



**CUPERTINO**

**CITY OF CUPERTINO  
REQUEST FOR PROPOSAL**

**FOR**

**STORM DRAIN CLEANING / CCTV  
INSPECTION SERVICES**

**Proposal Due Date:**

**Thursday, November 3, 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: Agreement

# City of Cupertino

## Storm Drain Cleaning / CCTV Inspection Services – Scope of Work & Requirements

### Overview:

The City of Cupertino (City) seeks proposals from qualified contractors to perform storm drain line cleaning and CCTV video services at various locations throughout the City.

Tasks may include cleaning of existing underground storm drain main lines, laterals located both within active travel lanes under streets and in off-street utility easements, visual inspection of manholes and CCTV inspection. The selected contractor will be responsible for cleaning/removal of obstructions and identifying deficient areas. Incidental proposal items include travel time to Cupertino, delivering of all pre-cleaning & post-cleaning storm drain videos along with notes to the public works department for review and disposal of solid debris to the Service Center (10555 Mary Avenue).

Objective of services to be provided is to document the condition of storm drain segments selected to better prepare for the upcoming rainy season. Less effort is expected in providing a heavily detailed inspection report. Alternatively, the contractor is expected to concentrate on structural issues, obvious failures, maintenance issues, etc. as they pertain to current operation.

The contractor shall perform all field work on residential and minor collector streets between 7:00am and 4:00pm Monday to Friday. Collector and arterial streets are to have field work performed between 9:00am and 3:00pm. Approximately 80% of the work is within residential areas, with the remaining 20% within collector / arterial areas.

Proposals are due before 3:00 p.m. Thursday, November 3, 2016 (See Proposal Format and Due Date below). The City has \$160,000 budgeted for this work.

### Scope of Work:

City will supply a drawing to the City Storm system (or at a minimum a 24" x 36" map of the city).

City will outline the locations of planned cleaning and inspection areas.

City will have a staff member work with contractor to note major failings, assess efficacy of line cleaning, quality of video and to assist in locating structures, etc.

Contractor will utilize a NASSCO approved PACP program and POSM for inspections.

Contractor will utilize, as necessary and as available, additional pieces of equipment not currently specified in this contract, including but not limited to pole cameras, which will be utilized at the

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beginning of the project to quickly assess pipe condition and cleaning and video needs; and more easily deployed flusher truck(s) with catch baskets (in lieu of a vacuum unit).

Staffing for this project is expected to be varied as necessary to allow for the most effective use of tooling and to ensure the greatest scope of work is accomplished.

Contractor will be prepared to locate pipe failings throughout the course of inspection.

Manhole inspections will be visual only (no video inspection required). These inspections will be to determine obvious failing and deficiencies which need immediate attention.

Traffic control needs will be based on location, field conditions and necessity. Contractor will work with City before and during operations to ensure the public and contractor safety.

The Contractor shall provide a proposal that details a schedule of hourly costs for personnel and equipment that is likely to be utilized to meet the intent of these scopes of services. Hours of work shall be from 7am to 4pm. Travel time to and away from Cupertino are incidental and not included in the eight hour work day. It is anticipated this program of CCTV inspection and cleaning will be complete by the end of January 2017 but depending on issues found may extend to the end of the calendar year.

The Contractor shall coordinate with the City on procedures, documentation standards and quality control. The Contractor shall agree to abide by the City's guidelines.

The scope of work includes, but is not limited to, the following requirements:

**Requirements:**

**1. Manhole Inspections**

Manholes along the storm drain lines selected for inspection shall be inspected for general construction, condition and evidence of inflow, infiltration, surcharging, displacement, and damage.

The City will provide the Contractor with the following:

- System drawings in hard copy.
- A list of manholes to be inspected.
- Assistance with locating manholes (on an as needed basis).

The Contractor will be responsible for performing the following tasks:

- Assess and record results of inspection on inspection table provided by City.
- Confirm the size and number of pipe penetrations.
- The Contractor shall provide a draft of the manhole inspection report prior to submitting the final Report of Recommendations.
- The Contractor shall provide the City with the following deliverables (to be submitted as attachments to the final Report of Recommendations) in connection with the tasks performed as set forth in this Section.

