



CUPERTINO

**CITY OF CUPERTINO
REQUEST FOR QUALIFICATIONS**

FOR

**TRANSPORTATION CONSULTING SERVICES
CDD-2026-847**

Issue Date:
June 18, 2026

Due Date :
July 17, 2026

DEPARTMENT OF COMMUNITY DEVELOPMENT
City Hall • 10300 Torre Avenue • Cupertino, CA 95014-3255
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REQUEST FOR QUALIFICATIONS
CITY OF CUPERTINO

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1. DESCRIPTION AND SCOPE

The City of Cupertino invites Statement of Qualifications (SOQ) submittals from qualified professionals (Consultants) to provide as-needed transportation consulting services. The City of Cupertino (City) seeks to compile a list of high-quality firms to be pre-qualified to perform professional transportation consulting services, as outlined below, for various types of development and land use projects that require evaluation of their potential transportation impacts. The City may use the list to select firms on a per-project basis or to enter into a master agreement for various projects.

The City intends to review the SOQs received and identify the highest qualified Consultants. The highest qualified Consultants identified to provide services resulting from this Request for Qualifications (RFQ) will remain on the pre-qualified list for approximately three (3) years. The City expects to enter into initial one-year contracts with the top highest qualified Consultants for services occurring July 1, 2026 – June 30, 2027. The City retains the option to extend each contract for up to two (2) additional one-year periods.

The Consultants will perform as-needed transportation consulting services under the general direction of Community Development Department personnel, in consultation with the Transportation Division personnel. The Consultant’s scope of services may include, but is not limited to, furnishing all materials, equipment, and labor, and providing other services associated with:

- a. Conducting project screening coordination to determine the level of review and transportation analysis.
- b. Preparing the scope of work, including but not limited to project descriptions, site location, analysis methods, area-wide assumptions, study elements, study time periods, and transportation data collection methods.
- c. Conducting and completing transportation analysis.
- d. Participating in City public proceedings.
- e. Providing clear communication, meeting expected timelines, and maintaining professional standards.

The Transportation Consulting Services Scope of Services (Attachment A) further outlines the anticipated scope of services to be completed by the consultant. The final scope of services may be refined during contract negotiations.

2. TENTATIVE TIMELINE

The tentative timeline for SOQ submission, evaluation, and selection is expected to follow the schedule below, but may vary at the City’s discretion. The items highlighted in blue represent deadlines for actions by prospective consultants.

Distribution of RFQ	Thursday, June 18, 2026
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Submission of Questions or Clarifications	Thursday, July 9, 2026, by 5:00 PM PST
Distribution of RFQ Addendum (as needed)	Monday, July 13, 2026, by 5:00 PM PST
Submission of SOQ	Friday, July 17, 2026, by 5:00 PM PST
Selection of Pre-Qualified List	August 2026

3. SUBMITTAL REQUIREMENTS

Consultant SOQ submittals are not to exceed twenty (20) pages, excluding table of contents, cover letter, resumes for key personnel, and exceptions to the standard agreement(s). Promotional materials are not requested and should not be included in submittal materials. The City prefers quality over quantity, and, as such, requests succinct, responsive proposals.

Consultant SOQ submissions shall highlight and identify the following general information:

- The consultant firm’s organization structure,
- The specific qualifications of the firm and staff to deliver requested services,
- The licensed subconsultants' background and general qualifications, and
- Recent experience with transportation projects in California.

To be considered, Consultants must meet the following minimum qualifications:

- The Consultant must have at least one (1) professional civil engineer or traffic engineer licensed in the State of California assigned to support this project.
- The Consultant must have a minimum of one (1) professional on the team with a Bachelor's or Master's degree in Civil Engineering, Transportation Engineering, or a related field.
- The Consultant must have completed a project that has met SB 375 and the California Environmental Quality Act (CEQA) laws.

To facilitate review, SOQs shall be organized in the order of the sections outlined below, with subconsultant work identified within each task item.

- A. Cover Letter: Provide a letter of interest that includes an overview of the firm’s qualifications, demonstrating how the minimum requirements are satisfied. The letter shall include the primary point of contact, phone number, email address, and DUNS number. The letter must identify the location(s) of the office(s) where services will be performed.

