



CUPERTINO

CITY OF CUPERTINO

REQUEST FOR QUALIFICATIONS

FOR

PROFESSIONAL SERVICES

**TO ENGAGE AND SUPPORT LOCAL BUSINESSES AND SCHOOLS IN A NEW GRANT-FUNDED
SUSTAINABILITY AND ENERGY EFFICIENCY PILOT PROGRAM.**

RESPONSES DUE: 3PM ON WEDNESDAY, SEPTEMBER 11TH, 2013

OFFICE OF THE CITY MANAGER, SUSTAINABILITY DIVISION
CITY HALL • 10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-7603

**REQUEST FOR QUALIFICATIONS
CITY OF CUPERTINO**

TABLE OF CONTENTS

I.	DESCRIPTION AND SCOPE	1
II.	SUBCONSULTANTS	2
III.	PROJECT TASKS	2
V.	CITY'S RESPONSIBILITIES.....	6
IX.	SELECTION CRITERIA.....	8
X.	QUALIFICATIONS INSTRUCTIONS AND FORMAT.....	8
	EXHIBIT A: SAMPLE CITY OF CUPERTINO AGREEMENT	10
	EXHIBIT B: PAYMENT SCHEDULE.....	19
	EXHIBIT C: ACKNOWLEDGEMENT OF MANDATED REPORTING REQUIREMENTS, RECEIPT OF TRAINING AND RECEIPT OF PENAL CODES STATUES	20
	EXHIBIT D: CONSULTANT DECLARATION.....	22

I. DESCRIPTION AND SCOPE

The City of Cupertino seeks professional consulting services to support the launch of its Silicon Valley Energy Watch (“SVEW”) grant-funded Emerald City Initiative: A Cross-Sector Sustainability Framework to Transform the Way Small Communities Live, Learn, Work, and Play (“Emerald City Initiative”). Through the SVEW Community Energy Champions Grant (“CECG”), Cupertino will implement a comprehensive sustainability initiative that prioritizes energy conservation across two cities (Cupertino and Mountain View) through two distinct tasks targeting (**Task 1**) small to mid-sized businesses and (**Task 2**) local schools. **Task 3** will evaluate the efficacy of the Emerald City Initiative and **Task 4** outlines reporting requirements for the Initiative. This new program builds on Cupertino’s successful [GreenBiz](#) and [Growing Greener Blocks](#) campaigns, developed in 2010-12 with the support of two first-round CECGs.

The purpose of the CECG is to:

- Increase awareness of the importance of energy efficiency, as well as energy efficiency resources and technologies, among target communities;
- Accelerate adoption of energy efficiency technologies and behaviors among target communities;
- Provide robust evidence, based in rigorous Experimental Design-based evaluation, for the efficacy of behavioral initiatives in promoting energy efficiency;
- Build the capacity of local agencies, organizations, and institutions to be effective and reliable providers of energy efficiency resources and information in targeted communities; and
- Provide robust, actionable, and replicable data on innovative energy efficiency education and outreach approaches for publication and statewide distribution.

The Scope of Work proposed for Emerald City Initiative-related consulting services, designed to achieve the aforementioned CECG objectives, is outlined below and is **not to exceed \$35,000**. All responding consultants are to provide an **hourly rate** and **quote per task** as defined below:

Task 1: GreenBiz Partners

In partnership with local Chambers of Commerce, local banks and credit unions, and the City of Cupertino’s Economic Development Program, **Task 1** of the Emerald City Initiative will extend Cupertino’s award-winning GreenBiz program to new geographic areas and non-traditional sectors. This “GreenBiz 2.0” will introduce a network of over 500 Mountain View Chamber of Commerce members and 1,000 Cupertino home-based businesses to the Santa Clara County Green Business Program and engage a percentage

of these organizations in program certification. This Project will specifically prioritize the creation and deployment of new and local financing tools to support businesses in implementing facility utility conservation upgrades, a historical program and certification barrier. Additionally, staff will develop a new GreenBiz handbook to foster the creation of this supplemental and beneficial program in adjacent jurisdictions, which will be made available to all interested agencies and Chambers of Commerce.