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- A manhole inspection table

## **2. Storm Drain Cleaning**

Storm drain cleaning shall include removal of foreign material and objects from the line sufficiently to permit the City to determine the locations of storm drain insufficiencies, such as infiltration, structural damage, and sagging. Prior to cleaning, Contractor is to utilize a pole camera to visually determine if cleaning is required. The Contractor shall take all necessary measures not to damage the storm drain as a result of the cleaning. The method of cleaning used will depend on pipe size.

- a. Low pressure hydraulic cleaning equipment with a movable dam, if used, shall be constructed in such a way that a portion of the dam may be collapsed at any time during the cleaning operations to protect against flooding of the storm drain. The movable dam shall be equal in diameter to the pipe being cleaned and shall provide a flexible scraper around the outer periphery to insure removal of debris.
- b. If pipe cleaning balls or other equipment which cannot be collapsed are used, special precautions shall be taken to prevent flooding of the storm drain and public or private property.
- c. The equipment shall have a selection of two or more high velocity nozzles. The nozzles shall be capable of producing a scouring action from 15 to 45 degrees in all size lines designated to be cleaned. The equipment shall carry its own water tank, auxiliary engines, pumps, and hydraulically driven hose reel.
- d. Mechanically powered (bucket machines) equipment shall be in pairs with sufficient power to perform the work in an efficient manner. Machines shall be belt operated or have an overload device. Machines with direct drive that could cause damage to the pipe will not be allowed. A power rodding machine shall be either a sectional or continuous rod type capable of holding a minimum of 750 feet of rod. The rod shall be specifically heat-treated steel. To insure safe operation, the machine shall be fully enclosed and have an automatic safety clutch or relief valve. The designated storm drain line sections shall be cleaned using hydraulically propelled, high-velocity jet, or mechanically powered equipment.

Selection of equipment used shall be based on the conditions of lines at the time the work commences. The equipment and methods selected shall be satisfactory to the Engineer. The equipment shall be capable of removing roots, dirt, leaves, rocks, sand, trash, and other materials and obstructions from the storm drain lines. If cleaning of entire section cannot be successfully performed from one manhole, the equipment shall be set upon the other manhole and cleaning again attempted. During storm drain cleaning operations, satisfactory precautions shall be taken in the use of cleaning equipment.

When hydraulically propelled cleaning tools (which depend upon water pressure to provide their cleaning force) or tools which retard the flow in the storm drain line are used, precautions shall be taken to ensure that the water pressure created does not damage or cause flooding of public or private property in the vicinity of the storm drain. When possible, the flow of water in the storm drain shall be utilized to provide the necessary pressure for hydraulic cleaning devices.

When additional water from fire hydrants is necessary to avoid delay in normal work procedures, the water shall be conserved and not used unnecessarily. No fire hydrant shall be obstructed in case of a fire in the area served by the hydrant. The Contractor shall provide the necessary water for this task.

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**The Contractor should contact San Jose Water Company or California Water Service Company to procure a hydrant meter. Use of property owner's water for storm drain cleaning is not permitted.**

The Contractor is responsible for any damage or clean-up on private property caused by negligent storm drain cleaning operations. Roots shall be removed in their entirety and as required to ensure an open passageway in the pipe sufficient to video the pipe. Procedures may include the use of mechanical equipment, which will not damage storm drain. Root removal and all related work shall be included in various items and shall not be considered for additional payment. Protruding taps shall not be removed, and shall remain in place. Acceptance of storm drain line cleaning shall be made upon demonstration, through the television inspection, that line has been cleaned sufficiently to allow for videoing.

The Contractor shall record notes regarding the quantity and type of material removed from each pipe segment using Granite XP/ or similar as approved by the City.

### **3. Storm Drain Video Inspection**

Storm drain video inspection shall include producing and logging of the storm drain video inspection as specified in the following paragraphs when possible and practicable.

The television camera used for inspection work shall be color format, specifically designed and constructed for use in storm and sanitary sewers. Lighting and camera quality shall allow a clear, in-focus picture of the entire periphery of the pipe for a minimum distance of six feet.

