



CUPERTINO

CITY OF CUPERTINO

REQUEST FOR QUALIFICATION

FOR

**ON-CALL TRAFFIC DATA COLLECTION
SERVICES**

Proposal Due Date:

FRIDAY, October 21, 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 PROPOSAL

CITY OF CUPERTINO

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I. INVITATION

The City of Cupertino Public Works Department (hereinafter “City”) invites qualification submittals from qualified firms (hereinafter “Consultant”) through this Request for Qualification (RFQ) for the On-Call Traffic Data Collection Services (hereinafter “Project”). The City is seeking to secure high quality firms to be included in the City’s pre-qualified Consultants list.

II. CONTACT PERSON

Inquiries relating to this RFQ 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

Cupertino is seeking the on-call professional services of a qualified consultant to conduct the following types of data collection: 7-day mechanical tube counts, peak hour turning movement counts, school pedestrian Classification Counts, 7-day video bicycle and pedestrian counts, and 72 hour mechanical tube counts. Data collection services will be performed on an “as needed” basis. These counts will assist the City in its transportation planning process.

IV. SCOPE OF WORK

The type of data collection work may include but is not limited to:

A. 7-Day Mechanical Tube Counts

For each roadway segment subject to the Mechanical Tube Count method, the Consultant shall install road tubes and electronic counting equipment for each street segment travel direction for a 7-day period to collect vehicle volume, vehicle speed, and vehicle classification data.

B. Peak Hour Turning Movement Counts

For each intersection subject to the Peak Hour Count Method, the Consultant shall count each vehicular turning movement, and each pedestrian walk direction and bicycle movement at each intersection for the Morning Peak Hour Period from 7:00AM to 10:00AM, and the Evening Peak Hour Period from 4:00PM to 7:00PM. Midday Peak Period from 11:30AM to 1:30PM traffic counts may also be performed.

As location for counting is identified by the City, the Consultant shall specify a list of the turning movement equipment proposed for use on the Project.

C. School Pedestrian Classification Counts

For each intersection subject to the School Pedestrian Classification Count, the Consultant shall manually collect the vehicle turning movement counts, the number of pedestrians crossing each leg of the intersection classified by age group (school-age or adult), and the number of times adult crossing guards enter the intersection to guide pedestrians if appropriate.

The Contractor shall collect data for 1-hour in the morning commute and 1-hour in the afternoon commute.

D. 7 Day Video Bicycle and Pedestrian Data

The Consultant shall collect the bicycle and pedestrian counts on trails using a Video Surveillance Technology. The technology used for these counts must be approved by the City before use. All video results will become the property of the City and must be provided in a format that is accessible by the City. The Consultant will be responsible for the costs of processing the video and proper classification of bicycles and pedestrians.

E. 72 Hour Mechanical Tube Intersection Approach Counts

For each roadway segment subject to the Mechanical Tube Intersection Approach Count method, the Consultant shall install a minimum of two road tubes and/or electronic counting equipment for each street intersection approach for a 72 hour period to collect vehicle volume and/or vehicle speed data. Required data may consist of volume only (directional), volume only (non-directional), or volume and speed (directional), throughout the 72-hours period.

V. 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.
- Perform timely reviews of consultant submittals.
- Prepare, execute, and manage the contracts with the consultant.

VI. SCHEDULE

All data collection must be performed within 2 weeks of request of service from the city. Deliverable must be provided to the City within 1 week of completing data collection.

VII. QUALIFICATION CONTENT

The response to RFQs are due by 3:00 p.m. on Friday, October 21, 2016. Response to RFQ 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

Qualification submittals of 3 bound hard copies (max. 8 ½” x 11”) and an electronic PDF copy are required. Late, emailed, 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 RFQ.

The qualification submittal shall be limited to 10 pages double sided (for a total of 20 pages), excluding table of contents, cover letter, biographies of staff proposed for the project, and any promotional materials.

It is solely the Consultants responsibility to check the City’s website for updates and addenda to requests for qualifications, requests for qualifications, and invitations for bids. Consultant’s failure to respond to all requirements may result in the rejection of your qualification submittal.

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 RFQ.