Scope 2: Green@School

In partnership with local schools and the City of Cupertino’s Parks & Recreation team, Green@School seeks to expand local elementary and middle school’s existing success in energy efficiency and energy management through a series of new student engagement tools. The Green@School program will foster greater student participation in campus-wide sustainability and encourage parent engagement in home energy efficiency and water conservation through the existing Do-It-Yourself Toolkit available at the Cupertino Library. This Project Scope will leverage the existing GreenBiz and Green Star Schools checklists to shepherd elementary and/or middle schools through a GreenBiz-equivalent Certification process. By doing so, Green@Schools will extend existing school-focused energy conservation efforts into new areas of environmental gain including waste management, water conservation, and pollution prevention. The consultant/firm will be required to comply with fingerprinting and additional reporting requirements, where applicable, as set forth in *Exhibits C and D*.

II. SUBCONSULTANTS

Due to the professional services funding cap of \$35,000, the City prefers to work with a single consultant/firm on this project.

III. PROJECT TASKS

The consultant(s) is responsible for supporting the City in achieving its grant-related project objectives, as directed by City Staff (Sustainability Manager and Environmental Programs Assistant). To that end, the consultant(s) is responsible for achieving the following grant-related milestones by performing, at a minimum, the following activities among the following project scopes:

Task 1: GreenBiz Partners

~ 20% of Consultant’s Project-Related Time

A. Planning Phase

October 2013 – December 2013

- Meet with and confirm business sector(s) of focus with Mountain View Chamber;

- Develop facility upgrade financing tools package with local lending institutions (banks and credit unions) and encourage these lending institutions to pursue GreenBiz certification; and
- Review and edit GreenBiz Mountain View-specific marketing materials, highlighting relevant utility and financial partners as developed by staff and Climate Corps Bay Area (“CCBA”) Members.

B. Implementation Phase

January 2014 – September 2014

- Review and edit CCBA Member-designed property manager guide describing GreenBiz-relevant Tenant Improvements and associated utility resources (rebates and free equipment) for interior upgrades that are required for certification through the County Green Business Program requirements;
- Review and edit CCBA Member design of a toolkit to help other California cities and Chambers adopt GreenBiz; and
- Support CCBA Member efforts to structure and form a “GreenBiz Ambassadors” program, to include managers/owners of certified green businesses convened to share best practices, develop joint procurement opportunities, and help shepherd new businesses through GreenBiz.

C. Targets and Deliverables

In addition to the documents described above, the consultant/firm must ensure that 130 Cupertino and Mountain View- based businesses are engaged in the GreenBiz 2.0 program and 25 new businesses are certified through the Santa Clara County Green Business Program during the program year (ending December 2014).

Task 2: Green@School

~ 80% of Consultant's Project-Related Time

A. Planning Phase

September 2013 – December 2014

- Review and edit CCBA Member map of parallels between Green Business Program, Green Star Schools Certification, and Green Schools Alliance criteria;
- Lead development of school and home-based Green@School Eco-Expert training modules by five topic areas (energy, water, waste, stormwater, health) working with relevant school administrators and students, City staff and Commissioners; and
- Design Eco-Expert surveys to gauge baseline and post-program student knowledge on each topic area listed above; and
- Design mini-grant program to fund equipment required for schools to complete Green@School certification (\$1,000/school).

B. Implementation Phase

January 2014 – June 2014

- Host program launch workshop with students to complete Green@School Eco-Expert surveys, gauge student interests, learn about previous environmental pursuits, and sign team commitment;
- Host Green@Home Do-It-Yourself Training for students and parents;
- Host monthly trainings with relevant guest presenters on each checklist topic and engage relevant members of the administration in these trainings;
- Offer mini-grants to support school initiatives;
- Launch school-to-school challenge to engage campus-wide community and ensure recommended projects are implemented;
- Complete Action Plan and 2nd Green@School Eco-Expert survey;
- Support Environmental Programs Assistant & CCBA Member:
 - Coordination of a County site visit for campus certification, implementation of any outstanding measures;
 - Compilation of a Green@School resource inventory for knowledge and information transfer (critical for 3-year recertification process) with completed checklist, notes, site visit photo “evidence”, surveys, etc.;
 - Development of an online handbook for other schools in Santa Clara County to implement this program on their own campuses – make available on the City of Cupertino website and Cupertino Green Kids;
- Host student leader recognition event at School Board (with their support) and City Council meetings;

C. Targets and Deliverables.

Consultant must engage at least 2 new Cupertino schools in Green@Schools and increase student and parent knowledge about sustainability and energy efficiency by guiding one school through the Green@Schools certification process.