To ensure acceptable picture quality under all possible conditions that may be encountered during the inspection, a variable intensity control for lighting, and a remote adjustment for camera focus, shall be provided for the operator. The camera, television monitor, and other components of the video system shall be capable of producing a color picture of quality adequate to identify major defects and locate laterals accurately. The camera shall be moved through the line in either direction at a moderate rate, stopping when necessary to permit proper documentation of the condition of the storm drain.

When manually operated winches are used to pull the television camera through the line, telephones or other suitable means of communication shall be set up between the two manholes of the section being inspected to insure good communications between members of the crew.

Accurate distance measurements are required. Measurement for location of defects shall be made by means of a camera-mounted transmitter and aboveground receiver. Marking on the cable, which requires interpolation for depth of the manhole, will not be permitted. To establish criteria for video picture quality to be maintained throughout the project, the Contractor shall furnish DVD of a previous storm drain inspection that meets these specifications for quality. This tape shall become the property of the City.

The audio portion of the inspection report, recorded at the time of inspection, shall be intelligible in its entirety. The information contained on the audio recording shall include (1) the location of the storm drain, (2) the location of the manholes involved, (3) the direction of travel (4) a description of conditions in the storm drain as they are encountered, and (5) the location and entrance condition of service laterals.

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The Contractor shall deliver the video inspections and logs on DVDs or on an external hard drive. **The Contractor shall provide all video inspection results in PACP format, compatible with Granite XP Version 5.4.12 or approved City equal.** The pipe information for which codes will be created includes but limited to obstructions (roots / debris build up), cracks, offset joints, sag, pipe type, and laterals.

Failure to responsibly and/or timely perform any of these service requirements may cause liquidated damages of \$75 per day to be levied.

**Traffic Control:**

Attention is directed to “Public Convenience”, “Public Safety”; and “Construction Area Traffic Control Devices” of the State of California Standard Specifications, 2010 Edition as currently revised (“Caltrans Specifications”). The Contractor shall cooperate with local authorities relative to handling traffic through the area and shall make his own arrangement relative to keeping the work area clear of parked vehicles.

All signs and other warning devices shall be provided by the Contractor. The Contractor shall refer to the current “Manual of Warning Signs, Lighting and Devices for use in the Performance of Work Upon Highways”, “Uniform Sign Chart” issued by the Department of Transportation, Division of Operations, and “Manual of Uniform Control Devices”.

The Contractor shall furnish, install and maintain such facilities as barricades, traffic signs, and flagmen, as may be necessary to advise the public of construction hazards and to control traffic. Contractor shall submit to the Engineer a Traffic Control Plan if work is to occur on or near arterial and collector streets, otherwise typical MUTCD plans will be followed. Any work being performed without proper signing in place shall be stopped until the unsatisfactory condition is corrected.

**Agreement Term:**

With satisfactory performance by the contractor, the agreement term will be through February 2017 with as much work as possible performed by the end of January 2017.

The City shall have the authority to suspend or cancel this agreement for cause or no cause upon thirty (30) days advance written notice.

**Proposal Format and Due Date:**

**Proposal Format:**

All proposals shall include the following minimum information included with the Proposal Schedule:  
CCCT

A. Approach

A short discussion of the intended approach to the project that demonstrates the contractor understanding of the issues and tasks and the contractor’s ability to address them.

B. Team Members

Qualifications and 24 hour contact phone numbers.

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C. Proposed Project Schedule

Time is of the essence for this agreement. The proposal shall include a schedule to undertake the work program. The project is anticipated to start by November 14, 2016 and substantially completed by the end of January 2017.

F. Proposed Budget.

Indicate the hourly personnel and equipment costs to complete this project. Prices quoted must be binding for a minimum duration of agreement. City budget for this project is \$160,000.

H. Contractor selected shall be able to meet the requirements of the City of Cupertino standard form Contractor Agreement (Agreement) and have the ability to commence operations the week of November 14, 2016

**Proposal Due Date:**

Proposals must be delivered to Roger Lee, 10300 Torre Avenue no later than Thursday, November 3, 2016 at 3:00 P.M. local time. Proposal packages or pdf email attachments must be plainly labeled: PROPOSAL FOR STORM DRAIN CLEANING / CCTV INSPECTION SERVICES). Faxed and/or electronic bids will be accepted.

Questions concerning scope of work and proposal requirements are to be directed to Roger Lee, Assistant Director of Public Works at (408) 777-3350, [rogerl@cupertino.org](mailto:rogerl@cupertino.org).

The contractor shall submit the completed City of Cupertino Storm Drain Cleaning / CCTV Inspection Services – Proposal Schedule with an original signature by an authorized agent of the company.

**Selection Process:**

The City of Cupertino will award the Storm Drain Cleaning / CCTV Inspection Services agreement to the lowest cost and responsive bidder in accordance with this Scope of Work and Requirements.

Responsiveness will be evaluated on thoroughness of meeting proposal requirements. To be considered responsive, contractor shall follow all submittal instruction requirements and include at a minimum the following in their proposal:

1. Submission of a proposal that details a schedule of hourly costs for personnel and equipment that is likely needed and as specified in this scope of services.

Lowest cost will be determined by the cost of labor and equipment for the typical crew outlined in the Proposal Schedule.

The successful contractor determined to be the lowest cost and responsive bidder will be required to meet the requirements of the City of Cupertino standard form Contractor Agreement (Agreement). Upon meeting all requirements of the Agreement, contractor will be required to execute the Agreement with no changes prior to being authorized to begin services. It is anticipated that an agreement will be executed and services will begin within in the week of November 14, 2016.

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The City of Cupertino reserves the right to reject any or all proposals with or without cause, to waive technical errors and informalities, or to accept the proposal which in its judgment best serves the public interest.

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# Proposal Schedule

## City of Cupertino Storm Drain Cleaning / CCTV Inspection Services

Contractor to provide a proposal that details a schedule of hourly costs for ALL personnel and ALL equipment likely to be used to meet the intent of the scope of services. City to pay only for personnel and equipment actually used to the nearest hour of use (no minimums).

For City to determine lowest cost, City will evaluate the proposal of hourly costs for personnel and equipment for the following typical crew:

PERSONNEL	EQUIPMENT	\$/HOUR (A)	# of HOURS (B)	TOTAL (AxB)
(1) Operator			8	
(2) Laborers			8	
	Flusher Truck		8	
	Vacuum Truck		8	
	Video Inspection Vehicle		8	

GRAND TOTAL: \$                     

This schedule and Contractor proposal will be an exhibit to the agreement to the selected Contractor.

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND**  
**FOR**  
**(insert contractor name)**

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THIS AGREEMENT, for reference dated November XX, 2016, 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 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 Storm Drain Cleaning / CCTV Inspection Services, in accordance with the adopted Storm Drain Cleaning / CCTV Inspection Services – Scope of Work & Requirements dated October 20, 2016.

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

1. **TERM:**

The Contractor shall begin work within five (5) working days after receiving notice from the Engineer to commence the work, and shall diligently prosecute the work to completion before January 31, 2017.

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 Storm Drain Cleaning / CCTV Inspection Services – Scope of Work & Requirements dated October 20, 2016 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 bid, 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 storm drain maintenance fund.

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

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

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in paragraph 1 above, damage will be sustained by the City, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the City the sum of Five Hundred Dollars (\$500) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

It is further agreed that in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if it decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge the Contractor, his or her heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which accrue during the period of such extensions.

The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the City, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that the Contractor shall, within one (1) day from the beginning of such delay, notify the City in writing of the causes of delay. The City shall ascertain the facts and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

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 or active 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:**

No bonds are required.

**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, sublessee, 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.

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 therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then 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  
10300 Torre Avenue  
Cupertino CA 95014  
Attention: Roger Lee, Assistant Director of Public Works

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

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

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.

1. **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.

22. **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.

34. **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 Contractor.

25. **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.

46. **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 on the day and year first above written.

CONTRACTOR  
\_\_\_\_\_[Name of Contractor]\_\_\_\_\_

CITY OF CUPERTINO  
A Municipal Corporation

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

By \_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

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

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