



Request for Proposal

Comprehensive Fee and Rate
Study & Review of Overhead
Cost Allocation Plan

June 5, 2015

REQUEST FOR PROPOSALS FOR COMPREHENSIVE FEE AND RATE STUDY &
OVERHEAD COST ALLOCATION

TABLE OF CONTENTS

1 PROJECT OVERVIEW 4

1.1 PROJECT PURPOSE 4

1.3 RFP COORDINATOR..... 5

1.4 PROPOSAL PREPARATION COSTS 5

1.6 QUESTIONS PERTAINING TO THE RFP..... 5

1.7 INTENT TO PROPOSE..... 5

1.8 PROPOSAL SUBMITTAL 6

1.9 PUBLIC RECORDS LAW 6

2 PROJECT SCOPE OF WORK 6

2.1 COMPREHENSIVE USER FEE AND RATE STUDY..... 7

2.2 COST ALLOCATION PLAN 8

3 CITY BACKGROUND 9

4 CURRENT STATUS 10

5 PROPOSAL REQUIREMENTS 11

5.1 PROPOSAL FORMAT..... 11

5.2 COVER LETTER..... 12

5.3 TABLE OF CONTENTS..... 12

5.4 SECTION 1 – EXECUTIVE SUMMARY 12

5.5 SECTION 2 – COMPANY BACKGROUND..... 12

5.6 SECTION 3 – COMPANY QUALIFICATIONS 12

5.7 SECTION 4 – REFERENCES..... 12

5.8 SECTION 5 – METHODOLOGY AND STRATEGY 13

5.9 SECTION 6 – TIMELINE AND PRICING..... 13

6 SELECTION CRITERIA 13

7 GENERAL REQUIREMENTS 14

7.1 COLLUSION 14

7.2 GRATUITIES..... 15

7.3 REQUIRED REVIEW AND WAIVER OF OBJECTIONS BY PROPOSER..... 15

7.4 NONDISCRIMINATION 15

7.5 PROPOSAL WITHDRAWAL 15

7.6 PROPOSAL ERRORS..... 15

7.7 INCORRECT PROPOSAL INFORMATION 16

7.8 ASSIGNMENT AND SUBCONTRACTING..... 16

7.9 RIGHT TO REFUSE PERSONNEL 16

7.10 PROPOSAL OF ADDITIONAL SERVICES 16

7.11 LICENSURE..... 16

7.12 CONFLICT OF INTEREST AND PROPOSAL RESTRICTIONS..... 16

7.12 CONTRACT NEGOTIATIONS..... 17

7.14 RIGHT OF REJECTION 17

7.15 DISCLOSURE OF PROPOSAL CONTENTS 18

7.16 PROPRIETARY INFORMATION 18
7.18 RFP AND PROPOSAL INCORPORATED INTO FINAL CONTRACT 18
7.19 PROPOSAL AMENDMENT 18
7.20 CONSULTANT PARTICIPATION 18
7.21 RIGHTS OF THE CITY..... 19
APPENDIX A – CITY PROFESSIONAL SERVICES AGREEMENT..... 20

1 PROJECT OVERVIEW

The City of Cupertino is requesting proposals for a Comprehensive Fee and Rate Study & Review of our current Overhead Cost Allocation Plan. There is a separate scope of work for each of the two projects.

1.1 Project Purpose

The purpose of this project is to ensure that the City of Cupertino's comprehensive cost allocation method accurately accounts for the true cost of providing various programs and services within City operations. It is the City's goal to have a well-documented and defensible cost allocation plan that will incorporate appropriate general and administrative cost allocations into the budget; identify overhead rates that can be used in the calculation of billable hourly rates for grants, fees, federal reimbursements, and other billings; and develop charges for user fees that comply with Proposition 218.

The last fee and cost of service study was performed by MAXIMUS in February 2007. The study focused on Community Development Building fees and the Planning, Engineering Design and Traffic Engineering fees only as they related to the building schedule. Prior to this the last comprehensive fee study had been completed in 2003. Since the study was completed fees in general have been left either unchanged or increased by the Consumer Price Index (CPI). Fees have also been increased to amortize the costs of specific technology improvements. Council approved the last revision of the City's fees and service charges schedule in June 2014 in conjunction with our budget process.

Staff Report:

http://cupertino.granicus.com/MetaViewer.php?view_id=18&clip_id=1641&meta_id=91299

Resolution: <http://64.165.34.13/weblink8/0/doc/364705/Page1.aspx>

1.2 Project Timeline

To meet the City's desired implementation date, the City is committed to pursuing an aggressive RFP process and subsequent schedule. The selection process outlined in this RFP will allow the City to select a PROPOSER by July 2015 and finalize the study by December 18, 2015.

Table 1, RFP Schedule of Events, identifies the RFP schedule that will be followed.

Table 1 – RFP Schedule

Activity	Event
City Issues Request for Proposal	June 5, 2015
Intent to Propose Form	June 19, 2015
Deadline for PROPOSER Questions	June 26, 2015
City Responses to Questions	July 2, 2015
Deadline for Proposal Submission	July 24, 2015

Optional Interviews with Finalists	August 3-7, 2015
Award of Proposal & Contract Execution	August 21, 2015
Project Start Date	September 2, 2015
Project Completion Date	January 15, 2015
Presentation of Draft Report to City Staff	January 15-29, 2016
Presentation of Final Report to City Council	February 16, 2015

The City reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the RFP Schedule of Events will be provided to all PROPOSERS who comply with Section 1.7 (Intent to Propose).

1.3 RFP Coordinator

All communications concerning this RFP must be submitted in email to the RFP Coordinator identified below. The RFP Coordinator will be the sole point of contact for this RFP.

Ms. Jaqui Guzmán, Assistant to the City Manager
 Email – JacquelineG@cupertino.org

PROPOSER contact with anyone else in the City is expressly forbidden and may result in disqualification of the PROPOSER's bid.

1.4 Proposal Preparation Costs

The City will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

1.5 RFP Amendment and Cancellation

The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue the RFP at its sole discretion. If an amendment is issued, it will be provided to all PROPOSERS complying with Section 1.7 (Intent to Propose). PROPOSERS will respond to the final written RFP and any exhibits, attachments, and amendments.

1.6 Questions Pertaining to the RFP

Specific questions concerning the RFP should be submitted via e-mail to the RFP Coordinator (See Section 1.3) before the date identified in Section 1.2 (Project Timeline). PROPOSER questions should clearly identify the relevant section of the RFP and page number(s) related to the question being asked.

Copies of all questions and the City's responses will be emailed to all PROPOSERS complying with Section 1.7 (Intent to Propose).

1.7 Intent to Propose

Each PROPOSER who plans to submit a proposal should register by email with the RFP Coordinator (Section 1.3) by the date identified in Section 1.2 (Project Timeline). The

email should indicate the PROPOSER's intent to respond to this RFP. The email should include:

- ◆ PROPOSER name
- ◆ Name and title of PROPOSER main contact
- ◆ Address, telephone and facsimile number, and email address

Submittal of the Intent to Propose email is necessary to ensure receipt of RFP amendments, responses to vendor questions, and other communications regarding the RFP. The Intent to Propose is not intended to bind PROPOSERS to submitting a proposal.

1.8 Proposal Submittal

Proposals will be submitted no later than the “Deadline for Proposal Submission” as identified in Section 1.2 (RFP Timeline). PROPOSERS assume the risk of the method of delivery chosen. The City assumes no responsibility for delays caused by any delivery service. A PROPOSER's failure to submit a proposal as required before the deadline may cause the proposal to be disqualified.

PROPOSERS must submit in a sealed package one (1) original, signed Master, four (4) copies, and one (1) electronic copy (a single .pdf file is strongly encouraged).

The package should be clearly labeled as follows:

Ms. Jacqueline Guzman, Assistant to the City Manager
Proposal for Comprehensive Fee/ Rate Study & Review of Overhead Cost
Allocation Plan
Name of PROPOSER
PROPOSER's Address
PROPOSER's Contact Person
PROPOSER's Telephone Number

The proposal package should be mailed, couriered, or hand delivered to the City Hall Front Desk at 10300 Torre Avenue, Cupertino, CA 95014. All proposals must be received by the City by 4:30 p.m. on the Deadline for Proposal Submission date as indicated in Section 1.2. Proposals received after this time and date will be returned unopened. Postmarks will not be accepted as proof of receipt.

1.9 Public Records Law

Pursuant California Government Code Section 6250, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. All submitted proposals are subject to this code section.

2 PROJECT SCOPE OF WORK

Below is the scope of work for (1) the Comprehensive Fee and Rate Study and (2) the Review of our current Overhead Cost Allocation Plan.

2.1 Comprehensive User Fee and Rate Study

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- a. Work with City staff to refine the project scope, purpose, uses and goals of the City's Comprehensive User Fee and Rate Study to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the Study.
- b. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees. This includes but not limited to the following: building permit, encroachment permit, grading permit, storm water permits, licenses, planning fees, building fees including inspection, public works/engineering fees including public right of way fees, parks and recreation fees, code enforcement compliance fees, and miscellaneous and administrative fees. For a list of City fees, see the following link to the City's fee schedule, which is adopted annually and is effective each July 1: <http://www.cupertino.org/index.aspx?page=175>
- c. Identify the total cost of providing each City service at the lowest reasonable activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Proposition 218.
- d. Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services as well as areas where we perhaps should charge, in light of the City's practices, or the practices of similar or neighboring cities.
- e. Recommend appropriate fees and charges based on your analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic (e.g. youth recreation, senior services). For permit and planning fees, make industry-based assumptions for cycle time (for example, it may take \$500 in staff time to process a building permit in one week but \$750 if the goal is to process the permit in 72 hours.)
- f. Prepare a report that identifies each service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service; and provide a model for adjusting these fees and rates for the City's current and future needs.

- g. Prepare a report that identifies the present fees, recommended fees (with alternatives if the Council wishes to provide subsidies), percentage change, cost recovery percentage, revenue impact and fee comparison with other Santa Clara County cities or other California cities that are comparable to Cupertino. A survey comparison of rates and fees with similar cities is for information only.
- h. Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.
- i. Present your findings to the City's management group and make necessary adjustments as requested.
- j. Prepare and deliver presentations to the Cupertino City Council and Finance & Investment Committee to facilitate their understanding of the plan and its implications for the City and make necessary adjustments as requested. As part of the presentation, prepare specific examples of several types of development projects and the impact of proposed fees.
- k. Provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs. Develop or modify the existing model for adjusting fees and rates to include the addition of hypothetical service area information for future services enhancements, and the ability to calculate the estimated costs of providing the service under consideration (scenario and "what if" analyses).
- l. Provide on-site training to enable staff to update fees on an annual basis.
- m. Prepare a final fee study report and provide five bound copies, one unbound copy and a single PDF and Word file of the plan that can be made available to City staff. Any master fee schedule revisions developed shall also be made available to the City electronically, providing the ability to add or delete and/or update information as needed.
- n. Consult with City staff should it become necessary to defend the City's User Fees and Rates as a result of any legal or other challenge.

2.2 Cost Allocation Plan

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- a. Work with selected City staff to refine the project scope, purpose, uses and goals of the City's Cost Allocation Plan to ensure that the Plan is both accurate and appropriate to meet the City's needs. Review project schedules and answer any questions pertaining to the review of the Cost Allocation Plan.

- b. Meet with staff and conduct interviews as needed to gain an understanding of the City's practices and operations.
- c. Confirm that the current cost allocation plan will determine appropriate General and Administrative overhead allocations to City programs and activities (including capital and fixed asset distributions), and recommend overhead rates for use in calculating the City's billable hourly rates.
- d. Identify gaps in the existing Plan that would prevent it from becoming a defensible cost allocation plan that conforms to all State of California and Federal guidelines including the State Controller's Office Guidelines for Cost Claiming and OMB Circular A-87 standards. The requirements of the model shall allow for:
 - ◆ Additions and revisions of direct and overhead costs so that the overhead cost allocation plan can be easily adapted to a range of activities both simple and complex.
 - ◆ The ability of City to continuously update the model and overhead cost allocation plan easily from year to year as the organization changes.
 - ◆ The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration.
- e. Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.
- f. Present the plan to the City's management group and make necessary adjustments as requested.
- g. Prepare and deliver presentations to the Council and Fiscal Strategic Committee to facilitate their understanding of the plan and its implications for the City.
- h. Provide the City with an electronic copy of the final comprehensive review, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs.
- i. Prepare a final report and provide five bound copies, one unbound copy and a single PDF and Word file of the plan that can be made available to City staff. Any Cost Allocation Model revisions developed shall also be made available to the City electronically, providing the ability to add or delete and/or update information as needed.
- j. Consult with City staff should the need arise to defend the cost allocation plan as a result of audits or other challenges.

3 CITY BACKGROUND

The City of Cupertino is a general law entity, governed by a council-manager form of government. The City employs 169.75 full-time employees. Incorporated in 1955, Cupertino has a population of about 60,000 and city limits that stretch across 13 square miles.

The total budget for the fiscal year 2014-2015 is \$119.5 million, with operations representing approximately \$114.5 million and a capital budget of \$5.0 million. The General Fund's appropriations of \$77.6 million support the main operations of the City including community development services, public works, and parks and recreation services. Police, fire and library services are contracted with Santa Clara County. Sewer collection and treatment services are provided by the Cupertino Sanitary District. The City also utilizes other contract services such as water, trash collection, and pavement maintenance.

In addition, the General Fund subsidized special funds with a \$31.6 million contribution. Special funds include Special Revenue Funds (Park Dedication, Transportation, Storm Drain, and Environmental Management/Clean Creeks), Enterprise Funds (Resource Recovery, Sports Center, Blackberry Farm Golf Course, and Recreation), the Capital Projects Fund, the Debts Service Fund, and several internal service funds. Other revenue sources include state and federal grants.

The City wishes to have the current cost allocation model and the cost of services model updated and/or expanded to capture the full cost recovery of programs and services. The last comprehensive cost of services study was undertaken in 2007 and is overdue for a new fee study, which should be completed every seven years per Council direction.

4 CURRENT STATUS

4.1 Current Fee Methodology

User fees are reviewed each year in conjunction with the City's budget process. City policy is to ensure that, to the extent possible, fees cover the full cost of providing services. Most fees are based on the actual cost to perform the service. Some fees, such as those for general or recreation purposes, are based on market conditions such as fees charged by outside service providers and other municipalities. Fees below the cost of supplying the service are subsidized by the City's general fund.

The changes to fees since the last fee study implemented in FY 2008-09 are summarized in the table below:

Fiscal Year	Schedule A - General	Schedule B - Engineering	Schedule C - Planning	Schedule D - Building	Schedule E - Recreation
08-09	Minimal Change	3.5%	3.5%	3.5%	Targeted Increases
09-10	Minimal Change	3.5%	3.5%	3.5%	Targeted Increases
10-11	No Change	No Change	No Change	No Change	Minimal Change

11-12	2.0%	3.5%	3.5%	3.5%	No Change
12-13	2.4%	2.4%	2.4%	2.4%	Targeted Increases
13-14	2.4%	2.4%	2.4%	2.4%	Targeted Increases
14-15	2.6%	3.0%	3.0%	3.0%	Targeted Increases

4.2 Cost Allocation Plan

As part of the City of Cupertino efforts to reflect total program costs and revenues, a Cost Allocation Plan (CAP) was implemented in FY 2013-14 to allocate overhead costs associated with internal administrative functions to all programs within the City. Not included in this CAP are overhead rates that can be applied to City fees and rates.

The City's CAP methodology can be found here:

<http://www.cupertino.org/Modules/ShowDocument.aspx?documentid=7191>

5 PROPOSAL REQUIREMENTS

The City wants to discourage lengthy and costly proposals. Proposals should be prepared simply and economically and provide a straightforward, concise description of the Proposer's company, qualifications, proposed solution, and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Glossy sales and marketing brochures are not necessary or desired.

Proposals must be organized consistent with the outline provided in this section of the RFP. Proposers must follow all formats and address all portions of the RFP set forth herein providing all information requested. Proposers may retype or duplicate any portion of this RFP for use in responding to the RFP, provided that the proposal clearly addresses all of the City's information requirements.

5.1 Proposal Format

Proposals must be structured, presented, and labeled in the following manner:

- ◆ Cover Letter
- ◆ Table of Contents
- ◆ Section 1 – Executive Summary
- ◆ Section 2 – Company Background and
- ◆ Section 3 – Company Qualifications
- ◆ Section 4 – References
- ◆ Section 5 – Methodology and Strategies
- ◆ Section 6 – Timeline and Pricing

Failure to follow the specified format, to label the responses correctly, or to address all of the subsections may, at the City's sole discretion, result in the rejection of the Proposal.

Proposals should be prepared on standard 8 1/2" x 11" paper and printed on 2 sides. All proposal pages should be numbered.

5.2 Cover Letter

A cover letter signed by an official authorized to solicit business and enter into contracts for the PROPOSER. The cover letter should include the name, address, email address, and phone number of contact person.

5.3 Table of Contents

All pages are to be numbered and figures, tables, charts, etc. must be assigned index numbers and identified in the Table of Contents.

5.4 Section 1 – Executive Summary

This section of the proposal should provide a brief and concise synopsis of the proposal and a description of the Proposer's credentials to deliver the services sought under the RFP. The Executive Summary should not exceed 3 pages.

5.5 Section 2 – Company Background

This section of the proposal should identify the following:

- ◆ A brief description of the Proposer's background and organizational history
- ◆ A statement of how long the Proposer has been performing the services
- ◆ Identify the location of headquarters, technical support, and field offices
- ◆ Identify the location of office which would service the City
- ◆ Identify the number of employees by the following functions: corporate (sales, marketing, finance, overhead, etc.), implementation support, ongoing maintenance support, and R&D
- ◆ Identify Proposer's annual company revenues and profit for the last 3 company fiscal years

The Background section should not exceed 3 pages.

5.6 Section 3 – Company Qualifications

A description summarizing the PROPOSER's experience over the past five years in performing similar services for municipal clients. Identify the consultants and key staff assigned to this project. Provide consultant and staff qualifications (attach resumes as appropriate). Demonstrate the firm's ability to produce the required product in a timely fashion and the ability to present any necessary reports or studies to elected officials and/or the general public.

5.7 Section 4 – References

Provide references from five different clients. Include the name, email address and telephone number for a contact person from each reference.

5.8 Section 5 – Methodology and Strategy

Outline methodology, planning and design strategies that will result in the development of practical recommendations that can be implemented in the City of Cupertino. The recommendations must not exceed the City's ability to implement, properly utilize, and replicate. Provide detailed information on methodology and tools used to meet the needs of the City's request.

5.9 Section 6 – Timeline and Pricing

Provide an estimated project timeline required to implement the overhead cost allocation review and comprehensive fee and rate study. Provide pricing estimates that include planning, development, and implementation services. Project budgets should include:

- a. A project schedule for each study with activities, milestones, and deliverables
- b. Project budgets for each study defined, at minimum, as follows:
 - ◆ By task with a collective total by milestone and deliverable
 - ◆ Labor rates for all project team members
 - ◆ General overhead rates
 - ◆ Costs for expenses such as printing, travel and attendance at meetings

The consultant shall present a specific "not to exceed" fixed fee, including associated fees (i.e., printing costs, attendance at meetings, travel). A requested payment schedule should accompany the work schedule. Each phase of work should have an itemized budget including labor costs and expenses for each piece of work. The proposal should include staff hourly rates.

6 SELECTION CRITERIA

An Evaluation Committee shall review all proposals to determine which PROPOSERS have qualified for consideration. The evaluation will include at least an initial review and a detailed review. The initial review will evaluate all submissions for conformance to stated specifications to eliminate all responses that deviate substantially from the basic intent and/or failure to satisfy the mandatory requirements. Only those proposals that meet or exceed the intent of the mandatory requirements will be further evaluated.

Submitted proposals will be evaluated on the following criteria:

- ◆ Quality, clarity, and responsiveness of proposal
- ◆ Ability to meet the needs of the City
- ◆ Timeline
- ◆ Proven technical ability to evaluate cost recovery of municipal fees and design a comprehensive cost allocation plan
- ◆ Understanding of fees in charges in other bay area agencies for benchmarking purposes.

- ◆ Demonstrated ability to work in a collaborative manner with clients
- ◆ Anticipated value and price
- ◆ Company financial stability
- ◆ References
- ◆ Interview Results
- ◆ Ability to prepare and execute a contract in a timely manner

The City reserves the right, at its sole discretion, to request clarifications of proposals or to conduct discussions for the purpose of clarification with any or all PROPOSERS. The purpose of any such discussions shall be to ensure full understanding of the proposal. Discussions shall be limited to specific sections of the proposal identified by the City and, if held, shall be after initial evaluation of Proposals is complete. If clarifications are made as a result of such discussion, the PROPOSER shall put such clarifications in writing.

7 GENERAL REQUIREMENTS

For a PROPOSAL to be considered, the City must receive four (4) copies of the proposal by 4:30 pm on July 24, 2015 at the following address:

Office of the City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Or one printable PDF copy via email, send to:

Jaqui Guzmán, Assistant to the City Manager
jacquelineg@cupertino.org

All proposals must be clearly marked: “Sealed Proposal – Comprehensive Fee and Rate Study & Review of Overhead Cost Allocation Plan.”

The City of Cupertino reserves the right to retain all proposals submitted, and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the PROPOSER of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Cupertino and the PROPOSER selected.

7.1 Collusion

By submitting a response to the RFP, each PROPOSER represents and warrants that its response is genuine and made in the interest of or on behalf of any person not named therein; that the PROPOSER has not directly induced or solicited any other person to submit a sham response or any other person to refrain from submitting a response; and that the PROPOSER has not in any manner sought collusion to secure any improper advantage over any other person submitting a response.

7.2 Gratuities

No person will offer, give or agree to give any City employee or its representatives any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee or its representatives will solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

7.3 Required Review and Waiver of Objections by PROPOSER

PROPOSERS should carefully review this RFP and all attachments, including but not limited to the Standard Professional Services Agreement (Appendix A), for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by the City no later than the "Deadline for Written Questions and Comments" detailed in the Table 1, RFP Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection will be considered waived and invalid if these faults have not been brought to the attention of the City, in writing, by the Deadline for Written Questions and Comments.

7.4 Nondiscrimination

No person will be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or California State Constitutional or statutory law; nor will they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's contractors. Accordingly, all PROPOSERS entering into contracts with the City will, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

7.5 Proposal Withdrawal

To withdraw a proposal, the PROPOSER must submit a written request, signed by an authorized representative, to the RFP Coordinator (Section 1.3). After withdrawing a previously submitted proposal, the PROPOSER may submit another proposal at any time up to the deadline for submitting proposals.

7.6 Proposal Errors

PROPOSERS are liable for all errors or omissions contained in their proposals. PROPOSERS will not be allowed to alter proposal documents after the deadline for submitting a proposal.

7.7 Incorrect Proposal Information

If the City determines that a PROPOSER has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the PROPOSER knew or should have known was materially incorrect, that proposal will be determined non-responsive, and the proposal will be rejected.

7.8 Assignment and Subcontracting

The Contractor may not subcontract, transfer, or assign any portion of the contract without prior, written approval from the City. Each subcontractor must be approved in writing by the City. The substitution of one subcontractor for another may be made only at the discretion of the City and with prior, written approval from the City.

Notwithstanding the use of approved subcontractors, the PROPOSER, if awarded a contract under this RFP, will be the prime contractor and will be responsible for all work performed and will be responsible for all costs to subcontractors for services provided by the PROPOSER. The PROPOSER is prohibited from performing any work associated with this RFP or using contractors for any service associated with this RFP offshore (outside the United States).

7.9 Right to Refuse Personnel

The City reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the prime contractor or its subcontractors. The City reserves the right to interview and approve all PROPOSER's staff. PROPOSER's staff may be subject to the City's background and drug testing processes at any time.

7.10 Proposal of Additional Services

If a PROPOSER indicates an offer of services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of the City.

7.11 Licensure

Before a contract pursuant to this RFP is signed, the PROPOSER must hold all necessary, applicable business and professional licenses. The City may require any or all PROPOSERS to submit evidence of proper licensure.

7.12 Conflict of Interest and Proposal Restrictions

By submitting a response to the RFP, the PROPOSER certifies that no amount will be paid directly or indirectly to an employee or official of the City as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the PROPOSER in connection with the procurement under this RFP.

Notwithstanding this restriction, nothing in this RFP will be construed to prohibit another governmental entity from making a proposal, being considered for award, or being awarded a contract under this RFP.

Any individual, company, or other entity involved in assisting the City in the development, formulation, or drafting of this RFP or its scope of services will be considered to have been given information that would afford an unfair advantage over other PROPOSERS, and said individual, company, or other entity may not submit a proposal in response to this RFP.

7.12 Contract Negotiations

After a review of the proposals and interviews, the City intends to enter into contract negotiations with the selected PROPOSER. These negotiations could include all aspects of services and fees. PROPOSERS shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements in Appendix A. If a Proposer desires to take exception to the Agreement, PROPOSER shall provide the following information in their submittal package. Please include the following:

- ◆ PROPOSERS shall clearly identify each proposed change to the Agreement, including all relevant Attachments.
- ◆ PROPOSERS shall furnish the reasons for each proposed change, as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take exceptions to the proposed Agreement may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award.

7.13 Execution of Contract

If the selected PROPOSER does not execute a contract with the City within fifteen (15) business days after notification of selection, the City may give notice to that service provider of the City's intent to select from the remaining PROPOSERS or to call for new proposals, whichever the City deems appropriate.

7.14 Right of Rejection

The City reserves the right, at its sole discretion, to reject any and all proposals or to cancel this RFP in its entirety.

Any proposal received which does not meet the requirements of this RFP may be considered to be nonresponsive, and the proposal may be rejected. PROPOSERS must comply with all of the terms of this RFP and all applicable State laws and regulations. The City may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP.

PROPOSERS may not restrict the rights of the City or otherwise qualify their proposals. If a PROPOSER does so, the City may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.

The City reserves the right, at its sole discretion, to waive variances in technical proposals provided such action is in the best interest of the City. Where the City waives minor variances in proposals, such waiver does not modify the RFP requirements or

excuse the PROPOSER from full compliance with the RFP. Notwithstanding any minor variance, the City may hold any PROPOSER to strict compliance with the RFP.

7.15 Disclosure of Proposal Contents

All proposals and other materials submitted in response to this RFP procurement process become the property of the City. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process. Upon the completion of the evaluation of proposals, the proposals and associated materials will be open for review by the public to the extent allowed by the California Public Records Act, (Government Code Section 6250-6270 and 6275-6276.48). By submitting a proposal, the PROPOSER acknowledges and accepts that the contents of the proposal and associated documents will become open to public inspection.

7.16 Proprietary Information

The master copy of each proposal will be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law (Government code §6276). Each PROPOSER may clearly label part of a proposal as "CONFIDENTIAL" if the PROPOSER thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City will constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by the City, the City will notify the PROPOSER of the request and delay access to the material until seven working days after notification to the PROPOSER. Within that time delay, it will be the duty of the PROPOSER to act in protection of its labeled information. Failure to so act will constitute a complete waiver.

7.17 Severability

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the City and PROPOSERS will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

7.18 RFP and Proposal Incorporated into Final Contract

This RFP and the successful proposal will be incorporated into the final contract.

7.19 Proposal Amendment

The City will not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless such is formally requested, in writing, by the City.

7.20 Consultant Participation

The City reserves the right to share with any consultant of its choosing this RFP and proposal responses in order to secure a second opinion. The City may also invite said consultant to participate in the Proposal Evaluation process.

7.21 Rights of the City

The City reserves the right to:

- ◆ Make the selection based on its sole discretion
- ◆ Reject any and all proposals
- ◆ Issue subsequent Requests for Proposals
- ◆ Postpone opening proposals, if necessary, for any reason
- ◆ Remedy errors in the Request for Proposal process
- ◆ Approve or disapprove the use of particular subcontractors
- ◆ Negotiate with any, all, or none of the PROPOSERS
- ◆ Accept other than the lowest offer
- ◆ Waive informalities and irregularities in the proposals
- ◆ Enter into an agreement with another PROPOSER in the event the originally selected PROPOSER defaults or fails to execute an agreement with the City

An agreement will not be binding or valid with the City unless and until it is approved by the City Council and executed by authorized representatives of the City and of the PROPOSER.

Appendix A – City Professional Services Agreement

It is recognized that the formal basis of any agreement between the City and the service provider is a contract rather than a proposal. In submitting proposals, Proposers must indicate that they are prepared to complete the City's Agreement for Professional Services, which is presented on the following pages.

The winning proposer will be expected to accept these terms and conditions unless they otherwise take exception in their cover letter.

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND
FOR COMPREHANSIVE FEE & RATE STUDY AND
OVERHEAD COST ALLOCATION PLAN**

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. 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.

Review the following paragraph to determine if applicable

4. TIME IS OF THE ESSENCE:

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

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in

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

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

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

5. **STANDARD OF CARE:**

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.

6. **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.

7. **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.

[Add Optional Clause A or B when Agreement involves state or federal funds]

8. **HOLD HARMLESS:** [Choose correct category - there are four broad categories of indemnification clauses: design professional, non-design professional, construction agreements (see contractor standard form) and standard consultant agreements (which is everything else).]

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.

A. 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 negligence or willful misconduct of City, its agents or employees.

B. 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 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.

9. **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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. **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.

16. **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: _____

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

17. **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 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.

18. **COMPLIANCES:**

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

19. **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.

20. **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.

21. **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.

22. **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.

23. **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 _____
Title _____
Date _____

By _____
Title _____
Date _____

RECOMMENDED FOR APPROVAL:

Title _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk