



CUPERTINO

CITY OF CUPERTINO
REQUEST FOR QUALIFICATIONS

FOR

SIGNAGE AND GRAPHICS DESIGN SERVICES FOR

**STEVENS CREEK CORRIDOR
PARK AND RESTORATION**

The City of Cupertino invites submittals from
qualified firms to provide signage and graphics design services for
Stevens Creek Corridor Park and Restoration

**** SUBMITTALS ARE DUE SEPTEMBER 3, at 2:00 pm ****

August 19, 2013

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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1. DESCRIPTION

The City of Cupertino has undertaken construction of improvements along Stevens Creek in Cupertino as part of the Stevens Creek Corridor Park and Restoration projects. The work includes restoration and widening of Stevens Creek, improvement of habitat conditions for steelhead and other wildlife species that inhabit the creek corridor, installation of a pedestrian-bicycle trail and trailside amenities, crosswalk and walkway improvements, plantings and irrigation, and other features.

The existing trail requires updated signage. A new section of trail will be completed in coming months. It requires several types of signage. All signage will be outdoors year round, in unsupervised settings and in an area that contains extensive wildlife. Among the signs needed are informational, directional, safety/regulatory, funder, advisory, and dedication plaque. The City seeks qualified firms that are knowledgeable and experienced in signage and graphic design and creating specification documents suitable for ordering signs.

The City intends to review qualifications submittals received, and create a list of firms that are deemed qualified to provide the needed services. The listed firms will be considered qualified to provide similar or related services through approximately 2015. The qualified firms may be asked to provide the services that are needed for the Stevens Creek Corridor projects, and/or other City sites with similar considerations in the future.

2. SCOPE OF SERVICES

Services are anticipated to consist of tasks noted below.

TASK A

Review and confirm desired signage with City.
Visit site to review signage locations and needs.
Attend kickoff meeting.

TASK B

Provide design of new signage placards for a public park and multi-use trail including text, layout and graphics. Provide revised and updated designs for existing trail and park signage. Provide input on siting and orientation of signs. New signs shall be compatible with existing signs in place at Blackberry Farm Park.

Signage shall address:

- Wayfinding/directional
- Safety/rules and regulations
- 'Icon' graphic signs
- Golf course proximity
- Maps of trail and creek corridor, including 'you are here' map
- Grantor acknowledgement
- Informational

TASK C

Provide design for bronze dedication plaque.

TASK D

Provide complete specifications for soliciting competitive fee proposals from potential suppliers and suitable for public agency use for grant-funded projects.

TASK E

Assist City with solicitation of fee proposals, vendor selection, and oversight of ordering, fabrication, delivery and installation of signs.

SCHEDULE

Design services are to be completed by October 15, 2013. Sign installation is anticipated in November 2013.

3. SELECTION PROCESS

A city selection team will evaluate the qualification packages submitted. The City may choose to select a best-qualified firm based upon the evaluation. As needed, the City may invite one or more firms to an interview or teleconference to clarify their submittal, understanding of the work and qualifications. At the conclusion of such interview(s), or if a best-qualified firm is selected without the need for interviews, the City will negotiate a services agreement with the firm that is top ranked for the services. If the negotiations with the top ranked firm are unsuccessful, the City will initiate negotiations with the second-ranked firm, and with the next-ranked firm as needed. The rankings, selection process and contract negotiations are expected to conclude swiftly.

4. SELECTION CRITERIA

Some of the criteria for selection of the firm for this assignment are listed below, not necessarily in order of importance:

- Prior experience performing similar work
- Range and success of experience in previous projects, especially projects of similar scope
- Qualifications of key staff persons who will carry out the project
- Ability to meet the City's schedule for the project
- Organization and location of the firm
- Experience in Cupertino and/or the south San Francisco Bay area
- Ability to provide insurance in the required amount. See Exhibit C for information regarding insurance requirements.
- References and recommendations

5. SCHEDULE

Qualifications submittals as described below are due by 2:00 pm on Tuesday September 3, 2013. Submittals may be mailed or delivered to City of Cupertino, City Hall, Public Works Department, 10300 Torre Avenue, Cupertino, CA 95014, attention Gail Seeds. Questions regarding the project or requests to arrange a site visit may be directed to Gail Seeds or Carmen Lynaugh, 408-777-3354, or via email, gails@cupertino.org and carmenl@cupertino.org.

6. QUALIFICATIONS SUBMITTAL

Please submit 4 copies of the qualifications submittal, including one unbound copy, plus one electronic copy on a diskette or flash drive in a pdf format. The qualifications submittal is expected to not exceed 8 pages, excluding biographies of key staff, and also excluding the following items if your firm chooses to provide: cover letter; table of contents; photos or samples of similar work; and any promotional materials. Simple and brief submittals are welcome. The City reserves the right to reject any or all submittals and to waive any irregularities to choose the firm(s) or team(s) which in its opinion best serves its interests.

The City is interested in receiving information that communicates your firm's qualifications. Suggested content would address points below. Brief responses are acceptable.

- Firm's structure, background, general qualifications.
- Description of your firm's approach to providing the desired services.
- Principal staff that would be assigned to the project and their role. A work history or resume for any key personnel would be appreciated. Resumes are preferred in an appendix.
- Recent experience of the firm in providing services for similar projects. Note the service(s) provided and the year. If possible provide the name and contact information for the owner/client, contractor, operator, or other contact(s) that may serve as references.
- Special knowledge or capabilities relating to the project.
- Whatever information you wish the City to know about your firm & your qualifications.
- Identify location of your office(s) where work will be performed.
- Confirm in writing that the City-required insurance levels and endorsements are acceptable and that your firm is willing to sign the attached agreement without changes in wording.
- Include a current rate sheet for your firm.