The letter shall also include a statement that the Consultant either accepts the attached City’s standard Master Professional/Specialized Services Agreement (Attachment B) in its entirety or takes exception to certain clauses or statements in the agreement. Any proposed exceptions to the agreement must be submitted as a separate sheet. The Consultant must accept, without modification or exception, the City’s Indemnification requirements and insurance coverage requirements.

- B. List of Personnel: Provide a list of key personnel involved in the performance of services, indicating the role of each individual. For each staff member, include related public sector experience, a description of project duties and responsibilities, the period of involvement, the overall project schedule, and the approximate project cost. Resumes of all listed personnel shall be included in the SOQ
- C. Project Examples: Provide a list of five (5) projects completed within the past three (3) years that demonstrate the firm's qualifications and capability to perform the types of services identified in this RFQ. For each project, include a brief description of the project, the project's location, the firm's scope of services, the firm's project manager, any subconsultants, the project's budget, and the final construction cost. Additionally, for each project listed, provide a single client reference, including the client's name, email address, and phone number.
- D. Outline of Qualifications: Provide an outline of the firm's qualifications that identifies any special knowledge, capabilities, licenses, systems, programs, or other unique qualifications of the firm that are applicable to performing the potential services.
- E. Subconsultants: Provide a list and overview of subconsultants utilized in the identified past projects (Item C). Additionally, identify subconsultants that may be used in support of the services requested in this RFQ. For each, identify key staff, experience, and qualifications relative to their individual disciplines, roles, and responsibilities.
- F. Labor Rate: Provide the current labor rate schedule for all potential positions and identify any applicable rates that may be in effect during the qualification period. If there are anticipated labor escalators, these must be identified.

4. CLARIFICATIONS AND QUESTIONS

Questions and clarifications are welcome throughout the process and shall be directed, via email, to Julia Garofalo, juliag@cupertino.gov. Questions and clarifications must be sent by Thursday, July 9, 2026, by 5:00 PM PST. Please include "RFQ for Transportation Consulting Services" in the subject line.

All responses to questions and/or clarifications will be provided to each of the potential proposers as an addendum to the original RFQ.

5. SUBMISSION PROCESS

Interested firms must submit an electronic PDF copy of their SOQ to Piu Ghosh at piug@cupertino.gov by Friday, July 17, 2026, by 5:00 PM PST. Include "RFQ for Transportation Consulting Services" in the subject line.

Only electronic submittals will be accepted. Hard copies in any form, including faxed submittals, will not be accepted. Make sure to follow all submission instructions and include all required documents. Submitting documents electronically can often take more time than anticipated, so

please ensure that you allow enough time to finalize your submittal by the stated deadline. Each firm is responsible for the costs incurred in association with the preparation of a SOQ submittal.

6. SELECTION CRITERIA AND QUALIFICATION PROCESS

The City's qualifications review panel will evaluate each SOQ submittal according to the Evaluation Criteria listed in this section.

Criteria		Possible Points
1.	Firm Qualifications and Experience	40
2.	Project Team Qualifications and Experience	40
3.	Specific Regional Knowledge & Experience	20
	Total Possible Points	100

7. PRE-QUALIFIED LIST

The City will select a limited number of pre-qualified Consultants in accordance with the evaluation process outlined above. The highest qualified consultants will be awarded an initial one-year contract and will remain on the City's pre-qualified list for a period of up to three years unless disqualified due to circumstances, including, but not limited to, non-performance or submission of inaccurate SOQ information. The City reserves the right to initiate a new RFQ process or revisit SOQs submitted in response to this RFQ to consider the addition of other pre-qualified Consultants during the three-year qualification period.

The City intends to select Consultants from the pre-qualified list based on their fit for particular projects or tasks and their ability to perform the required services. Consultants will be selected for project opportunities based upon the City's needs, the Consultant's qualifications relevant to each identified project or task, and the estimated cost of services. As such, selection for each project, task, or distribution of work will be considered in accordance with the City's Procurement policy and the following criteria, in no particular order or preference, which include but are not limited to:

- a. Expertise relevant to the services to be performed
- b. Ability to perform services within the required timeframe
- c. General availability
- d. Budgetary constraints
- e. Consultant's potential conflicts of interest (as applicable)
- f. Current volume of City work
- g. Estimated costs of services

The City reserves the right to request a pre-qualified Consultant to submit a Request for Proposal (RFP) for work in competition with other Consultants within five business days prior to issuing a service order. The City reserves the right to reject any or all consultant responses to a project RFP. The City Manager may further streamline this process.