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 RFQ. 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 RFQ.

B. Title Page

Title page showing the RFQ 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 IV, 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, 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 RFQ.

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. 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.

F. 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 RFQ evaluation process.

G. Disclosure(s)

A complete disclosure of any prior or ongoing incidents as to which it is alleged 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.

At the City's discretion, any response to RFQ that does not include enough information to permit the evaluators to rate the qualifications in of any one the items required for a complete response to this RFQ will be considered non-responsive and will not be evaluated.

VIII. 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. Responsiveness to solicitation
- B. Understanding of project
- C. Prior experience performing similar work.
- D. Success and range of experience in previous projects of similar work.
- E. Clarity of response to RFQ
- F. 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 transportation masterplans.
- G. Information obtained from reference checks

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.

The City reserves the right to accept or reject any and all submitted response to RFQ, to waive minor irregularities, to request additional information from the responsive Consultant at any stage of the evaluation and to choose the Consultant which in its opinion best serves its interests. Submissions from Consultant not chosen to be included in the pre-qualified Consultants list will not be returned.

IX. CONFLICT OF INTEREST

By submitting a response to the RFQ, the Consultants represent and warrant that no Commissioner, officer or employee of the City is in any manner interested directly or indirectly in the RFQ or in the contract that may result from this RFQ 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 RFQ 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.

X. PROCEDURE FOR SUBMITTING QUESTIONS, INQUIRIES, AND OBJECTIONS

Consultants must direct all questions about the meaning or intent of the RFQ 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 the City in response to such questions will be issued by Addenda via mail, fax, or delivered to all “Consultant List” parties invited to submit a response to the RFQ. Addenda will be written and will be issued to each Consultant to the address, e-mail, or fax number supplied to the City by Consultant. Consultants are responsible to City may not answer questions received less than five (5) days prior to the due date of the RFQ. 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 RFQ Documents as deemed advisable by the City.

XI. CONTRACT AND OTHER REQUIRED DOCUMENTS

Contract documents will consist of this Request for Qualification; its attachment(s) and addenda, if any; the successful Consultant’s completed response to RFQ and signed cover letter; the successful Consultant's proof of insurance coverage; and an executed Consultant Master Agreement (Sample at Attachment A).

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

ATTACHMENT A

MASTER AGREEMENT BETWEEN THE CITY OF CUPERTINO AND _____ <insert name of design professional> FOR DESIGN PROFESSIONAL SERVICES FOR _____ <insert project title or general description, e.g., "various capital improvement projects">

This Master Agreement for Design Professional Services ("Agreement"), dated _____, 20_, <insert date> is entered into by and between City of Cupertino, a municipal corporation ("City"), and _____, <insert name of design professional> a <insert type of legal entity, e.g., corporation, partnership, sole proprietor, individual> ("Design Professional").

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. Design Professional represents that it is specially trained, experienced and competent to perform the _____ <insert the type of services: architectural, landscape architecture, civil engineering, or land surveying> services ("Services") required by this Agreement.

C. Design Professional represents that it is duly licensed in good standing by the State of California to perform such Services.

D. City is entering into this Agreement in reliance upon Design Professional's representations, set forth above, to provide the Services in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

1. TERM:

The term of this Agreement ("Term") will begin on the date this Agreement is fully executed by both parties and will terminate on _____, 20_, unless terminated earlier as set forth below.

2. SERVICES TO BE PERFORMED:

Design Professional will provide Services under this Agreement on an "as needed" basis, in response to and in compliance with this Agreement and the Scope of Services set forth in **Exhibit A, Scope of Services**, attached hereto and incorporated herein, and in compliance with each Service Order authorized by the City. The City has sole discretion to authorize any Service Order, but has no obligation to authorize any Service Order under this Agreement. Services may only be provided by Design Professional in response to and in compliance with a Service Order issued by the City's Director of Public Works or his or her delegee (collectively, "Director")

City of Cupertino
<Design Professional name>
For <project title or service description>

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in accordance with the following procedures, except or unless otherwise specified in Exhibit A:

A. Service Order Development. The Director will provide a written request for Design Professional's Services, including a request to schedule a meeting within a specified time to discuss the requested Services. The Design Professional will meet with the City within the time specified in the written request. After the initial meeting, Design Professional must submit to City within the time specified by the City, a written proposal which includes, at a minimum, the specific scope of services, schedule of performance, and compensation. Following receipt and review of the written proposal, the parties will meet to discuss the proposal and the terms of the Service Order to be issued by the City. The City will prepare a Service Order, using the Service Order Form attached as **Exhibit B, Service Order Form**, attached hereto and incorporated herein, specifying the scope of Services, deliverables, the schedule of performance, compensation and any other applicable terms. The Director has the discretionary authority, but not the obligation, to streamline these procedures, e.g., conferring by telephone instead of meeting, when the Director deems it is in the City's best interest to do so.

B. Service Order Execution. The Service Order must be executed by authorized representatives for each party before any Services may be performed. Design Professional will not be entitled to compensation for any Services performed without a duly authorized and fully executed Service Order.

C. Reports. Design Professional must provide City with written reports concerning the status of Services required under this Agreement, at the time and in the form required by the City.

3. SCHEDULE OF PERFORMANCE:

All Services must be provided within the time specified in the schedule of performance for each Service Order. All Services under this Agreement must be completed on or before the end of the Term. The schedule of performance for a Service Order may not extend beyond the Term.

4. COMPENSATION:

A. Not to Exceed Limits. Compensation for Services provided under each Service Order will be based on the rates set forth in **Exhibit C, Compensation**, attached hereto and incorporated herein, and will be subject to any maximum compensation limit specified in the Service Order. The total, aggregate compensation to be paid to Design Professional during the Term of this Agreement may not exceed _____ Dollars (\$_____).

B. Invoices and Payments. City will pay Design Professional for Services satisfactorily provided under a Service Order, within 30 days following receipt of a properly submitted invoice for Services provided during the preceding calendar month, unless otherwise provided by a Service Order.

Unless otherwise provided by a Service Order, each invoice must include, for each day Services were provided:

1. The name of each individual providing Services;
2. A succinct summary of the Services performed by each such individual;
3. The time spent by each individual providing those Services;

4. The applicable hourly billing rate and payment due; and
5. A detailed breakdown of all allowable expenses.

All hourly rates and allowable expenses must conform to the City-approved rates set forth in Exhibit C.

5. TIME IS OF THE ESSENCE:

Time is of the essence for the performance of all Services required under each Service Order and for all of Design Professional's duties under this Agreement. Design Professional must at all times have sufficient, qualified staff or subconsultants assigned to provide timely provision of all Services under this Agreement. Design Professional must respond promptly to Service Order requests; and, when applicable, to contractor requests, including, but not limited to, requests for information, substitution requests and change order requests.

6. STANDARD OF CARE:

All Services must be provided in a manner that meets or exceeds the standard of care applicable to the same type of design professionals performing similar work in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by the City and who do not have any contractual relationship with City, with the exception of this Agreement.

7. ERRORS AND OMISSIONS:

Design Professional is solely responsible for all of its or its subconsultants' errors and omissions and must promptly correct any and all such errors and omissions at its sole expense. Design Professional must also take appropriate measures to avoid or mitigate any delay, liability or costs resulting from any such errors or omissions. This provision survives expiration or termination of this Agreement.

8. PROJECT COORDINATION:

A. City's Representative. The Director's authorized delegee, _____, <insert name> will be the City's representative for all purposes under this Agreement, serving as the Project Manager with authority to oversee the progress and performance of Services under this Agreement. The City reserves the right to replace or provide a substitute Project Manager at any time, and without prior notice to the Design Professional.

B. Design Professional's Representative. Design Professional will assign a single Project Executive, subject to City approval, with authority to receive and act on directions from the City and responsibility for the progress and performance of Services under this Agreement. The designated Project Executive is _____ <insert name>. If a substitute or replacement Project Executive is required for any reason, the City must be notified of the need as soon as possible, Design Professional's designation of the individual proposed to serve as the substitute or replacement will be subject to the Director's prior written approval. Design Professional is not entitled to compensation for the time required for the substitute or replacement Project Executive to obtain sufficient knowledge of the required Services to fully assume the former Project Executive's responsibilities.

9. **HOLD HARMLESS:**

A. Indemnity Obligations Subject to Civil Code Section 2782.8. Design Professional will, 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 (collectively, the "Indemnified Parties") 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 (collectively, "Liability"), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's employees, officers, officials, agents or subconsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation. Design Professional is not obligated under this Agreement to indemnify City to the extent that any Liability is caused by the sole or active negligence or willful misconduct of any of the Indemnified Parties. In addition to its indemnity obligations, Design Professional will provide its immediate and active cooperation and assistance to the City, at no additional cost to the City, in analyzing, defending, and resolving such Liability.

B. Claims For Other Liability. For all liabilities other than those included within paragraph (A) above, Design Professional will, to the fullest extent allowed by law, indemnify, defend, and hold harmless the Indemnified Parties 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 Design Professional or Design Professional's employees, officers, officials, agents or subconsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation. Design Professional will 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 the Indemnified Parties.

C. Claims Involving Intellectual Property. In addition to the obligations set forth in paragraphs (A) and (B) above, Design Professional will indemnify, defend, and hold the Indemnified Parties harmless from and against any claim in which an alleged violation of intellectual property rights, including but not limited to copyright or patent rights, arises out of, pertains to, or relates to Design Professional's negligence, recklessness or willful misconduct under this Agreement. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation.

D. Survival. The requirements of this section survive expiration or termination of this Agreement.

10. **INSURANCE:**

On or before the commencement of the Term of this Agreement, Design Professional must furnish City with certificates showing the type, amount, effective dates and dates of expiration of insurance coverage required in this section. Such certificates, which do not limit Design Professional's indemnification obligations, must also contain substantially the following statement: "If any of the above insurance covered by this certificate is canceled before the expiration date thereof, the insurer affording coverage will provide 30 days advance written notice to the City of Cupertino, Attention: City Manager." Design Professional will maintain in force at all times during the performance of this Agreement all insurance coverage required by

maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured Endorsements. City, its City Council, boards and commissions, officers, officials, employees, agents and volunteers must be named as additional insureds under all insurance coverages, except any worker's compensation and professional liability insurance, required by this Agreement. Any additional insured will 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 will not be required to contribute anything toward any loss or expense covered by the insurance required under this Agreement.

E. Sufficiency of Insurance. The insurance limits required by City are not represented as being sufficient to protect Design Professional. Design Professional is advised to confer with Design Professional's insurance broker to determine adequate coverage for Design Professional.

11. INDEPENDENT CONTRACTOR:

City and Design Professional intend that the relationship between them created by this Agreement is that of owner-independent contractor. The manner and means of providing the Services are under the control of Design Professional, 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 Design Professional's performance of the 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 Design Professional, its employees or agents. Deductions will 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 payments due to Design Professional. Payments for the above items, if required, are the responsibility of Design Professional.

12. SUBCONSULTANTS:

Unless prior written consent from City is obtained, only those individuals and subconsultants whose names are included in this Agreement, including the Exhibits hereto, may provide Services under this Agreement. Design Professional must require all of its subconsultants providing Services under this Agreement to comply with the terms and conditions of this Agreement. Any subconsultants employed by Design Professional must be required to furnish proof of workers' compensation insurance and must also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance required for Design Professional.

13. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Design Professional assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing the Services, pursuant to all applicable IRCA or other federal, or state laws, rules or regulations. Design Professional will indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance with this section by Design Professional.

14. **NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer or employee conduct, Design Professional agrees that harassment or discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Design Professional or Design Professional's employees or subconsultants on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected classification will not be tolerated. Any violation of this provision by Design Professional, its employees, subconsultants or agents constitutes a material breach of this Agreement, and grounds for termination for cause.

15. **PROHIBITION AGAINST TRANSFERS:**

Design Professional will 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 City's consent will be null and void, and any assignee, sublessee, hypothecate or transferee will acquire no right or interest by reason of any attempted assignment, hypothecation or transfer. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Design Professional, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Design Professional is a partnership or joint venture or syndicate or cotenancy, which results in changing the control of Design Professional as a legal entity, will be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the business entity.