Thank you for your interest in this RFQ. If you have any questions, please contact City of Cupertino, Department of Public Works, 408-777-3354, attn. Gail Seeds gails@cupertino.org or Carmen Lynaugh, carmenl@cupertino.org.

EXHIBIT A

Maps and Exhibits

Project Area Vicinity Map



STEVENS CREEK CORRIDOR RESTORATION PLAN - OVERVIEW

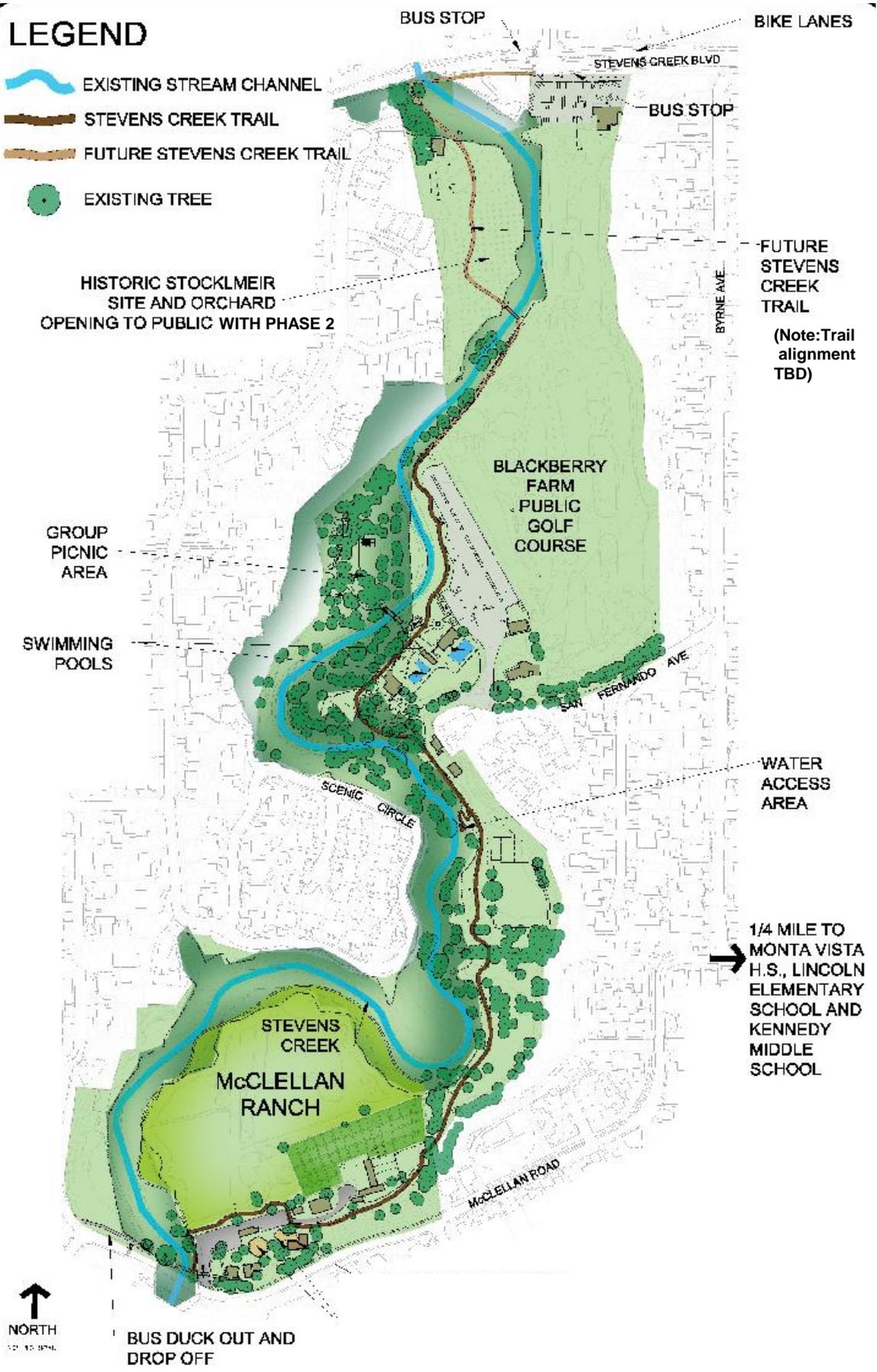


EXHIBIT B

City of Cupertino

Consultant Services Agreement



AGREEMENT BETWEEN CITY OF CUPERTINO AND
FOR PROFESSIONAL SERVICES FOR

THIS AGREEMENT, for reference dated _____, 2013, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), and _____, a _____ (California Corporation, partnership, sole proprietor, individual), whose address is _____ (hereinafter referred to as "Consultant"), and is made with reference to the following:

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Consultant desire to enter into an agreement for _____ upon the terms and conditions herein.

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

1. TERM:

The term of this Agreement shall commence on the date this agreement is executed and shall terminate on _____, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED:

Consultant shall perform each and every service set forth in Exhibit "A". titled "Scope of Services" which is attached hereto and incorporated herein by this reference.

