gathers, Grounds Division Supervisor" to commence the work, and shall diligently prosecute the work to completion before the expiration of "Three Years" from the date of receipt of notice to begin work. The City retains the option to extend the contract in the form of two (2) one (1) year extensions for a total of five (5) years upon satisfactory performance.

2. **SERVICES TO BE PERFORMED:**

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with the proposal dated "proposal date" hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein.

3. **COMPENSATION TO CONTRACTOR:**

Contractor shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Contractor's proposal, which is attached hereto as exhibit "A" and incorporated herein by this reference. Payment will be made in the same manner that claims of a

like character are paid by the City, with checks drawn on the treasury of the City, to be taken from the general fund.

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

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

5. **STANDARD OF CARE:**

Contractor 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.

6. **INDEPENDENT PARTIES:**

City and Contractor 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 Contractor, 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 Contractor'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 Contractor, 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 Contractor. Payments of the above items, if required, are the responsibility of Contractor.

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

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

8. **NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Contractor or Contractor's employee 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. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

Contractor 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, stop notices, 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, arising out of, pertaining to, or related to the performance of this Agreement by Contractor or Contractor's employees, officers, officials, agents or independent contractors. Contractor 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. 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.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in these sections from each and every subcontractor or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this agreement. If Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section.

10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Contractor 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 10A, B, C and D. Such certificates, which do not limit Contractor'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 Contractor 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:**

Contractor 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:	\$1,000,000
	each occurrence
	\$2,000,000
	aggregate - all other

Property Damage: \$500,000 each occurrence
\$1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury: \$500,000 each occurrence

Property Damage: \$500,000 each occurrence

or

Combined Single Limit: \$1,000,000 each occurrence

B. **SUBROGATION WAIVER:**

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

C. **FAILURE TO SECURE:**

If Contractor 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 Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor 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 worker's compensation insurance. 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 Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

11. **BONDS:**

Contractor is not required to provide bonds.

12. **PROHIBITION AGAINST TRANSFERS:**

Contractor 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, sub lessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Contractor 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 Contractor.

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

13. **SUBCONTRACTOR APPROVAL:**

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

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of City, be issued in the form of a Work Order.

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

14. **PERMITS AND LICENSES:**

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License, that may be required in connection with the performance of services hereunder.

15. **REPORTS:**

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of City. Consultant may retain a copy of any report furnished to the City pursuant to this Agreement.

Attachment "A"

No report, information nor other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by City.

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

16. **RECORDS:**

Contractor 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.

Contractor 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. Contractor 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 Contractor shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. **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 Contractor to City shall be addressed to City at:

City of Cupertino
10555 Mary Avenue
Cupertino CA 95014
Attention: "Brian Gathers, Grounds Division Supervisor"

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

Attention:

18. **URBAN RUNOFF MANAGEMENT:**

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

A. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season (October 15), in site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site).

B. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.

C. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed and the wash water shall be collected and disposed of offsite in an appropriate location.

D. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.

E. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each work day. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that the City and County of Santa Clara County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations are intended to be used in conjunction with the States Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the contractor, pursuant to Cal. Water Code ' 13385.

19. **TERMINATION:**

In the event Contractor fails or refuses to perform any of the provisions hereof at the time

and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Contractor 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 Contractor 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 Contractor 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.

20. **COMPLIANCES:**

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

21. **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.

12. **ADVERTISEMENT:**

Contractor 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.

23. **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.

24. **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

Attachment "A"

written execution signed by both City and Contractor.

25. **SAFETY REQUIREMENT**

All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. City reserves the right to issue restraints or cease and desist orders to Contractor when unsafe or harmful acts or conditions are observed or reported relative to the performance of the work under this Agreement.

Contractor shall maintain the work sites free of hazards to persons and/or property resulting from his or her operations. Any hazardous condition noted by Contractor, which is not a result of his or her operations, shall immediately be reported to City.

26. **HOURS OF OPERATION**

Contractor shall be allowed to operate only for the hours of 7:00 a.m. to 3:30 p.m. unless prior written approval has been secured from City to do otherwise.

27. **REQUIREMENT TO PAY PREVAILING WAGES**

Consistent with the City's policy to pay prevailing wage rates, Contractor shall comply with the City's Labor Compliance Program and all other requirements set forth in Labor Code section 1770 et seq. The City shall require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work. Contractor will submit (monthly or biweekly) 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.

28. **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.

Attachment "A"

29. **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.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

CONTRACTOR

CITY OF CUPERTINO

A Municipal Corporation

By _____
Title _____
Date _____
Soc. Sec. # or Tax I.D. _____

By _____
Title _____
Date _____

RECOMMENDED FOR APPROVAL:

By _____
Title _____

APPROVED AS TO FORM:

By _____
City Attorney

ATTEST:

City Clerk

Contract Amount: \$ _____
Account Number: _____

IPM Requirements:

Pesticide use:

The following pesticides are prohibited from use: Clopyralid, Diazinon, Chlorpyrifos (Dursban), Chloradane, DDT, Dieldrin.

Employee purchase of pesticides:

Employees may not purchase pesticides of any kind without prior permission of their supervisor and that the division has a written current Pest Control Recommendation from a certified Pest Control Adviser.

Contractors:

Contractors must comply with all elements of the City's pesticide plan.

Annual Responsibilities

Each Division who is responsible for pest management activities must complete or provide the following by February 1 each year.

- Review Division level IPM plans for any updates, changes and evaluation of previous year activities.
- Complete *Annual Division "IPM SOP" Report and Pesticide Inventory* (Attachment C).
- Provide necessary training to staff based on California State Code of Regulations, Title 3 and annual IPM training to Service Center staff.

On-Going Responsibilities

- Record all pesticide applications using "*Pesticide Application Record*" (Attachment B)
- Submit California State Monthly Summary Use reports to County Agriculture Department.

Services to Be Provided:

Frequency:

Pruning of fruit trees

Annual

Dormant spraying of fruit trees

Annual

Weed control in the orchard

Quarterly

Removal and replacement of dead or diseased fruit trees
(at contractor's expense)

As Needed

Minor repairs of irrigation system

As Needed