

PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and Nexinite, LLC (“Contractor”), a Limited Liability Company – Partnership, for O365 Solution for CIP, and is effective on the last date signed below (“Effective Date”).

2. SERVICES

Contractor agrees to provide the services and perform the tasks (“Services”) set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

3. TIME OF PERFORMANCE

3.1 This Agreement begins on the Effective Date and ends on June 30, 2023 (“Contract Time”), unless terminated earlier as provided herein. Contractor’s Services shall begin on the effective date and shall be completed by June 30, 2023. The City’s appropriate department head or the 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 in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Contractor must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$150,000.00 (“Contract Price”), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City.

4.2 Invoices and Payments. Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending

claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

51 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.

52 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.

53 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.

54 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.

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

56 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. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

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 provided by City to Contractor 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 is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. 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 consultants ("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 D**, 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 its 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 Teri Gerhardt 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 Jeffrey Wright as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor 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:

To City of Cupertino Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014 Attention: Teri Gerhardt Email: terig@Cupertino.org	To Contractor: Nexinite, LLC PO Box 749 Napa, CA 94559 <hr/> Attention: Jeffrey Wright Email: jeff@nexinite.com
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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 Bill Mitchell

Name Bill Mitchell

Title CTO

CONTRACTOR

By 

Name Jeffrey Wright

Title Managing Partner

Date Dec 21, 2021

Date Dec 21, 2021

APPROVED AS TO FORM:

Christopher D. Jensen

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

Kirsten Squarcia

KIRSTEN SQUARCIA
City Clerk

Date Dec 21, 2021

Nexinite

The Next Step in Modern Business Solutions

Silver

Microsoft Partner

Microsoft Office 365 Capital Improvement Program (CIP) / Submittal Solution for the City of Cupertino Proposal

Submitted: October 18, 2021

Offer Valid for 90 Days from Proposal Submission Date

Prepared for:
The City of Cupertino

Prepared by:
Nexinite, LLC

Jeffrey Wright, Managing Partner

- jeff@nexinite.com
- 415-915-2929

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1 Introduction



Nexinite, a Silver Microsoft Partner, specializes in using Microsoft tools to provide innovative business solutions. We deliver a customized scalable infrastructure that provides collaborative and insightful workflows. We use standard platforms like Microsoft Teams, SharePoint, and Power BI to provide insightful management and reporting capabilities to help your productivity in the most efficient, smartest way possible. Our passion is finding the right solutions and implementing a strategy that will last for the long haul.

Nexinite, LLC is pleased to submit its proposal to the City of Cupertino, California, for the Microsoft Office 365 CIP/Submittal Solution project. Nexinite will establish a secure Microsoft cloud-based environment to host a custom program management solution in the City of Cupertino's Office 365 tenant.

This proposal outlines the tasks and associated costs to successfully accomplish these objectives.

2 Solution Overview

The solution will consist of the following 4 components:

- CIP Project Management Application
 - Capture Project information and combine this information with the project financial information in New World
- New World Financial Data Integration
 - Augment Cupertino's Dataverse-based central data repository with project financial information.
- Submittal Application
 - Internal/external submittal application which will enable external 3rd-parties to initiate submittal requests which can be reviewed internally by City of Cupertino
- Reporting
 - Project, Submittal, and Invoicing Reporting.

Task details are provided in the following section.

3 Scope of Work (SOW) Tasks

This section provides details and activities Nexinite will perform to accomplish each SOW task.

3.1 CIP Project Management Application

The CIP Project Management Application will be accessible via a SharePoint site with the following links:

- Projects
- Reports
- City Map and Drawing Database -Laserfiche
- GIS – Property Info

- GIS – CIP Public Dashboard
- GIS – CIP Internal Dashboard
- Public Improvement Standards
- Council Meeting Minutes/Staff Reports/Council Actions

Via the Projects link, a user will access the CIP Project Management Application which will present the user with a window containing the following 6 panes, and fields within each pane:

1. Project Details

- Project Name
- Project Type
 - Park
 - Sidewalk
 - Facility
 - General Transportation
 - Trail
 - Bike
- Location
- Project Phase
- City Project Manager
- City Project Number
- GL Number
- Finance Project Number
- Project Number
- Fiscal Year Initiated
- Project Description

2. Financials Pane

- Estimates
- Actuals
- Funding Sources
- Federal Funding Requirements
- Grant Fund
- Council Fund

3. Recent Documents

- List of recently viewed documents with a link to all available project documents
- The types of CIP documents will be as follows
 - Building/Planning Department – Communications
 - Staff Reports
 - Memos

- Applications (e.g. Caltrans)
- SOW – Project Charter
- Schedule
- Record Documents

4. Contracts Pane

- Enable user to view all contracts and access a Contract Detail Pane which will contain the following information:
 - Invoice Details
 - Change Orders
 - Amendments
 - Purchase Orders
 - Service Orders
 - Notice of Completion (Internally Created)
 - Insurance Updates Original Contract (Additional Attachment)

5. Council Actions Pane

- Minutes Attached
- History of Public Actions Against Funds
- Staff Reports
- Approval Date
- Amendment Date
- Indicate if Item was Part of Council Work Program

6. Submittal Pane

- Summary of Submittals

The duration of this activity will be 5 weeks and the resourcing and effort will be as follows:

CIP PROJECT MANAGEMENT APP. Activity	Resources & Hours	
	Modern Workplace Lead 2	Modern Workplace Lead 1
Design	10	10
Build Out	0	100

3.2 New World Financial Data Integration

It is assumed that all required Financial for the Project Record Application and for Reporting will be provided via the New World ERP system. The following financial information will be available from the New World system:

- Budgets
- Actual Expenditures
- Contracts & Purchase Orders
- Funding Sources

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Nexinite will utilize Microsoft's PowerApps platform to extract the required financial information from New World and load this information in a structured manner in City of Cupertino's current data repository in Microsoft's Dataverse.

Below are the assumptions with regards to the financial information:

- Budgets
 - All budget information will be available in New World
 - The following budget information will be available:
 - Budget Amount
 - Balance Amount
 - Budget Year
 - Encumbrance Amount
 - Expense Amount
 - Budget Information Hierarchy is as follows:
 - Program
 - Project
 - Vendor
 - Budgets are assigned on a Fiscal Year basis
 - There are no Budget Categories
 - Contingency Budgets are assigned at a project level
- Expenditures
 - Estimated expenditures are initial estimates used by council to approve funds. This is not used once the project has been approved.
 - Projected expenditures (i.e. cashflow) information is not available and will not be used for reporting purposes
 - Expenditures are assigned to specific Project Codes and these codes can be tied back to each project and CIP cost category
 - Administrative overhead is currently not tracked and assigned to specific projects in New World
- Contracts & Purchase Orders
 - Both Contractual and Purchase Order amounts are available in New World
 - Contractual amounts are the amounts contained in the initial legal agreement
 - Purchase Order amounts are committed amounts which will go against the budget
 - Expenditures go against Purchase Orders
- Funding Sources
 - Funding information in New World appears as a transaction that was made to the project account in New World
 - Projects can be funded by multiple Funds

- The Funding amount allocated to a project is based on the off the estimated budget approved by the council

The duration of this activity will be 5 weeks and the resourcing and effort will be as follows:

NW FINANCIAL DATA INTEGRATION Activity	Resources & Hours	
	Modern Workplace Lead 2	Modern Workplace Lead 1
Design	20	20
Build Out	0	80

3.3 Submittal Application

After reviewing the request for City of Cupertino’s CIP Management Platform we recommend PowerApps Portals for the Contractor Submittal & Invoice Application. Administration of the Portal will provide simplified onboarding for external requirements/participants and create a consistent repeatable process for deployment as new projects come online, we feel this is the appropriate approach with Microsoft’s Portals technology and will be beneficial to the City of Cupertino.