3. SCHEDULE OF PERFORMANCE:

The Services of Consultant are to be completed according to the schedule set out in Exhibit C, titled "Schedule", which is attached hereto and incorporated herein by this reference.

4. COMPENSATION TO CONSULTANT:

The maximum compensation to be paid to Consultant under this agreement shall not exceed _____ Dollars (\$X,000.00). The rate of payment is set out in Exhibit B, titled "Fee Schedule", which is attached hereto and incorporated herein.

Consultant shall furnish to City a detailed statement of the work performed for compensation during the term of this Agreement. Consultant may submit monthly invoices for interim progress payments during the course of each phase, clearly stating as a minimum the total Contract amount, amount paid to date, percent complete and amount due.

5. TIME IS OF THE ESSENCE:

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

6. STANDARD OF CARE:

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

7. INDEPENDENT PARTIES:

City and Consultant intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by City to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

8. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

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

9. NON-DISCRIMINATION:

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

10. PROJECT COORDINATION

CITY: Director of Public Works shall be representative of City for all purposes under this Agreement. Gail Seeds is hereby designated as the Director of Public Works' designee and Project Manager, and shall supervise the progress and execution of this Agreement.

CONSULTANT: Consultant shall assign a single Consultant Project Manager to have overall responsibility for the progress and execution of this Agreement for Consultant. Should circumstances or conditions subsequent to the execution of the Agreement require a substitute Consultant Project Manager for any reason, the Consultant Project Manager designee shall be subject to the prior written acceptance and approval of the City Project Manager. The designated Consultant Project Manager shall be _____.

11. HOLD HARMLESS:

Indemnification:

Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the performance of this Agreement by Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation.

12. INSURANCE:

On or before the commencement of the term of this Agreement, Consultant shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 12A, B, C, D and E. Such certificates, which do not limit Consultant's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino by certified mail, Attention: City Manager." It is agreed that Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Consultant shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$500,000
 each occurrence
 \$1,000,000
 aggregate - all other

Property Damage: \$100,000 each occurrence
 \$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automotive liability coverage in the following minimum limits:

Bodily Injury: \$500,000 each occurrence
Property Damage: \$100,000 each occurrence

or

Combined Single Limit: \$500,000 each occurrence

B. SUBROGATION WAIVER:

Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or City with respect to the services of Consultant

herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE:**

If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

13. CONFLICT OF INTEREST:

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

14. PROHIBITION AGAINST TRANSFERS:

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant.

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

15. SUBCONTRACTOR APPROVAL:

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

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

16. PERMITS AND LICENSES:

Consultant, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

17. REPORTS:

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of City. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to City the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of City, and all publication rights are reserved to City. Consultant may retain a copy of any report furnished to the City pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by City in execution or implementation of:

- (1) The original Project for which Consultant was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original project; and/or
- (4) Other City projects as appropriate.

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

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by City.

F. Electronic and hard copies of Consultant's work product shall constitute the Project deliverables. Plans to be in CAD and PDF formats, and other documents to be in Microsoft Word and PDF formats. City holds Consultant harmless for any modifications to the documents.

18. RECORDS:

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

19. NOTICES:

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter

provided.

All notices, demands, requests, or approvals from Consultant to City shall be addressed to City at:
City of Cupertino
10300 Torre Ave.
Cupertino CA 95014
Attention: Director of Public Works

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

20. TERMINATION:

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If such default is not cured within the time specified after receipt by Consultant from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the Consultant written notice thereof.

City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Consultant as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

In the event of termination, Consultant shall deliver to City, copies of all reports, documents, and other work performed by Consultant under this Agreement.

21. COMPLIANCES:

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

22. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.)

Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Santa Clara, State of California.

23. ADVERTISEMENT:

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

24. WAIVER:

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

22. INTEGRATED CONTRACT:

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Consultant.

25. GIFTS:

A. Consultant is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in City Administrative Procedures.

B. Consultant agrees not to offer any City officer or designated employee any gift prohibited by the Administrative Procedures.

C. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Consultant. In addition to any other remedies, City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 19 of this Agreement.

26. INSERTED PROVISIONS:

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

27. CAPTIONS:

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

28. COMPLIANCE WITH FUNDING AGREEMENT:

Consultant and Consultant's subconsultants and subcontractors shall comply with applicable requirements of City's Applicant-State Agreement No. 04-20-035 Environmental Enhancement and Mitigation (EEM) Program. A copy of the agreement marked Exhibit C is attached hereto and incorporated herein by reference.

P.O. No.: _____

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

CONSULTANT

CITY OF CUPERTINO

A Municipal Corporation

By _____

By _____

Timm Borden, Director of Public Works

Name _____

Date _____

Title _____

Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

Address:

Carol Korade, City Attorney

ATTEST:

Grace Schmidt, City Clerk

EXHIBIT C

FUNDING AGREEMENT CITY OF CUPERTINO & STATE OF CALIFORNIA

APPLICANT-STATE AGREEMENT NO. 04-20-035 ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM

FOR CALTRANS USE:								
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
Accounting Officer						Date:		\$
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	\$

**APPLICANT-STATE AGREEMENT NO. 04-20-035
ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM**

STATE PROJECT NUMBER: **EEM-2010 (035)**
2010-2011 FISCAL YEAR ALLOCATION

Advantage Project ID: 0400021079

THIS AGREEMENT, made effective this December 15, 2011, by and between the **City of Cupertino**, hereinafter referred to as "APPLICANT", and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH

WHEREAS, as provided by Streets and Highways Code Section 164.56, Senate Bill 117 (Statutes of 1999, Chapter 739) established the EEM Program as a permanent program, funds have been allocated to APPLICANT by the California Transportation Commission (CTC) after the PROJECT submitted by APPLICANT had been recommended for funding by the Resources Agency; and as described in the application (APPLICATION);

WHEREAS, STATE and APPLICANT now desire to enter into an Agreement relative to fund transfers and cost sharing on the described PROJECT.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - Project Administration and General Provisions

1. PROJECT shall mean that EEM PROJECT described in the APPLICATION submitted by APPLICANT and summarized in Exhibit A to this Agreement including financing information as set forth in Section III of Exhibit A to this Agreement.

2. The PROJECT submitted by APPLICANT, together with all conditions and assurances contained therein, and specifically including information on how the PROJECT shall be financed, are made an express part of this Agreement. Should any conflict exist between the APPLICATION and the Agreement, the Agreement shall prevail.
3. APPLICANT shall complete PROJECT, which shall be acquired, developed, designed and constructed as provided in this Agreement.
4. If PROJECT is located on STATE-owned right-of-way, APPLICANT shall comply with all applicable STATE design and construction standards and practices. If PROJECT is not on STATE-owned right-of-way, APPLICANT shall comply with the applicable design and construction standards and practices of the local government having jurisdiction over the PROJECT location.
5. In cases where the CTC approved funding is less than the amount for which APPLICANT originally applied due to a Budget Reduction on the project required by the State Resources Agency, APPLICANT is obligated to complete PROJECT without downscoping it, unless specifically authorized to do so, in writing, by the State Resources Agency. This will be accomplished by APPLICANT supplementing PROJECT costs with another funding source or by finding a less costly way to complete the PROJECT.
6. The estimated total cost of PROJECT is as shown in Section III of Exhibit A. While APPLICANT may, with the STATE's written approval, award a contract in an amount in exceeding the estimated total PROJECT cost specified in Section III-A of Exhibit A of the Agreement, the allocation of STATE funds for PROJECT will never be greater than the amount specified in Section III-C of Exhibit A of this Agreement.
7. Section III of Exhibit A specifies the APPLICANT's estimated total PROJECT cost, each party's proportionate percentage of those costs and the maximum amount of STATE funds the CTC has authorized for the PROJECT. The STATE's proportionate share of funding is a certain percent of the estimated total PROJECT cost and approved scope of the PROJECT (STATE's PROPORTIONATE SHARE) and will be used as the reimbursement ratio on the project. In the event the actual cost of PROJECT exceeds the estimated total cost of the PROJECT, the STATE shall pay its PROPORTIONATE SHARE of the cost only up to the amount specified in Section III-C of Exhibit A of the Agreement.
8. In the event the PROJECT scope decreases, a decrease in the STATE's PROPORTIONATE SHARE shall be made. In the event the actual cost of PROJECT decreases for any reason from the estimated total PROJECT cost specified in Section III of Exhibit A, the allocation of STATE funds will be decreased proportionately with any decrease in APPLICANT's participating contribution so that the STATE's PROPORTIONATE SHARE of costs relative to TOTAL PROJECT COST remains as specified in Section III-B of Exhibit A of the Agreement.
9. No changes of any kind may be made to the PROJECT without prior written notice to and written acceptance by the STATE of the proposed change. The STATE shall acknowledge a written notice of proposed change by either accepting or rejecting the proposed change in writing. In the event the STATE responds to a proposed change by stating that the proposed change requires discussion and amendment, such action shall constitute a rejection of the proposed change and any work performed in spite of that rejection shall not be eligible for reimbursement unless and until there

is a written, duly executed amendment to this Agreement which addresses that work. Any amendment to this Agreement shall not be effective until executed by both parties. In addition, the parties should take special notice of ARTICLE XII, paragraph 6 of this Agreement.

10. After completion and acceptance of PROJECT by both APPLICANT and STATE, STATE shall pay STATE's PROPORTIONATE SHARE of the cost of PROJECT to APPLICANT, within sixty (60) days after receipt of a signed invoice for payment submitted by APPLICANT. At the option of APPLICANT, monthly or quarterly pro rata progress payments in arrears may be made on a reimbursement basis upon submittal of invoices by APPLICANT and approval by STATE of the PROJECT costs incurred. Pro rata payments will be based on the amount of the STATE fund transfer authorized herein in proportion to the total cost of PROJECT, including APPLICANT contributions. An invoice format document is included as Exhibit C.

11. If PROJECT involves work anywhere on the State highway system, a separate standard form of encroachment permit between STATE and APPLICANT must be prepared and executed before PROJECT work may commence.

12. APPLICANT shall comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit B) and further agrees that any agreement or service contract entered into by APPLICANT with a third party for performance of work connected with the PROJECT shall incorporate Exhibit B as a part of such agreement.

13. Upon completion of all work under this Agreement and prior to the expiration of this Agreement, APPLICANT shall prepare and file with STATE one (1) original Final Project Expenditure Report. The Final Project Expenditure Report must be submitted with the final invoice on the PROJECT.

ARTICLE II - Rights-of-Way

1. The acquisition, clearance, and improvement of rights of way necessary for the development of PROJECT shall be the responsibility of APPLICANT. Right-of-way acquisition and clearance costs may be included as a participating item of total PROJECT costs if included as part of the PROJECT scope of work.