Task 3: Program Evaluation and Assessment

Per the City’s CECG Agreement, the consultant/firm shall evaluate the efficacy of the Emerald City Initiative using “quasi-experimental design” (QED) at a minimum, as defined by the Silicon Valley Energy Watch, and shall comply with all direction from SVEW in developing a complete evaluation plan at the outset of grant activities. This Initiative, along with those of all 2013-14 CECG campaigns, is part of the statewide portfolio of ratepayer-funded energy efficiency programs (Statewide Portfolio), and therefore must provide robust evaluation of its delivery and impact, in terms of both energy efficiency behavior change and immediate energy efficiency technology uptake among participants. The evaluation of this campaign will be of particular interest to the California Public Utilities Commission (CPUC), as the CPUC is currently in the process

of establishing a definition and framework for expanding and incorporating behavioral energy efficiency programs into the Statewide Portfolio.

To that end, the consultant/firm will track all project activities and progress toward objectives. Measurement methodologies will be designed to determine changes in awareness, knowledge, behavior, program uptake, and energy use reductions (in kWh) where applicable. At a minimum, the consultant/firm shall work with the City’s Project Manager to:

- Establish treatment and control groups, according to methodology approved by SVEW for all Project Scopes;
- Conduct a baseline and follow-up assessment, as guided by SVEW, with all populations participating in the program, including those in treatment and control groups;
- Assess variations in subscribership to the GreenBiz program and to Green Business certification between treatment and control groups;
- Assess differences in pro-environmental and energy efficient behavior among students in the treatment vs. control schools;
- Collect anecdotal evidence from participants regarding their experience with the program, including their overall perspective on energy efficiency and the environment;
- Comply with all other Experimental Design and QED protocols as agreed upon between Cupertino and SVEW in the first month of implementation.

Consultant/firm shall also make recommendations for any additional program assessment methods as appropriate.

Task 4: Reporting requirements

The consultant/firm will be required to comply with fingerprinting and additional reporting requirements as set forth in *Exhibits C and D*. The Consultant(s) shall cooperate with City to prepare fiscal and progress reports according to the following schedule:

Report	Content Description	Due Date
Report 1	Target population profile, outreach plan, evaluation plan, staff, any changes since contracting	October 10, 2013
Report 2	Activities and milestones to date, any changes in target population profile, staff, hurdles, evaluation progress including any interim results, and testimonials	March 21, 2014

Final	Final program summary, all activities and milestones to date, final evaluation results, best practices, testimonials and photos, any plans for program continuation or expansion	November 30, 2014
-------	--	-------------------

Additional Responsibilities

In addition to the tasks outlined above, the consultant/firm is expected to support the following CECG monitoring and assessment obligations, as deemed necessary by the City’s Project Manager:

- Attend periodic site visits to support SVEW’s monitoring of the City’s progress in meeting its goals; and
- Attend three initial training sessions to ensure progress is being made by the Emerald City Initiative and to inform the program’s team of new services technologies and findings from the CPUC Marketing, Education and Outreach Task Force.

All deliverables, including reports, may be shared with PG&E and/or the CPUC in their entirety and/or in summary. As such, the consultant/firm will be expected to adequately substantiate all claims made as part of all aforementioned **Task 1-4** deliverables in accordance with all applicable requirements of the laws of the State of California, federal common law, any California or federal statute or regulation and any local ordinances, if applicable. Further, the consultant/firm shall substantiate marketing or technological claims made in all program marketing materials. Claims include, but are not limited to, statements about the energy efficiency, safety, reliability, or performance of a piece of equipment or category of energy efficiency measures. For all deliverables noted above, including but not limited to reports and marketing materials, the consultant/firm is responsible to identify all claims, and shall have written evidence and data to substantiate the claim.