This RFQ does not commit the City to award a contract or to pay any costs incurred in the preparation of any SOQs or any resulting proposals in response to this request or future RFP's.

8. CONTRACT REQUIREMENTS

As a result of this pre-qualification process, the highest qualified Consultants will be awarded a standard City Master Professional/Specialized Services Agreement. After the RFP process is conducted with the highest qualified consultants (Section 9), the City will issue a service order with the specific scope of work and negotiated price to the selected Consultant for that project. The Service Order will define the specific Scope of Services, compensation schedule, and deliverable schedule.

A sample City Master Professional/Specialized Services Agreement is attached to this RFQ as Attachment B. Note that the indemnity and insurance requirements that are included as Attachment C are identified in the agreements and must be accepted without modification.

Business License Requirements: The Consultant and their subconsultants must hold or obtain business licenses in the City of Cupertino for any work within City limits. If work for the City of Cupertino is the only business within the City of Cupertino that the firm undertakes, no business license is required per the City of Cupertino municipal code.

A completed Internal Revenue Service Form W-9 may also be required to establish the vendor in the City's Financial System.

9. CONSULTANT SERVICES PROPOSAL

Following the selection of Consultants for the City's pre-qualified list and awarding of Master Services Agreements, Consultants may be invited to submit consultant service proposals in response to project-specific RFPs within five (5) business days from issuance of the RFP. Consultant proposals shall include but not be limited to: (a) a detailed scope of work, (b) the proposed approach to the project; (c) a list of key staff and subconsultants; (d) a deliverables schedule; and (e) a cost estimate for proposed services, including any subconsultant work, itemized by proposed staff's hours and rates, tasks, and any additional anticipated expenses. The final scope of work and fee shall be a negotiated agreement, using the Consultant's proposal as the basis for the estimate.

When multiple proposals are provided in response to an RFP, proposals will be evaluated and ranked to determine the highest-rated Consultant prior to issuance of a service order. In some situations, project-specific interviews may be required to determine the best-qualified firm for a project. If interviews are required, the City will issue interview invitations and selection information on a project-specific basis. All Consultant costs associated with project interviews are the Consultant's sole responsibility.

If the City starts negotiations with a Consultant and is unable to reach an agreement within ten working days, the City may initiate negotiations with the next highest rated Consultant, as needed.

10. DISCLAIMERS

The City reserves the right to:

- Find any firm “non-responsive” for failure to disclose or for falsification of pertinent information during the RFQ process, and to remove a firm from a pre-qualification list should the City become aware of any such non-disclosure or falsification of pertinent information at any time during the evaluation period;
- Waive minor irregularities in the SOQs and/or reject any and all firms that have provided SOQs, if found to be in the best interest of the City;
- Terminate any contract if the selected firm(s) cannot or does not perform services under the timelines, terms, and/or conditions established for any specific project;
- Cancel, modify, extend, or renew the process at any time during the qualification period;
- Solicit proposals for tasks or projects through a separate RFP process; and
- Issue a master services agreement with one or more qualified firms.

ATTACHMENT A

SCOPE OF TRANSPORTATION CONSULTING SERVICES

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

1. Project screening coordination to determine the level of review and transportation analysis by:
 - a. Reviewing the [City's Transportation Study Guidelines](#) to determine the level and type of study required for each project, and to determine if projects are a) subject to CEQA analysis and/or b) required to prepare either a Local Transportation Analysis (LTA) or a Transportation Analysis (TA).
 - b. Consulting with City staff, including but not limited to Public Works Department staff, Community Development Department staff, and/or any consultants retained to assist City staff, to determine the level and type of study required for land use entitlements and activities based on General Plan consistency, Santa Clara County Congestion Management Program (CMP) consistency, CEQA compliance, and/or project-specific considerations.
2. Preparation of a scope of work, including but not limited to project descriptions, site location, analysis methods, area-wide assumptions, study elements, study time periods, and transportation data collection methods, for review and approval by the Transportation Division prior to commencing analysis.
3. Completion of transportation analyses identified within the approved scope of work through the preparation, or peer review, of a report that may include, without limitation:
 - a. An examination of project trip generation (person and vehicle) and distribution, and, if required, identification of the Vehicle Miles Traveled (VMT) approach.
 - b. An analysis of existing conditions.
 - c. An analysis of existing and proposed site access, on-site circulation, and off-site intersection analyses.
 - d. An outline of the project's consistency with the City's Transportation Study Guidelines, General Plan, the Santa Clara County CMP, CEQA requirements, and/or other applicable project-specific considerations and thresholds of significance established through the project's screening outlined in Item 1.
 - e. An outline of project-specific transportation impacts and recommended conditions of approval, CEQA mitigation measures, modifications to project design, and/or off-site transportation system improvements.
 - f. An overview of coordination with other agencies, such as neighboring cities or Caltrans, as applicable.

If prepared or peer reviewed in conjunction with an Initial Study, (Mitigated) Negative Declaration, or Environmental Impact Report, the format of the transportation study report shall be coordinated with any lead environmental consultant and/or City staff. The Consultant shall be responsible for ensuring that all analyses align with applicable state and local laws.

The report shall be provided as a draft, administrative draft, and final report, each subject to City review. Responses to City staff's comments should be provided through comment response matrices, depending upon the project size. The report production process must allow adequate time for City staff's review of draft documents.

4. Participation in City public proceedings, including:
 - a. Attendance at public hearings and meetings, including City Council Planning Commission meetings, as needed.
 - b. Presentation of transportation study findings in response to questions, input, and requests for clarification from decision makers, City staff, and the public.

All work within the scope of services shall be completed in accordance with professional standards, including:

- a. Provision of clear responses to assist City staff in responding to questions raised by decision makers and members of the public.
- b. Completion of reviews and analyses in a timely manner, consistent with state-mandated project processing timelines and mutually agreed upon review schedules.
- c. Communication of expectations related to transportation study requirements, required revisions, and justifications.
- d. Adherence to internal quality assurance/ control review prior to submission to the City in order to certify completeness and accuracy.

ISSUANCE OF SERVICES

The City intends to select Consultants from the pre-qualified list based on their fit for particular projects or tasks and their ability to perform the required services. Consultants will be selected for project opportunities based upon the City's needs, the Consultant's qualifications relevant to each identified project or task, and the estimated cost of services. As such, selection for each project, task, or distribution of work will be considered in accordance with the City's Procurement policy and the following criteria, in no particular order or preference, which include but are not limited to:

- a. Expertise relevant to the services to be performed
- b. Ability to perform services within the required timeframe
- c. General availability
- d. Budgetary constraints
- e. Consultant's potential conflicts of interest (as applicable)
- f. Current volume of City work
- g. Estimated costs of services

The City reserves the right to request a pre-qualified Consultant to submit a Request for Proposal (RFP) for work in competition with other Consultants within five business days prior to issuing a service order. The City reserves the right to reject any or all consultant responses to a project RFP.

When multiple proposals are provided in response to an RFP, proposals will be evaluated and ranked to determine the highest-rated Consultant prior to issuance of a service order. In some situations, project-specific interviews may be required to determine the best-qualified firm for a project. If interviews are required, the City will issue interview invitations and selection information on a project-specific basis. All Consultant costs associated with project interviews are the Consultant's sole responsibility.

The final scope of work and fee shall be a negotiated agreement, using the Consultant's proposal as the basis for the estimate. If the City starts negotiations with a Consultant and is unable to reach an agreement within ten working days, the City may initiate negotiations with the next highest rated Consultant, as needed.

CITY'S RESPONSIBILITIES

To support the selected Consultant, the City's responsibilities include:

1. **Designation of a Planner:** The City will assign a representative from the Community Development Department's Planning Division to serve as the primary point of contact for each project. They will coordinate communication, set project timelines, and provide guidance to the Consultant, as needed. The City's designated Planner will also be responsible for facilitating internal contacts and communication with other relevant City staff to support the consultant's review process.
2. **Provision of Relevant Information:** The City will provide documents related to the adopted General Plan, Zoning Ordinance, applicable specific plans, as well as any new process changes, adopted ordinances, or state requirements that may affect the services provided by the Consultant. The City will also be responsible for providing administrative support related to the submission of deliverables, as needed.
3. **Timely Review of Submittals:** The City will be responsible for conducting reviews of the Consultant's deliverables in a timely manner. This includes providing necessary feedback, approvals, and decisions in a timely manner to avoid confusion and delays.



MASTER PROFESSIONAL/SPECIALIZED SERVICES AGREEMENT WITH

1. PARTIES

This Master Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and _____ (“Contractor”) a _____, for _____, and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Scope of Services. Contractor agrees to provide the Services set forth in the Scope of Services, attached and incorporated here as **Exhibit A**, on an as-needed basis. The Services must comply with this Agreement and with each Service Order issued by the City’s Project Manager or his/her designee, in accordance with the following procedures, unless otherwise specified in Exhibit A. Contractor further agrees to carry out work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Service Orders. Before issuing a Service Order, the City Project Manager will request Services in writing and hold a meeting with Contractor to discuss the Service Order. Contractor will submit a written proposal that includes a specific Scope of Services, Schedule of Performance, and Compensation, which the Parties will discuss. Thereafter, City will execute a Service Order Form for the Services, attached and incorporated here as **Exhibit B**. The Service Order will specify the Scope of Services, Schedule of Performance, Compensation, and any other conditions applicable to the Service Order. Issuance of a Purchase Order is discretionary. The City Project Manager is authorized to streamline these procedures based on the City’s best interests. Contractor will not be compensated for Services performed without a duly authorized and executed Service Order.

2.3 Contractor’s duties and services under this agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on _____ (“Contract Time”), unless terminated earlier as provided herein. The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

3.2 Schedule of Performance. Contractor must deliver the Services within the time specified in each Service Order, and under no circumstances should the Services go beyond the Contract Time.

3.3 Time is of the essence for the performance of all the Services required in this Agreement and in each Service Order. Contractor must have sufficient time, resources and qualified staff to deliver the Services on time. Contractor must respond promptly to each Service Order request.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services a total amount that will be based upon actual costs but that will be capped so as not to exceed \$_____ (“Contract Price”), based upon the Scope of Services in Exhibit A and the budget and rates included. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount.

4.2 Per Service Order. Compensation for Services provided under a Service Order will be based on the rates set forth in the Service Order, which shall not exceed the capped amount specified in the Service Order.

4.3 Invoices and Payments. Except as otherwise provided in a Purchase Order, monthly invoices must state a description of the deliverables completed and the amount due for the preceding month. Thirty (30) days prior to expiration of the Agreement, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Noncompliance with this requirement relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

5.1 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker’s compensation, or other benefits from the City.

5.2 Contractor’s Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.

5.3 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.

5.4 Subcontractors. Only Contractor’s employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

5.5 Tools, Materials, and Equipment. Contractor will supply all tools, materials, and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor

and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and actual attorney's fees incurred by City in connection with the above.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.

7.3 Patents and Licenses. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-Contractors, prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;

- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

7.5 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

Contractor acknowledges that certain documents generated or received by Contractor in connection with the performance of this Agreement, including but not limited to correspondence between Contractor and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Contractor shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

9. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity will be considered an assignment of the Agreement and subject to City approval. Control means fifty percent (50%) or more of the voting power of the business entity.

10. PUBLICITY / SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and Contractors ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings), of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City's confidential and proprietary information;
- (e) Claim of infringement or violation of a U.S patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

11.3 Contractor's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

11.4 Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order or other transaction.

11.5 Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

11.6 This Section 11 shall survive termination of the Agreement.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit C**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a “public works” component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS,) or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City’s rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns _____ as the City’s representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns _____ as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Services. Contractor’s Project manager is responsible for coordinating and scheduling the Services in accordance with City instructions, service orders and the Schedule of Performance. Contractor must regularly update the City’s project manager about the status, progress and any delays with the work. City’s written approval is required prior to Contractor substituting a new Representative which shall result in no additional costs to City.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts thereof at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City’s pre-approval in writing, the time spent in

closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

23. HEADINGS

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

24. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law and Attorney Fees, shall survive the Agreement and remain in full force and effect.

26. NOTICES

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

<p>To City of Cupertino Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014</p> <p>Attention: Email:</p>	<p>To Contractor:</p> <p>Attention: Email:</p>
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27. EXECUTION

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

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

CITY OF CUPERTINO

A Municipal Corporation

By _____

Name _____

Title _____

Date _____

CONTRACTOR

By _____

Name _____

Title _____

Date _____

APPROVED AS TO FORM:

MICHAEL K. WOO
Senior Assistant City Attorney

ATTEST:

LAUREN SAPUDAR
Deputy City Clerk

Date _____

EXHIBIT C
Insurance Requirements
Professional/Specialized Services Agreement

Contractor shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. ***Commercial General Liability*** (CGL): with coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01, with limits no less than **\$2,000,000** per occurrence, **\$2,000,000** general aggregate, and **\$2,000,000** products and completed operations aggregate. The policy shall include a per project or per location general aggregate endorsement as broad as CG 25 03 or CG 24 04. If a per project/location endorsement is not available, the limit of the general aggregate shall be doubled.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Contractor's policy shall allow and be endorsed "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as the most recent edition of ISO CG 20 01.
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess liability insurance, provided each policy follows form of the underlying policy and complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City. The City's own insurance or self-insurance shall not be called upon.
2. ***Automobile Liability***: Coverage shall be provided using ISO Form Number CA 00 01 (or equivalent) covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** each accident for bodily injury and property damage.
 - Not required. Consultant shall be fully remote and not use automobiles to provide the service.*
 In the event Consultant uses an automobile or automobiles in the operation of its business to provide services under this Agreement, the Consultant shall, **prior to such use**, provide the City with evidence of Business Automobile Liability insurance coverage in the amount required under this Section 2 for owned, non-owned and hired autos (any auto-Symbol 1), or if Consultant does not own autos (hired autos-Symbol 8 and non-owned autos-Symbol 9). Evidence shall be provided with a Certificate of Insurance, along with an additional insured endorsement in favor of the City, primary and non-contributory coverage and endorsement, and waiver of subrogation coverage and endorsement under the policy prior to the use of any automobile.
 - Consultant has provided written confirmation that it does not own any autos. Consultant shall provide coverage for hired autos-Symbol 8 and non-owned autos-Symbol 9. Primary and Non-Contributory coverage and Waiver of Subrogation coverage is waived under the Automobile Liability hired and non-owned only coverage. In the event Consultant uses an owned automobile or automobiles in the operation of its business to provide services under this Agreement, the

Consultant shall, **prior to such use**, provide the City with evidence of Business Automobile Liability insurance coverage in the amount required under this Section 2 for owned, non-owned and hired autos (any auto-Symbol 1).

- In lieu of Business Automobile Liability, Consultant shall maintain throughout the term of this Agreement and provide the City with evidence (including the policy Declarations Page) of personal automobile insurance coverage in accordance with the laws of the State of California. As available under the policy, evidence shall be provided with the Certificate of Insurance, along with an additional insured endorsement in favor of the City, primary and non-contributory coverage and endorsement, and waiver of subrogation coverage and endorsement. City approval of coverage is required prior to commencement of services.

3. **Workers' Compensation:** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance of no less than **\$1,000,000** each accident / disease.

- Not required. Consultant has provided written verification of no employees.*

4. **Professional Liability** for professional acts, errors and omissions, if applicable and as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. If written on a claims-made basis form:

- a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
- b. Insurance must be maintained for at least five (5) years after completion of the Services.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

The aforementioned insurance policies shall contain, be endorsed and have the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered and endorsed as additional insureds on Contractor's CGL and automobile liability policies. General Liability coverage shall be in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 (11 85) or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms, if a later edition is used.

Primary and Non-Contributory Coverage

Except for Workers' Compensation, coverage afforded to City/Additional Insureds shall allow and be endorsed primary with coverage at least as broad as the most recent edition of ISO CG 20 01 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums. If a carrier will not provide the required notice of cancellation or policy modification, the Contractor shall provide written notice to the City of a cancellation or policy modification no later than 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Contractor waives any right to subrogation against City/Additional Insureds for recovery of damages to the

extent said losses are covered by the insurance policies required herein. Specifically, the General Liability, Automobile Liability and Workers' Compensation policies shall allow and be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents and volunteers. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City (Insert on the Certificate of Insurance, if zero, insert "\$0"). At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Contractor must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A-VII or higher.

Verification of Coverage

Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City prior to commencing the Services. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City retains the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance required herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Higher Insurance Limits

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Contractor.

Adequacy of Coverage

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.

Insurance coverage shall not limit Contractor's duties to indemnify, defend and hold City harmless. City reserves the right to modify these requirements based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.