2. APPLICANT shall perform all PROJECT right-of-way activities in accordance with applicable State laws and regulations unless the STATE determines, in writing, that the State Uniform Relocation Assistance and Real Property Acquisition Policies Act (Government Code Secs. 7260-7277) do not apply to PROJECT.

3. APPLICANT, as part of its PROJECT design responsibility, shall identify and locate all utility facilities within the PROJECT area. All utility facilities, including those not relocated or removed in advance of construction, shall be identified on PROJECT plans and specifications.

4. If any existing public and/or private utilities conflict with the construction of PROJECT, APPLICANT will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If utility relocation is required within STATE right-of-way, APPLICANT shall conform to STATE standards, policies and procedures. If utility relocation is outside of STATE right-of-way, APPLICANT shall conform with local government policies.

5. APPLICANT shall certify as to legal and physical control of that PROJECT right-of-way once it is ready for construction and that the PROJECT right-of-way was acquired in accordance with applicable State laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for construction/development of PROJECT.

6. If right-of-way acquisition and clearance costs are included as a participating item of PROJECT costs, STATE shall provide funds only for purchase of the actual right-of-way required for PROJECT. If APPLICANT acquires right-of-way which includes excess land, STATE will not participate in the cost of the excess portion. In the event land initially acquired as part of PROJECT is declared excess at a later date, APPLICANT shall reimburse STATE, no later than one hundred twenty (120) days after PROJECT completion or upon the subsequent sale of that excess land, for either the pro rata fair market value of that excess at the time of disposal or, if that property is retained by APPLICANT, the pro rata fair market value of the excess land at that time. The pro rata fair market value shall be based on the total of the STATE fund transfer amount applied toward purchase of the property in proportion to the total purchase price of the property.

ARTICLE III – Safety

1. APPLICANT shall comply with OSHA regulations regarding necessary safety equipment and procedures. If PROJECT work is to be performed within STATE right of way, APPLICANT shall also comply with safety instructions issued by the District Safety Officer and other STATE representatives. APPLICANT's and APPLICANT's personnel shall see that all individuals wear white hard hats and orange safety vests at all times while working within STATE right of way.

2. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of the PROJECT and are open to public traffic, APPLICANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. APPLICANT shall take all reasonably necessary precautions for safe operation of its and its agent's or APPLICANT's vehicles and the protection of the traveling public from injury and damage from such vehicles when performing work within STATE right of way.

ARTICLE IV - Inspection of Work

1. APPLICANT and any of its PROJECT subcontractors shall permit STATE to review and inspect PROJECT activities at all reasonable times during the performance period of this Agreement, including review and inspection on a daily basis.

ARTICLE V - Equipment Purchase

1. Prior authorization in writing by STATE shall be required before APPLICANT enters into any non-budgeted purchase order or subcontract exceeding \$500 for supplies, equipment, or consultant services. APPLICANT shall provide an evaluation of the necessity or desirability of incurring such costs.

2. For purchase of any item, service or consulting work not identified in APPLICANT's Cost Proposal and exceeding \$500, with written prior authorization by STATE, three (3) competitive quotations must be submitted with that request or the absence of bidding must be adequately justified.

3. Any equipment purchased as a result of this Agreement is subject to paragraph 3 of this Article V. APPLICANT shall maintain an inventory of all nonexpendable property, defined as property having a useful life of at least two years and an acquisition cost of \$500 or more. If purchased equipment needs replacement and is sold or traded in, STATE shall receive a proper refund or credit. Upon the expiration date of this Agreement, or if this Agreement is terminated, APPLICANT may either keep the equipment and credit STATE in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established STATE procedures, and credit STATE in an amount equal to the sales price. If APPLICANT elects to keep that equipment, fair market value shall be determined, at APPLICANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to STATE and APPLICANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by STATE.

ARTICLE VI - Management and Maintenance of Property

1. APPLICANT will operate, manage and maintain into the future all property acquired, developed, rehabilitated, or restored with funds transferred through this Agreement. With STATE's prior approval, APPLICANT or its successors in interest may transfer management and maintenance responsibilities over the property. If the property is not managed and maintained consistent with the PROJECT APPLICATION, APPLICANT or its successors in interest, at the discretion of STATE and within 45 days after receiving notice to APPLICANT by STATE, shall reimburse STATE an amount at least equal to the amount of STATE's funding participation in PROJECT together with all accrued interest at State Treasurer's pooled money investment account.

2. All real property, or rights thereto, acquired with these funds shall be subject to an appropriate form of restrictive title, or rights, covenants approved by STATE. If the PROJECT real property, or rights thereto, is sold, traded, condemned, or otherwise put to any use other than that use as approved in the Allocation for STATE funds, the State Highway Account, at the discretion of STATE and within 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in PROJECT or the pro rata fair market value of the real property, or rights thereto, including improvements, at the time of sale, whichever is higher. The pro rata fair market value shall be based on the proportions of the fund transfer amount applied toward the purchase of the property, or rights thereto, and the design and construction of improvements in proportion to the total purchase price of the real property, or rights thereto, and the cost of all improvements made prior to the time of sale.

ARTICLE VII - Retention of Records/Audit Review Procedures

1. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code 10532, APPLICANT, its contractors and their subcontractors and STATE shall each maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under this Agreement. STATE, the State auditor, the Federal Highway Administration (FHWA), or any duly authorized representative of the Federal government shall have access to any books, records, and documents of APPLICANT that are pertinent to this Agreement for audits, examinations, excerpts, and

transactions, and copies thereof shall be furnished by APPLICANT or its contractors, if requested.

2. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not satisfactorily disposed of by agreement shall be reviewed by the Chairperson of the STATE Audit Review Committee (ARC). The ARC will consist of the Assistant Director, Audits & Security (Chairperson); Deputy Director of Transportation Engineering; the Chief Counsel, Legal Division, or their designated alternates; and two representatives appointment by the Director of Transportation from private industry whose role will be advisory in nature only and without voting rights.
3. Not later than 30 days after issuance of the final audit report, APPLICANT may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for STATE within one (1) month following the receipt of the notification of dispute or following the ARC meeting recommendation date, whichever is later in time.
4. Neither the pendency of a dispute nor its consideration by STATE will excuse APPLICANT from full and timely performance of its obligations in accordance with the terms of this Agreement.
5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article VII.
6. Expenditures of EEM program funds are subject to financial and compliance audits by the State Controllers Office and Caltrans Office of Audits and Investigations. These guidelines may be found in Caltrans *Local Assistance Procedures Manual*, Chapter 10, "Consultant Selection", Exhibit 10-N "Accounting and Auditing Guidelines for Contracts with Caltrans".

ARTICLE VIII – Allowable Costs and Payments

1. The method of reimbursement authorized by STATE for PROJECT expenditures made by APPLICANT under this Agreement will be based on actual costs incurred. STATE will reimburse the STATE's PROPORTIONATE SHARE of actual costs (based on Section III of Exhibit A and including labor costs, employee benefits, travel, equipment rental costs, and other direct costs) incurred by APPLICANT in performance of the work. APPLICANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, fringe benefit rates, and other estimated costs set forth in APPLICANT's cost proposal (Exhibit A1) unless additional reimbursement is provided for by Agreement amendment. In the event that STATE determines additional work beyond that specified in APPLICANT's cost proposal and this Agreement is required to produce a satisfactory PROJECT, the actual costs reimbursable by STATE may be increased by Agreement amendment to accommodate that additional work. The maximum total costs as specified in Section III of Exhibit A of this Agreement, shall not be exceeded unless authorized by Agreement amendment.
2. Reimbursement for transportation and subsistence costs shall not exceed the rates to be

paid nonrepresented/excluded State employees under then current State Department of Personnel Administration rules detailed in the Caltrans Travel And Expense Guide.

3. General and administrative PROJECT overhead is unallowable under the Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* guidelines.
4. Progress payments will be allowed and may be made no less than monthly in arrears based on PROJECT work performed and allowable incurred costs authorized as part of the PROJECT.
5. APPLICANT may not commence any reimbursable PROJECT development work or services or PROJECT capital outlay work before both program adoption and funding allocation by the California Transportation Commission and execution of this PROJECT agreement by both APPLICANT and STATE. Reimbursement is subject to annual appropriation by the Legislature in the State Budget for the Environmental Enhancement and Mitigation Program Fund.
6. APPLICANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by STATE's Local Program Accounting office in the Division of Accounting of signed invoices. One original and two copies of the invoice (in the format shown in Exhibit C) shall be submitted after the performance of work for which APPLICANT is billing. Invoices shall include detailed backup information supporting the work performed. The final invoice must contain the final cost and all credits due STATE, including credits or reimbursements due STATE for any equipment purchased under the provisions of Article V of this Agreement. **Progress and final invoices as well as the Final Project Expenditure Report shall be mailed to the Caltrans District Director, ATTN: District Local Assistance Engineer (DLAE), for invoice approval.** The DLAE will forward invoices to the Accounting Office for payment.

ARTICLE IX – Cost Principles

1. APPLICANT agrees to comply with: 1) The Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria*, and 2) *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*.
2. APPLICANT agrees to comply with the following, as applicable:
 - A) The Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., which shall be followed to determine the allowability of individual items of cost for which reimbursement is sought.
 - B) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments.
 - C) Office of Management and Budget Circular A-122, Cost Principles for Nonprofit Organizations, which shall be used to determine costs of grants, contracts and other agreements with nonprofit organizations (excluding colleges, universities and hospitals).
 - D) Office of Management and Budget Circular A-21, Cost Principles for Educational

Institution establishing principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

E) Office of Management and Budget Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations.

3. Any costs for which payment has been made to APPLICANT that are determined by subsequent audit to be unallowable under Paragraphs 1 and 2 of this Article IX are subject to repayment by APPLICANT to STATE.

4. Should any conflict exist between the STATE guidelines as described in Paragraph 1 and 2 of this Article IX, the following order will prevail and be applied as follows: 1) Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria*; 2) *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*, 3) 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; 49 CFR, Federal Acquisition Regulations System, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government; OMB A-21, Cost Principles for Educational Institutions; OMB A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations; OMB A-122, Cost Principles for Nonprofit Organizations; and OMB A-87, Cost Principles for State and Local Government.

5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article IX.

6. Should APPLICANT fail to reimburse moneys due STATE within thirty (30) days of demand, or within such other period as may be agreed between the parties hereto, STATE is authorized to withhold future payments due APPLICANT from any source, including but not limited to, the State Treasurer, the State Controller and the California Transportation Commission.

ARTICLE X – Subcontracting

1. APPLICANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by STATE, except that which is expressly identified in APPLICANT's Cost Proposal (Exhibit A1).

2. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement and shall be applicable to all subcontractors.

3. Any substitution of subcontractors must be approved in writing by STATE.

4. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article X.