V. CITY’S RESPONSIBILITIES

To support the process, the City will:

- Designate a Project Manager (Sustainability Manager) and support staff for the project (Environmental Programs Assistant, 1-2 Climate Corps Bay Area Members);
- Provide information and resources regarding related projects and activities as requested by the consultant in a timely manner;

- Facilitate introductions and support relationship-building with the funder and relevant project stakeholders;
- Schedule meetings and presentations to relevant groups and participate in presentations with consultant support; and
- Perform reviews of material and report submittals by consultant in a timely manner.

VIII. SELECTION PROCESS

A selection team will evaluate the qualifications submitted and may contact persons involved in former or current projects by responding firms, including but not limited to reference contacts. Based upon the evaluation, the City may choose to invite one or more firms to an interview or teleconference to clarify their project understanding 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 undertake contract negotiations with the top-ranked firm. If the negotiations with the top firm are unsuccessful within 10 working days, the City may initiate negotiations with the second-ranked firm, and with the next-ranked firm as needed. The selection process will be completed when a contract is agreed upon and executed.

If interviews occur, the selected firm(s) or team(s) will be contacted and may be asked to prepare a brief presentation. The rankings, selection process and contract negotiations are expected to conclude swiftly and services are expected to begin in October.

The City reserves the right to reject any and all consultants.

More than one firm may be found qualified to perform the type of service described in this document. Firms that are deemed to have appropriate qualifications will be placed on a Qualified Consultant list and may be contacted in the future to provide scope and fee proposals, without the need to re-submit qualifications information.

The City reserves the right to modify the scope of the project at any time based on the best interests of the City.

Business License Requirements: The consultant and their subconsultants must hold or obtain business licenses in the City for any work within City limits.

IX. SELECTION CRITERIA

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

- Prior experience performing similar work
- Success and range of experience in previous projects
- Qualifications of key staff persons who will carry out the project
- Proposed work program for carrying out the assignment and ability to meet City's schedule
- Ability to adapt to changes and factors that may affect the project outcome
- Understanding of the project assignment
- Organization and location of the firm
- Ability to provide general and professional liability insurance in the required amounts specified in sample agreement
- References and recommendations

X. QUALIFICATIONS INSTRUCTIONS AND FORMAT

Qualifications submittals of 2 hard copies and an electronic pdf copy are due by 3:00 p.m on Wednesday, September 11th, 2013. The hard copy proposals may be mailed or delivered to City of Cupertino, City Hall, City Clerk, 10300 Torre Avenue, Cupertino, CA 95014, attention Erin Cooke, Sustainability Manager and the electronic copy should be emailed to erinc@cupertino.org. No faxed submittals will be accepted. Questions regarding the project may be directed to Erin Cooke, Sustainability Manager at 408-777-7603 or via email erinc@cupertino.org.

The qualifications submittal is expected to not exceed 10 pages, excluding table of contents, cover letter, biographies of staff proposed for the project, and any promotional materials. Simple and brief submittals are welcome. The City reserves the right to reject any or all proposals and to waive any irregularities to choose the firm or team which in its opinion best serves its interests.

The City is interested in information to address the points below. Brief responses are acceptable and encouraged.

- Firm's structure, background, general qualifications.
- Special knowledge or capabilities relating to the project.
- Principal staff that will be assigned to the project; role of each; work history or resume for key personnel. Relevant information could include related projects each has worked on; dates, approximate project cost; duties/responsibilities

particularly for projects of a similar nature. Resumes are preferred in an appendix. There can be no change of key personnel once the proposal is submitted without the prior approval of the City.

- Recent experience of the firm in providing services for similar projects. If possible note name, address and phone number for owner/client, or others that may serve as references.
- Name of subconsultants that will be utilized on the project, include firm qualifications and key personnel.
- Provide a description of the firm's understanding of the scope of the project, detailed approach and methodology for managing the scope of work as outlined in this RFQ. List specific tasks and any specific considerations or options. Identify particular challenges or opportunities associated with this project.
- Provide a timeline for completion of the project including start date, milestones and project completion date; noting that the project must conclude by December 31st, 2014.
- Identify location of the office(s) where work will be performed.
- Submit confirmation that the required City standard/insurance levels are acceptable.

Prior to negotiating a contract with the successful firm, City will ask the proposer to submit the expected level of services to be provided by each subconsultant, if relevant, broken down by task or phase and the corresponding fees.

EXHIBIT A: SAMPLE CITY OF CUPERTINO AGREEMENT

AGREEMENT BETWEEN THE CITY OF CUPERTINO AND FOR CONSULTANT SERVICES

THIS AGREEMENT, for reference dated _____, 20_, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), and _____, a (California corporation, partnership, sole proprietor, individual) whose address is _____ (hereinafter referred to as "Consultant"), and is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.
- B. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. City and Consultant desire to enter into an agreement for upon the terms and conditions herein.

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

1. **TERM:**

The term of this Agreement shall commence on _____, 20_, and shall terminate on _____, 20_, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED:**

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

3. **COMPENSATION TO CONSULTANT:**

Consultant shall be compensated for services performed pursuant to this Agreement in the amount set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference. Payment shall be made by checks drawn on the treasury of the City, to be taken from the General Fund.

4. **ACKNOWLEDGEMENT OF MANDATED REPORTING REQUIREMENTS:**

Consultant shall comply with the requirements of California Penal Code 11164-11174.3 and as set forth in Exhibit "C" which is attached hereto and incorporated herein by this reference.

5. **FINGERPRINT AND TB CONSULTANT DECLARATION:**

Consultant agrees that all individuals covered under this Agreement shall provide fingerprints for

criminal background test purposes and results of TB screening, pursuant to the requirements as set forth in Exhibit "D" which is attach hereto and incorporated herein by this reference.

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

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

7. **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.

6. **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. **HOLD HARMLESS:**

- A. **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, whether physical, emotional, consequential or otherwise, arising out, pertaining to, or related 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.

- B. Claims for Professional Liability. Where the law establishes a standard of care for Consultant's professional services, and to the extent the Consultant breaches or fails to meet such established standard of care, or is alleged to have breached or failed to meet such standard of care, Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.
- C. Claims for Other Liability. 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 against any and all liability, claims, actions, causes of action or demands whatsoever from and against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.
- D. Claims involving intellectual property. In addition to the obligations set forth in (A) and (B) above, Consultant shall indemnify, defend, and hold the City, its elected and appointed officers, employees, and volunteers, harmless from and against any Claim in which a violation of intellectual property rights, including but not limited to copyright or patent rights, is alleged that arises out of, pertains to, or relates to Consultant's negligence, recklessness or willful misconduct under this Agreement. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation.

11. **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 9A, 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

(4) **Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.

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.

12. **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.

13. **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.

14. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from City is obtained, only those people and subcontractors whose names and resumes are attached to 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.

15. **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.

16. **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 and provided electronically in an editable format (e.g. not PDF) . 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.

17. **RECORDS:**

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

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

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

18. **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: Erin M. Cooke

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

19. **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.

20. **UTILITIES**

Consultant shall pay all charges for fuel, gas, water, electricity, telephone services and any other utilities necessary to carry on the operations of Consultant.

21. **NUISANCE**

Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

22. **SAFETY REQUIREMENT**

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

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

23. **COMPLIANCES:**

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

24. **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.

25. **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.

26. **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.

27. **INSERTED PROVISIONS:**

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

28. **CAPTIONS:**

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

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

CONSULTANT

CITY OF CUPERTINO

A Municipal Corporation

_____[Name of Consultant]

By _____

By _____

Title _____

Title _____

Date _____

Date _____

RECOMMENDED FOR APPROVAL:

Title _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

EXHIBIT B: PAYMENT SCHEDULE

To be defined following consultant selection

EXHIBIT C: ACKNOWLEDGEMENT OF MANDATED REPORTING REQUIREMENTS, RECEIPT OF TRAINING AND RECEIPT OF PENAL CODES STATUES

A mandated reporter is an individual who is obligated by law to report suspected cases of child abuse and neglect. In general, any individual who, in the ordinary course of their employment, has contact with children is a mandated reporter. Mandated reporters include child care workers, teachers and coaches. (California Penal Code 11165.7).