While Portals will used for access and as the interaction interface and location for external participants this solution will also take advantage of SharePoint. As described in the RFP, documents will be a large part of the information exchange. With the internal CIP Project Management Application being built on SharePoint’s core infrastructure we would extend SharePoint’s document features and functionality to PowerApps Portals and utilize Power Automate to route document properly into the Project Records folder hierarchy. SharePoint is a cost-effective approach to file storage and document management features.

Another requirement for the City of Cupertino is to create a submittal application to manage content submissions from external contractors/consultants as a record. By using a record approach, business logic will be implemented for notifications to PMs related to specific submittals. In addition, submittal types related to specific projects will allow us to use Power Automate to route content types to specific folders. The submittal application will also offer an approval feature for submittals with the ability to reject and notify.

The Submittal Application will consist of a single screen will following 3 panes:

- Submittal Details Pane:
 - Name
 - Type
 - Invoice
 - Submittal
 - Material Submittals – construction
 - Specifications
 - RFIs - Assigning to consultant – action required
 - Change orders

- Fields reports
- Inspection reports
- Schedule change
- Photos
- Cost estimates
- Punch List
- Meeting notes
- Design directives
- Prevailing wage
- Permit documents and Applications
- Feasibility
- Potential Reports (e.g. CEQA, Geotech, Topo)
- Deliverable's page - drawings
 - Bulletins – drawing changes
 - Specs - written description
 - IFC – Issue for construction – original drawings
- Design Progress Sets
 - Status
 - Submitter
 - Date Received
 - Date Modified
- Files Pane
 - List of files included with the submittal
- Return Comments
 - Comments by either submitting or receiving party throughout the life of the submittal

City of Cupertino Submittal Users will also have access to a SharePoint list which will display the summary information and status of all submittals.

With regards to invoices, the following process will be assumed:

- An Invoice will come in through the submittal application
- A Project Manager (PM) will be notified to approve or deny the invoice
- If denied, the PM will enter comments to be sent back to the submitter
- Once approved, a notification will be sent for the administrator to input the invoice in New World
- A notification will also go to the submitter letting them know the invoice was approved by PM
- Show invoice copy in this Submittal system
- Auto ping PM, on set interval, if they have not approved or denied invoice

The following assumptions apply to the Submittal Application:

- Notifications will be initiated for the following cases:
 - PM notification when a Submittal is created and initiated
 - Submitter notification when PM changes Submittal status
- A Project Contact Directory will be created for each project
 - Will describe who are the players, both internal and external

The duration of this activity will be 6 weeks and the resourcing and effort will be as follows:

NW FINANCIAL DATA INTEGRATION Activity	Resources & Hours	
	Modern Workplace Lead 2	Modern Workplace Lead 1
Internal Submittal Application	4	30
External Submittal Application	16	90

3.4 Reporting

Nexinite will create the following 2 reports:

1. CIP Project Report

- Report will contain the following 7 pages:
 - CIP Project Overview
 - Filtered by Project Type
 - KPIs
 - Total Number of Projects
 - Active Projects
 - Completed Projects
 - Project Costs
 - Estimated versus Actuals
 - Project Status
 - Project Details
 - Project Type
 - Project Name
 - Project Status
 - Project Manager
 - Total Actual Costs
 - Total Budget
 - CIP Fund Analysis
 - Filtered by Program, Project Name and Fiscal Year
 - Funding by Project Type
 - Funding by Project Stage

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- Shows total Invoiced Amount versus Total Funding
- Funding over all Fiscal Years
- Project Contracts Overview
 - Filtered by Project Type, Project Name and Date
 - KPIs
 - Total Number of Projects
 - Total Number of Contracts
 - Active Number Contracts
 - Current Contracts
 - Percent Increase Contract
 - Change Order
 - Invoice Amount
 - Contract Amount by Vendor Role
 - Historical Cumulative Amounts
 - Project Contracts information
- Project Invoice
 - Filtered by Project Type, Project Name and Date
 - KPIs
 - Number of Projects
 - Current Contract Amount
 - Invoice Amount
 - Number of Invoices
 - Remaining Budget
 - Budget Amount
 - Current Contract versus Invoiced Amount by Project
 - Historical Invoices Received by Project Type
- Contractor Performance Overview
 - Filtered by Vendor and Project Type
 - KPIs
 - Number of Projects
 - Number of Contracts
 - Contractual Amounts
 - Average Change Order Percentage
 - Historical Invoices Received
 - Current Contract versus Invoiced Amount by Project
- Project Schedule Overview
 - Filtered by Project Type, Project Name, Project Manager and Date
 - Number of Projects
 - Project Plan
 - Task Status

Use or disclosure of data contained on this sheet is subject to the disclosure notice on the title page of this response.

- Task Status Distribution
 - Project Manager's Overview– Pull in MS Project
 - Filtered by Project Type, Project Name, Project Manager and Date
 - KPIs
 - Fund Amount
 - Estimated Costs
 - Current Contract Amount
 - Remaining Estimated Budget
 - Estimated versus Actual Costs
 - Project Duration (Actual versus Total Remaining)
 - Cumulative Invoice Totals Over Time
 - Project Contracts Details
 - Project Progress
2. Submittal Reporting
- Filtered by Submittal status (active/closed) and date
 - KPIs
 - Total Number of Submittals
 - Total Number of Accepted Submittals
 - Number of Submittals Awaiting Vendor Action
 - Number of Submittals Awaiting City of Cupertino Action
 - Average Days to Close
 - Number of Submittals by Status
 - Late/On-Time Distribution
 - Number of Submittals Due This and Next Week
 - Number of Submittals by Days Open
 - Detailed Submittal Information
3. Invoice Submittal Reporting
- Filtered by Vendor, Project, and Date
 - KPIs
 - Number of Invoices
 - Total Invoice Amount
 - Average Invoice Amount
 - Invoice Distribution by Submittal Status
 - Number of Invoices by Month
 - Invoice Details

It is assumed that project plan information will be acquired from City of Cupertino’s Microsoft Project Web App (PWA) environment and loaded into the central data repository in Dataverse.

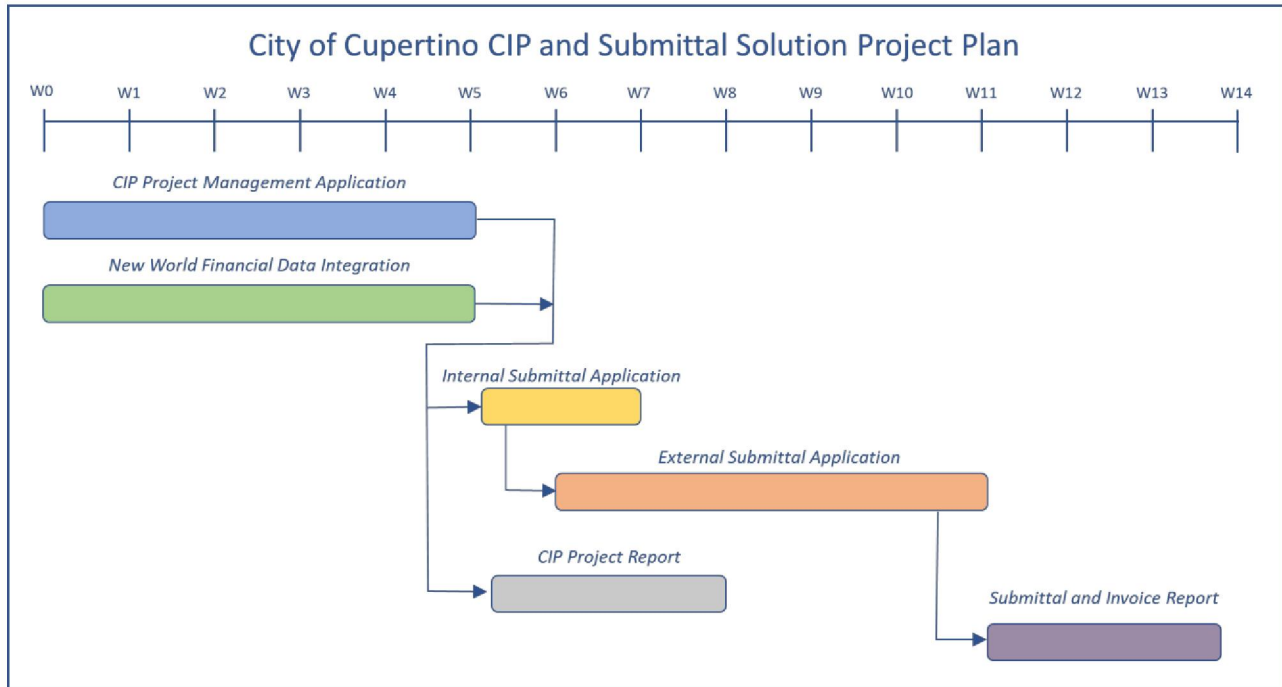
The duration of this activity will be 6 weeks and the resourcing and effort will be as follows:

Use or disclosure of data contained on this sheet is subject to the disclosure notice on the title page of this response.

REPORTING Activity	Resources & Hours	
	Modern Workplace Lead 2	Modern Workplace Lead 1
CIP Project Report	6	54
Submittal and Invoice Report	4	40

4 Project Plan and Price

The high-level project plan is as follows:



Nexinite will assign a Project Manager during the duration of the entire project for a total of 56 hours.

The following table outlines the costs associated with the SOW described in section 2 of this proposal.

CONTRACT LINE ITEM	COST
CIP Project Management Application	\$25,050
New World Financial Data Integration	\$25,500
Submittal Application	\$29,600
Reporting	\$21,770
Project Management	\$7,000
TOTAL	\$108,920

Use or disclosure of data contained on this sheet is subject to the disclosure notice on the title page of this response.

4.1 Terms & Conditions

Support outside of and/or in addition to the scope described in SOW 3.1 – 3.4 will be separately scoped and priced and agreed upon in writing between the parties below.


_____ Date: 10/18/2020
Jeffrey Wright, Managing Partner
Nexinite, LLC

Bill Mitchell _____ Date: Dec 21, 2021
Name Bill Mitchell Title CTO
The City of Cupertino

EXHIBIT D
Insurance Requirements
Design Professionals & Consultants Contracts

Consultant 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.

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - 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 Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy 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 before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
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** per occurrence for bodily injury or disease.
✓ Not required. Consultant has provided written verification of no employees.
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made 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 Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers (“Additional Insureds”) are to be covered as additional insureds on Consultant’s CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant’s insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’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.

Waiver of Subrogation

Consultant 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 Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. 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. At City’s option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant 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

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory 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 prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant’s insurance policies.

Higher Insurance Limits

If Consultant 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 Consultant.

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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11.29.21

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Applegate-Beard Insurance Solutions PO Box 4578 Sunriver, OR 97707	CONTACT NAME: Michael Applegate PHONE (A/C, No, Ext): 707.235.1059 E-MAIL ADDRESS: mike@binsurancesolutions.com	FAX (A/C, No): 707.637.8136
	INSURER(S) AFFORDING COVERAGE	
INSURED Nexinite LLC PO Box 749 Napa, CA. 94559	INSURER A : Hartford/Sentinel Insurance	NAIC #
	INSURER B : Progressive Commercial	
	INSURER C : Hartford/Trumbull Insurance	
	INSURER D : Scottsdale Insurance	
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			57 SBM BL6316 DX	2.21.21	2.21.22	EACH OCCURRENCE	\$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$ 1,000,000
<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GENERAL AGGREGATE			\$ 2,000,000				
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	AUTOMOBILE LIABILITY			00481056-2	3.1.21	3.1.22	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
	<input type="checkbox"/> ANY AUTO	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				BODILY INJURY (Per person)	\$ 2,000,000
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$ 2,000,000
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$ 2,000,000
				\$				
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	EXCESS LIAB						AGGREGATE	\$
	DED							\$
	RETENTION \$							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			57 WEC AC8PCG	2.21.21	2.21.22	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y	N/A				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	Professional Liability			EK13405299	10.31.21	10.31.22	CSL	\$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured includes: The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers

CERTIFICATE HOLDER**CANCELLATION**

City of Cupertino 10300 Torre Avenue Cupertino, CA 95014 marilynm@cupertino.org	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

Policy Number: 57 WEC AC8PCG

Endorsement Number:

Effective Date: 02/21/21

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: Nexinite Inc.

4225 SOLANO AVE # 523
NAPA CA 94558

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 5 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

The City of Cupertino 10300 Torre Ave Cupertino, CA
95014

1

Countersigned by _____
Authorized Representative

POLICY NUMBER: 57 SBM BL6316



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - PERSON-ORGANIZATION

THE CITY OF CUPERTINO, ITS CITY COUNCIL, OFFICERS, OFFICIALS,
EMPLOYEES, AGENTS, SERVANTS AND VOLUNTEERS
10300 TORRE AVE
CUPERTINO, CA 95014

KENNEDY/JENKS CONSULTANTS, INC. AND EAST COUNTY ADVANCED WATER
PURIFICATION JOINT POWERS AUTHORITY ITS MEMBERS, EACH MEMBER OF THE
BOARD, OFFICERS, EMPLOYEES, AGENTS AND DESIGNATED VOLUNTEERS
9325 SKY PARK CT. STE. #300
SAN DIEGO, CA 92123












NexInite, LLC., for CIP Management Hub

Final Audit Report

2021-12-21

Created:	2021-12-21
By:	Marilyn Monreal (Marilynm@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZ3jIYDr895hTcFqTrG0ao-HdqzOO7yFy

"NexInite, LLC., for CIP Management Hub" History

-  Document created by Marilyn Monreal (Marilynm@cupertino.org)
2021-12-21 - 8:25:21 PM GMT- IP address: 69.181.110.140
-  Document emailed to Araceli Alejandre (aracelia@cupertino.org) for approval
2021-12-21 - 8:30:35 PM GMT
-  Document approved by Araceli Alejandre (aracelia@cupertino.org)
Approval Date: 2021-12-21 - 9:00:48 PM GMT - Time Source: server- IP address: 73.170.27.253
-  Document emailed to Jeffrey Wright (jeff@nexinite.com) for signature
2021-12-21 - 9:00:52 PM GMT
-  Email viewed by Jeffrey Wright (jeff@nexinite.com)
2021-12-21 - 9:01:24 PM GMT- IP address: 70.237.75.115
-  Document e-signed by Jeffrey Wright (jeff@nexinite.com)
Signature Date: 2021-12-21 - 9:05:03 PM GMT - Time Source: server- IP address: 70.237.75.115
-  Document emailed to Christopher D. Jensen (christopherj@cupertino.org) for signature
2021-12-21 - 9:05:07 PM GMT
-  Email viewed by Christopher D. Jensen (christopherj@cupertino.org)
2021-12-21 - 9:22:51 PM GMT- IP address: 104.28.50.119
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)
Signature Date: 2021-12-21 - 11:37:09 PM GMT - Time Source: server- IP address: 184.167.31.63
-  Document emailed to Bill Mitchell (billm@cupertino.org) for signature
2021-12-21 - 11:37:12 PM GMT
-  Email viewed by Bill Mitchell (billm@cupertino.org)
2021-12-21 - 11:38:27 PM GMT- IP address: 104.47.74.126



 Document e-signed by Bill Mitchell (billm@cupertino.org)

Signature Date: 2021-12-21 - 11:42:10 PM GMT - Time Source: server- IP address: 73.63.186.99

 Document emailed to Kirsten Squarcia (kirstens@cupertino.org) for signature

2021-12-21 - 11:42:14 PM GMT

 Email viewed by Kirsten Squarcia (kirstens@cupertino.org)

2021-12-21 - 11:43:37 PM GMT- IP address: 104.47.73.126

 Document e-signed by Kirsten Squarcia (kirstens@cupertino.org)

Signature Date: 2021-12-21 - 11:43:54 PM GMT - Time Source: server- IP address: 162.245.20.145

 Agreement completed.

2021-12-21 - 11:43:54 PM GMT