ARTICLE XI – Insurance

1. If the scope of APPLICANT services will not require APPLICANT or a subcontractor to enter upon STATE highway right of way, then the APPLICANT is not required to show evidence of general comprehensive liability insurance.
2. In the event that APPLICANT or an agent, contractor or subcontractor of APPLICANT will be present or working on STATE right of way, prior to commencement of the work described herein, the APPLICANT shall furnish to STATE a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for APPLICANT and/or its agents, contractors, and subcontractors who will be working (in any manner) on STATE property with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
3. The Certificate of Insurance must provide:
 - A. That the insurer will not cancel the insured’s coverage without 30 days prior written notice to the STATE.
 - B. That the STATE, its officers, agents, employees, and servants are also included as additional named insureds, but only insofar as PROJECT operations under this Agreement are concerned.
 - C. That STATE will not be responsible for any premiums or assessments on the policy.
4. APPLICANT agrees that all bodily injury liability insurance or self-insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, APPLICANT agrees to provide, at least thirty (30) days prior to said expiration date, a new Certificate of Insurance or Certificate of Self-Insurance evidencing coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New Certificates are subject to the approval of STATE and Department of General Services. In the event APPLICANT fails to keep coverage as herein provided in effect at all times, STATE may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
5. If APPLICANT is self-insured, the EEM PROJECT APPLICANT shall submit a Certificate of Self-Insurance asserting that APPLICANT is covered for all purposes of liability for all work performed hereunder. STATE and APPLICANT acknowledge that only one Certificate of Self-Insurance will be required and that APPLICANT must maintain that level of Self-Insurance [not less than one million dollars (\$1,000,000)]. It is also understood that STATE, its officer, agents, employees, and servants, are included as covered for all purposes insofar as the operations of APPLICANT under this Agreement are concerned.

ARTICLE XII - Miscellaneous Provisions

1. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction conferred upon APPLICANT under this Agreement. It is understood and agreed that APPLICANT shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or

omitted to be done by APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE'S interests are at stake.

2. APPLICANT, and the agents and employees of APPLICANT, in performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.

3. Following written notice and at least thirty (30) days to cure, STATE may terminate this Agreement with APPLICANT should APPLICANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this Agreement with APPLICANT, STATE shall pay APPLICANT the sum of allowable costs due APPLICANT under this Agreement prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due APPLICANT under this Agreement, and the balance, if any, shall then be paid APPLICANT upon demand.

4. Without the written consent of STATE, this Agreement is not assignable by APPLICANT, either in whole or in part.

5. Time is of the essence in this Agreement.

6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

7. The consideration to be paid APPLICANT, as provided herein, shall constitute full compensation for all of APPLICANT's allowable approved costs and expenses incurred in the performance hereof, unless otherwise expressly so provided.

8. APPLICANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by APPLICANT for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the price of consideration, or otherwise recover from APPLICANT, the full amount of such commission, percentage, brokerage, or contingent fee.

9. In accordance with Public Contract Code Section 10296, APPLICANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against APPLICANT within the immediate preceding two-year period because of APPLICANT's failure to comply with an order of a Federal court that orders APPLICANT to comply with an order of the National Labor Relations Board.

10. APPLICANT shall disclose any financial, business, or other relationship with STATE, the Resources Agency, or the California Transportation Commission (CTC) that may have an impact upon the outcome of this Agreement. APPLICANT shall also list current associates or clients who may have a financial interest in the outcome of this Agreement.

11. APPLICANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of this Agreement.

12. APPLICANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE or Resources Agency employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion, to terminate the Agreement without liability, to pay only for the work actually performed, or to deduct from the Agreement price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or the Federal Government that may affect the provisions, terms, or funding of this Agreement in any manner.

14. This Agreement shall terminate on **June 30, 2014 --with project completion and final invoicing done by April 30, 2014** --or upon the earlier completion of PROJECT, whichever is first earlier in time, except that APPLICANT duties regarding the continuing operations and maintenance of PROJECT property, credits due STATE, and indemnification of STATE shall survive.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA DEPARTMENT OF APPLICANT
TRANSPORTATION

By _____
April Nitsos, Senior Transportation Engineer
Office of Special and Discretionary Programs
Division of Local Assistance

1120 "N" Street, Sacramento, California 95814

By _____

APPLICANT Representative Name and Title

Agency

Address

City, State, ZIP

Telephone No.

E-mail address

EXHIBIT A - PROJECT DESCRIPTION AND FINANCING

APPLICANT: City of Cupertino
PROJECT NAME : Stevens Creek Corridor Park & Restoration Project, Phase 2
COUNTY: Santa Clara

I. Project Location: Final segment of the trail between Stevens Creek Blvd. and McClellan Rd within the City of Cupertino.

II. Project Description of Work Proposed (as set forth in Application No.): 035
Project will extend the regional multi-use Stevens Creek Trail, restore 1,800 feet of riverine and riparian habitat along Stevens Creek, and open 5 acres of parkland to the public. Over 2 acres of native riparian, wetland and oak woodland plantings will be installed, a local orchard restored, and wildlife habitat improved.

III Proposed Project Funding:

A. ESTIMATED TOTAL PROJECT COST: \$ 2,695,000.00

Is this amount different from that set forth in the APPLICATION?