16. **PERMITS AND LICENSES:**

Design Professional, at its sole expense, must 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 the Services.

17. **WORK PRODUCT:**

A. Property Rights. Any interest (including copyright interests) of Design Professional or its subconsultant(s) in any work product, document, report, draft, memoranda, map, record, plan, drawing, specification and other deliverable, in any medium (collectively, "Work Product"), which has been prepared or created by Design Professional or its subconsultant(s) pursuant to or in connection with this Agreement, will be the exclusive property of City. No Work Product, information or other data given to or prepared, created, or assembled by Design Professional or its subconsultant(s) pursuant to this Agreement may be made available to any individual or organization by Design Professional or its subconsultant(s) without prior written approval by City. All provisions of this section survive expiration or termination of this Agreement.

B. Copyright. To the extent permitted by Title 17 of U.S. Code, all Work Product prepared or created under this Agreement is deemed works for hire and all copyrights in such Work Product will be the property of City. In the event that it is ever determined that any Work Product prepared or created by Design Professional or any subconsultant under this Agreement are not works for hire under federal law, Design Professional hereby assigns to City all copyrights to such Work Product when and as created. Subject to City's prior written approval, Design Professional may retain and use copies of such Work Product for reference and as

documentation of its experience and capabilities and in its promotional materials. With respect to Design Professional's standard details, Design Professional may retain the copyright, but grants to City a perpetual non-exclusive license to use such details in connection with the Services.

C. Patents and Licenses. Design Professional must pay any and all royalties or license fees required for authorized use of any third party intellectual property, including, but not limited to, patented, trademarked, or copyrighted intellectual property that it selects for incorporation into the Services or Work Product provided under this Agreement.

D. Re-Use of Work Product. Without limiting any other City right to any of the Work Product prepared or created by Design Professional or its subconsultants, and subject to the limitations of law, all Work Product prepared under this Agreement may be used or modified by the City or its authorized agents in execution or implementation of:

1. The original Services for which Design Professional was hired;
2. Completion of the original Services by others;
3. Subsequent additions to the original Services; and/or
4. Other City projects.

E. Deliverables and Format. Electronic and hard copies of Design Professional's Work Product will constitute the Project deliverables. Plans must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats. All written Work Product required to be provided by this Agreement (other than large-scale architectural plans and similar items) must be printed on recycled paper and copied on both sides of the paper except for one original, which must be single-sided.

18. RECORDS:

Design Professional must maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of Services under this Agreement. Design Professional must maintain adequate records of Services provided in sufficient detail to permit an evaluation of the Services. All such records must be maintained in accordance with generally accepted accounting principles and must be clearly identified and readily accessible. Design Professional must provide free access to such books and records to the City or its agents at all times during Design Professional's normal business hours. Design Professional must give the City or its agents the right to examine and audit those items, and to make transcripts or copies as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, must be kept separate from other documents and records which are unrelated to this Agreement and must be maintained for a period of three years after receipt of final payment from the City.

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 Design Professional must reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit. The requirements of this section survive expiration or termination of this Agreement.

19. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement must be given in writing and will 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; or upon confirmation of delivery by a reputable overnight delivery service.

A. To City. All notices, demands, requests, or approvals from Design Professional to City must be addressed to City at:

City of Cupertino
10300 Torre Ave.
Cupertino CA 95014
Attention: _____

B. To Design Professional. All notices, demands, requests, or approvals from City to Design Professional must be addressed to Design Professional at:

20. **TERMINATION:**

A. Termination for Convenience. City may, at any time, acting in its sole discretion and without cause, terminate this Agreement for convenience by giving written notice to Design Professional at least seven days before the effective date of the termination. If the Agreement is terminated pursuant to this paragraph, the City will compensate Design Professional for all Services satisfactorily performed prior to the effective date and time of the termination, in accordance with this Agreement.

B. Termination for Cause. If Design Professional fails or refuses to perform any of its duties under this Agreement at the time and in the manner required, Design Professional will be deemed in default of this Agreement. If the default is not cured or diligently attempted to be cured by Design Professional within the time specified in the City's written notice of default, or if the Design Professional has otherwise materially breached the Agreement, the City may terminate the Agreement for cause by giving written notice to Design Professional at least seven days before the effective date of the termination, unless otherwise specified in the written notice of default.

C. Duties upon Termination. If the Agreement is terminated, whether for convenience or cause, within seven days of the effective date of the termination, Design Professional must promptly deliver to City copies of all Work Product, deliverables, or documents prepared by Design Professional under this Agreement, including both print and electronic versions. Full compliance with this requirement is a condition precedent to final payment following termination. This paragraph survives termination of the Agreement.

21. **LEGAL REQUIREMENTS:**

Design Professional must comply with all applicable local, state or federal laws, rules and regulations, and all ordinances, rules and regulations enacted or issued by City. In addition, if any of the Services provided under this Agreement are subject to prevailing wage requirements under Labor Code Section 1720 et seq., the following provisions apply to those Services:

A. Prevailing Wages. To the extent applicable, Design Professional must comply with the City's Labor Compliance Program and all other requirements set forth in Labor Code section 1770 et seq.

B. Working Day. To the extent applicable, Design Professional must 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, Design Professional must 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 must be made available for inspection as provided in California Labor Code Section 1776.

D. Apprentices. To the extent applicable, Design Professional must comply with California Labor Code Section 1777.5 regarding apprentices.

22. **DISPUTE RESOLUTION:**

This Agreement will 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 must be filed with the Superior Court for the County of Santa Clara, State of California, and no other place. If the parties engage in arbitration to resolve a dispute relating to this Agreement, the arbitrator's award must be supported by law and substantial evidence, and must include detailed written findings of law and fact. This section survives expiration or termination of the Agreement.

23. **ATTORNEY FEES:**

If the City initiates a legal action, including a complaint or cross-complaint, arising out of, relating to or seeking the interpretation or enforcement of the terms of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs, including the attorney fees and costs for any arbitration, appeal, or enforcement of judgment. This attorney fee provision does not apply to legal actions initiated by the Design Professional. This section survives expiration or termination of the Agreement.

24. ADVERTISEMENT:

Design Professional may not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, posters or cards of any kind on City property performed under this Agreement without prior written approval from the City.

25. WAIVER:

A waiver by City of any breach of any term, covenant, or condition contained herein will 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.

26. THIRD PARTY BENEFICIARIES:

There are no intended third party beneficiaries of this Agreement.

27. RECITALS:

The parties agree that the above recitals, which are made part of this Agreement, are true and correct.

28. INTEGRATED AND AMENDMENT:

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 will be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written instrument signed by authorized representatives for both City and Design Professional. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, all remaining provisions will remain in full force and effect.

29. CONFLICT OF INTEREST:

Design Professional warrants that it is not a conflict of interest for Design Professional to perform the Services required by this Agreement. Design Professional may be required to fill out a conflict of interest form if the Services provided under this Agreement require Design Professional 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.

30. GIFTS:

Design Professional is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, as set forth in City Administrative Procedures. Design Professional agrees not to offer any City officer or designated employee any gift prohibited by the Administrative Procedures. Offering or giving a prohibited gift constitutes a material breach of this Agreement by Design Professional. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for cause as provided in Section 20 of this Agreement.

31. INSERTED PROVISIONS:

Each provision and clause required by law to be inserted into the Agreement is deemed to be enacted herein, and the Agreement will 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 will be amended to make such insertion on application by either party.

32. EXECUTION:

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

33. HEADINGS:

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

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

DESIGN PROFESSIONAL
<Name of Design Professional>

CITY OF CUPERTINO
A Municipal Corporation

By _____

By _____

Name _____

Timm Borden, Director of Public Works

Title _____

Date _____

Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

Address: _____

Randolph Stevenson Hom, City Attorney

ATTEST:

Grace Schmidt, City Clerk

Contract Amount: _____

Account No. : _____

Exhibit A
Scope of Services

SAMPLE

**Exhibit B
Service Order Form**

SAMPLE

**Exhibit C
Compensation**

SAMPLE