If your job duties as an employee or an independent contractor of _____ include contact with children, you are a Mandated Reporter. Prior to commencing employment and as a prerequisite of that employment, California law requires that you sign a statement to the effect that you have knowledge of the provisions of the Mandated Reporter Law, and will comply with those provisions. (California Penal Code 11166.5).

The following are the Mandated Reporter responsibilities under California law. You are also being provided with a separate informational document which includes the text of the California Mandated Reporter Law and contact information for Child Abuse and Neglect Reporting for the County of Santa Clara. Please review this information carefully and acknowledge your receipt and understanding where indicated. If you have questions or concerns about this form or your Mandated Reporter responsibilities, please contact the Recreation Supervisor at 408-777-3120.

I understand that:

- By virtue of my employment or independent contractor status with _____, and because my employment requires me to have contact with children, I am a Mandated Reporter as defined by California Penal Code 11165.7.
- The following situations trigger mandatory reports: a) Physical Abuse (willful harming of a child); b) Sexual abuse including sexual assault, child exploitation, pornography, and trafficking; c) Severe or General Neglect; and d) Extreme Corporal Punishment (resulting in injury). (Cal. Pen. Code 11165 et. seq.) I further understand that I may, but am not required to, report suspected Emotional Abuse.
- If I reasonably suspect that a child is being abused, I must immediately make a telephone report. I must follow up with a written report within 36 hours. This report may be made to local law enforcement, or County Sheriff's Department, Probation Department or Child Welfare Agency. (Cal Pen. Code 11166(a)).
- I am not required to, but I may, share information about suspected abuse with my supervisor or management or the parents of the alleged victim.
- When I make a mandated report, I will be required to give my name. However, my identity will be kept confidential unless I either consent to disclosure or if the disclosure is made pursuant to a court order. Further, agencies investigating the mandated report may disclose my identity to one another. (Cal Pen. Code 11167(d)).
- The following agencies and individuals receiving or investigating mandated reports may disclose my identity to one another:

- Prosecutors in a criminal prosecuting or in an action initiated under section 602 of the Welfare and Institutions Code arising from alleged child abuse;
- Counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code;
- A licensing agency when abuse or neglect in out-of-home care is reasonably suspected. (Cal Pen. Code 11167.5)
- I may not be disciplined, dismissed, retaliated against, discriminated against or harassed for making a mandated report of reasonably suspected child abuse.
- As a Mandated Reporter, I have civil and criminal immunity when making a report (Cal Pen. Code 11172).
- As a Mandated Reporter, it is a misdemeanor to fail to comply with Mandated Reporting laws and I can be held criminally liable for failing to report suspected abuse. The penalty for this is up to six months in County jail, a fine of not more than \$1000, or both. I further understand I could be civilly liable for failure to report. (Cal. Pen. Code 11166(c)).

I have been provided with a copy of California Penal Code sections 11164-11174.3 (Mandated Reporter Law).

I understand that I am a legally Mandated Reporter. I am aware of and understand my responsibilities under the Mandated Reporter laws of this state and am willing and able to comply. I understand that a copy of this Acknowledgement will be kept in my personnel file.

Name (Signature)

Date

Name (Print)

EXHIBIT D: CONSULTANT DECLARATION

The undersigned does hereby certify that:

1. I am a representative of _____ (consultant or company name); that I am familiar with the facts herein and am authorized and qualified to execute this declaration.
2. I declare that _____ (consultant or company name) has complied with fingerprinting and criminal background investigation requirements with respect to all Consultant's employees who may have contact with minors in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in California Penal Code Section 11105.3.
3. That a complete and accurate list of Consultant's employees, who may come in contact with minors during the course and scope of the Agreement, are included below.
4. All of the below mentioned employees have tested negative for TB, or X-ray results for TB, and have current documentation on file with Consultant.

A List of all Consultant Employees Working for the City of Cupertino:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. The City of Cupertino will be notified by Consultant of any new employees and will be added to the above list prior to beginning work for the City of Cupertino.

I declare under penalty of perjury that the foregoing is true and correct:

Date Place Consultant Signature

Staff Title: _____