_____ Yes x No

B. PROJECT FINANCING:

State Funding	\$ 245,000.00	= 9.10% of total project cost*
Applicant Funding	\$ 2,245,000.00	= 90.90% of total project cost
Federal Funding (if any)\$		
Total Project Funding	\$ 2,265,000.00	=100.00% of total project cost

*NOTE: This percentage is referred to in this Agreement as the STATE's PROPORTIONATE SHARE of costs and will be used as the reimbursement ratio on the project.

C. The maximum amount of STATE funding approved by the CTC that may be contributed to the PROJECT shall not exceed \$ 245,000.00.

EXHIBIT A1 - COST PROPOSAL

(This must be completed by APPLICANT for all projects, except for acquisition-only projects, and returned with Applicant-State Agreement to the STATE.)

APPLICANT:
PROJECT NAME:
COUNTY:

Direct Labor:
(labor rates must be calculated as actual dollar earned per hour and cannot include overhead costs)

<u>Classification</u>	<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Project Manager			@	
			@	
			@	
			@	
Total Direct Labor Costs				

Fringe Benefits:
(Benefits, such as vacation, medical, and retirement, etc., must be calculated as rates earned per hour)

Other Costs: *(itemize with description, quantity, unit price, and total cost; estimates acceptable)*

Travel Costs
Equipment and Supplies
Other Direct Costs

Subcontractor Costs:
(attach scope of work and detailed cost estimate for each subcontractor)

Volunteer Services:

<u>Classification</u>	<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Volunteer			@	
			@	
			@	
Total Volunteer Labor Costs				

Donations:
(itemize with description, quantity, unit price, and total cost; estimates acceptable)

Materials
Other

Total Project Cost:

EXHIBIT B

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, APPLICANT will not discriminate against any employee for employment because of race, sex, color, religion, ancestry, or national origin. APPLICANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. APPLICANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. APPLICANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. Remedies for Willful Violation:

- a) The State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which APPLICANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the APPLICANT has violated the Fair Employment Practices Act and had issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.
- b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by APPLICANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or the thereafter may become due to APPLICANT, the difference between the price named in the Agreement and the actual cost thereof to STATE.

AGREEMENT EXHIBIT C - SAMPLE OF EEM INVOICES
(Prepare On Applicant's Letterhead)

Date of Invoice

(For all Invoices)
 Department of Transportation
 Division of Local Assistance
 Name, District Director
 District Local Assistance Engineer

 Street Number
 City, CA Zip Code
 Attn: District EEM Coordinator

Billing No.: 1, 2, or Final
 Invoice No: *Local Agency's Invoice No.*
 Project Completion Date: *Final Date or*
"Ongoing" (if not final)
 Tax Identification # _____
 County: *County Name* _____
 Project Location _____
 Advantage ID _____

Reimbursement for Environmental Enhancement and Mitigation (EEM) funds is claimed pursuant to State Project No. EEM-20XX (XXX), Applicant State Agreement No. _____, Agreement date _____.

Description of work covered by this invoice: _____

	Preliminary Engineering	Construction Engineering	Acquisition and Incidentals	Construction
Total Costs to Date **	_____	_____	_____	_____
Less: Nonparticipating Costs to Date	_____	_____	_____	_____
Total State Participating Costs to Date	_____	_____	_____	_____
Reimbursement Ratio	_____ %	_____ %	_____ %	_____ %
Total Reimbursement	_____	_____	_____	_____
Less: Amount Claimed on Previous invoice	_____	_____	_____	_____
Amount this Invoice	_____	_____	_____	_____
			Total Amount this Invoice _____	

**** Note:** The State will make the payment(s) on a reimbursement basis of its proportionate share of actual costs incurred on the project to date after expenses and debts have been paid by the applicant; timesheets, mileage logs, invoices, receipts, cancelled warrants, and other documents as applicable are required by the State as supporting documentation prior to each reimbursement.

I certify that the work covered by this Invoice has been completed in accordance with approved plans and specifications; the costs shown in this Invoice are true and correct; including retention as reflected above, is due and payable accordance with the terms of the agreement.

 Signature, Title and Unit of Local Agency Representative Phone No.

 Contact Name (for questions about this invoice) Phone No.

AGREEMENT EXHIBIT D - FINAL PROJECT EXPENDITURE REPORT

(Prepare On Applicant's Letterhead)

Name, District Director
Department of Transportation
Street or P.O. Box
City, CA, Zip Code
Attention: Name, District Local Assistance Engineer

Final Project Expenditure Report

Description/Location of Work:
Project Completion Date:
Expenditure Authorization:
Project Number:
State-Local Entity Agreement Number:

State Funds Allocated:

Expenditure Incurred:

Total \$

- A. Payment to Contractor
(Attach final pay estimate)
- B. Other Project Costs:
 - Preliminary Engineering
 - Construction Engineering
 - Any Additional Construction
 - Right of Way (Capital and Support)
- C. Liquidated Damages
- D. Outstanding Contractors Claims
- E. Others *(specify)*

Sources and Amounts of Additional Funds Used:

State Funds Allocated But Not Used:

CERTIFICATION

I hereby certify that:

To the best of my knowledge and belief, the information in this report is a true and accurate record of project costs. The work was performed in accordance with the CTC approved scope and state funding for the project.

Title and Unit of Local Agency Representative

PROJECT VERIFICATION: This verification of completion also constitutes approval to pay costs shown in the Final Invoice included in the Report of Expenditures. I have reviewed the job site and found the project completed in accordance with the scope and description of the project authorization document.

District Local Assistance Engineer

Date: