



CITY OF CUPERTINO
REQUEST FOR PROPOSAL
FOR
BLACKBERRY FARM GOLF COURSE
MAINTENANCE

Issue Date:

September 2, 2025

Submittal Due Date:

October 3, 2025, by 5:00 p.m.

OFFICE OF THE DIRECTOR OF PARKS AND RECREATION
QUINLAN COMMUNITY CENTER • 10185 N. STELLING ROAD • CUPERTINO, CA 95014-3255
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REQUEST FOR PROPOSAL CITY OF CUPERTINO

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- ATTACHMENT A: Scope of Work and Technical Specifications
- ATTACHMENT B: Pricing Table
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1. INVITATION

The City of Cupertino (City) invites proposal submittals from qualified Contractors to provide specialized maintenance services at the Blackberry Farm Golf Course. The City is seeking to secure a firm that has the required experience, qualifications, expertise, and resources to perform the services identified in this Request for Proposal (RFP).

The Blackberry Farm Golf Course was constructed in 1962 and privately owned until the City purchased the property in 1991. The course site is approximately 16-acres and lies within the Stevens Creek Corridor. The site includes a pro shop, staff office, restroom facilities, and restaurant facility that is leased by the Blue Pheasant. The site is a 9-hole golf course, with a back tee yardage of 1,544 yards and a par of 29 (seven par 3's and two par 4's). Approximately 28,000 rounds of golf are played at the course per year. Until 2002, City employees maintained the course. However, due to challenges in maintaining an aging course, the City decided to seek an outside maintenance contractor at that time.

The City intends to review proposals received and select the highest qualified Contractor to continue maintaining the Blackberry Farm Golf Course and execute a three-year contract commencing on January 1, 2026. The City shall retain the option to extend the term for up to two (2) additional one-year periods not exceeding a total of five (5) years.

2. PROJECT SCOPE OF WORK

The Contractor shall furnish all labor, tools, equipment, and materials, except as otherwise specified, which are required to perform the maintenance assignments of the Blackberry Farm Golf Course as outlined in the Scope of Work, Attachment A. Work tasks shall include, but are not necessarily limited to those items listed in Attachment A. A maintenance building adjacent to the golf course is available for the storage of equipment and materials necessary for regular course maintenance.

The Contractor shall be prepared to provide maintenance of the Blackberry Farm Golf Course with Contractor-supplied equipment. All materials and supplies shall be of commercial quality only and no additional charges shall be made by the Contractor for providing and maintaining materials and equipment consistent with providing the services described in Attachment A.

The Contractor shall comply with all regulations and safety precautions listed on the product and equipment labels.

The Contractor is required to be registered with the California Department of Industrial Relations (DIR) and have a C-27 Landscaping License and the Contractor or its subcontractor must possess either a Qualified Applicator License (QAL) or a Qualified Applicator Certificate (QAC).

3. SUBCONTRACTORS

Subcontractors that will support the lead Contractor and may be included as a part of the project team should be identified. The City is committed to securing high quality services that will result in a successful program or project outcome. Subcontractor staff and experience shall be included in the response to this RFP.

4. TENTATIVE TIMELINE

The tentative RFP timeline is provided for the convenience of prospective proposers and is subject to change. Any such change will be stated in an addendum to this RFP. The tentative RFP timeline is as follows:

RFP EVENT	DATE
Request for Proposals Released	September 2, 2025
Optional Pre-Proposal Meeting	September 11, 2025 at 10:00 AM PST
Deadline for Contractor Questions	September 22, 2025 by 5:00 PM PST
City Response to Questions Deadline	September 25, 2025 by 5:00 PM PST
Request for Proposals Due	October 3, 2025, by 5:00 PM PST
Contract Award	December 2025

5. OPTIONAL PRE-PROPOSAL WALK-THROUGH

The City will offer an optional pre-proposal meeting for prospective proposers to learn about the project and ask clarifying questions. This walk-through will meet at the Blackberry Farm Golf Course Parking Lot, located at 22100 Stevens Creek Blvd., Cupertino, CA 95014. The date and time of the meeting is as follows:

Date: September 11, 2025

Time: 10:00 AM – 11:00 AM PST

6. SUBMITTAL REQUIREMENTS

The Proposal submittal is not to exceed 30 pages, excluding table of contents, cover letter, and resumes for key personnel. The City prefers a quality submission over quantity and succinct, responsive proposals are requested.

Contractor proposal submissions are to provide the following information:

- business type (corporation, partnership, sole proprietorship)
- firm's organization structure,
- background and general qualifications,
- subcontractors, and
- recent experience with golf course maintenance projects in California, particularly in

the San Francisco Bay Area.

MINIMUM QUALIFICATION

In order for the proposal to be considered responsive, the Contractor must meet the following minimum qualifications. Failure to meet these minimum qualifications may deem the proposal non-responsive.

1. Contractor must have an active and valid California C-27 Landscaping License; and
2. Contractor, or its subcontractor, must have either a current Qualified Applicator License (QAL), or a Qualified Applicator Certificate (QAC).

Demonstration of these minimum qualifications shall be attached to the Cover Letter.

The proposal shall be organized by tabs/dividers in the order of the sections as outlined below to facilitate review, with subcontractor work identified within each task item:

- A. Cover Letter - The cover letter of interest shall include an overview of the firm's qualifications, specifically the demonstration of minimum qualifications, and the name, address, and telephone number of the principal person the City shall contact regarding the proposal and DUNS number of the Contractor. Identify the location of the office(s) where the services will be performed.

Additionally, include the signature(s) of the company officer(s) empowered to bind the firm, with the title of each (e.g., president, vice president, general partner), and the acknowledgment of the receipt of any addenda, by number, if issued for this Request for Proposals.

- B. Project Team Qualifications and Experience – Identify the Project Manager and key staff involved in delivering the services outlined in this RFP. Identify the role of each and describe each team member's experience, qualifications, and proposed role in the project. Relevant information includes related public sector experience; dates, approximate project cost and project duties/responsibilities.

Key firm personnel shall be referenced to personnel resumes (up to 2 pages each) included in the proposal. Identify any subcontractors expected to be used in support of this project including firm resume, key personnel staff resume, and qualifications relative to their supporting role. Include an organization chart that identifies working relationships with team members included.

- C. Firm Qualification and Experience - Provide (3) golf course maintenance project/contract examples that are active or were completed in the past five (5) years that represent the firm's qualifications, expertise and technical capabilities to fulfill all services specified and required to successfully accomplish the work. Information regarding the project location, project description, scope of services performed, project manager, subcontractors, and final contract cost is required. Include a single client contact for each project listed.

- D. Project Work Plan & Approach - Present a well-developed approach to the Scope of Work, including procedures, methodologies, measures of effectiveness, team

organization and scheduling of tasks to be performed as well as a statement outlining the anticipated involvement of City staff. Specifically describe the proposed approach for performing and delivering the required scope of services and the firm's ability to meet the City's identified maintenance schedule, outlining the approach that would be undertaken in providing the required services. Additionally, identify the approach to resolve potential critical issues and other elements of concern that Contractor would proactively identify.

Proposers are encouraged to suggest technical or procedural innovations that have been used successfully on similar golf course maintenance projects and optional services that may be used for the benefit of this Project.

- E. Cost Proposal - A cost proposal will be evaluated with the initial submittal and shall be submitted in accordance with Section 10. The cost proposal shall include the cost for tasks and hour and fee breakdown by the tasks detailed in the Scope of Work, and per the Pricing Table template contained in Attachment B. Line items shall be broken out by subtask, when appropriate.
- F. Contract Acceptance - The Contractor must specifically agree, in writing, to accept the Professional/Specialized Services agreement, including specifically the City's Indemnification requirements and insurance coverage requirements, without modification, in the submitted proposal. If a Contractor has proposed changes to the Agreement, these must be submitted along with an explanation of the request as part of their response to this Request for Proposal. The City reserves the sole right to accept, reject or modify any proposed changes to the Agreement. Those documents are included as Attachments to this Request for Proposal (RFP).

7. CLARIFICATIONS AND QUESTIONS

Questions and requests for clarification and/or additional information shall be directed in writing via email to Molly James at MollyJ@cupertino.gov by September 22, 2025 by 5:00 PM PST. Include "RFP for Blackberry Farm Golf Course Maintenance" in the subject line.

All responses to questions and/or clarifications will be provided by addenda and posted on the City's Business Opportunities webpage. To ensure prompt receipt of any additional information, potential proposers are requested to sign up for the "Notification List" for this RFP.

8. SUBMITTAL PROCESS

Interested firms must submit an electronic PDF format copy of their proposal on the City's Business Opportunities webpage at: <https://apps.cupertino.org/bidmanagement/index.aspx>

Firms will need to create an account to download RFP documents as well as to upload Proposals. To submit a Proposal, open the RFP posting and select the Electronic Submission tab.

Proposals shall be submitted no later than 5:00 pm PST on October 3, 2025, and are to be

addressed to Molly James, Recreation Manager.

It is recommended that contractors familiarize themselves with the web application prior to the due date. Make sure to follow all submittal instructions and include all required documents.

Submitting documents electronically can take more time than anticipated so please allow enough time to finalize your submission by the stated deadline. Proposal submittals in process but not completely uploaded by the deadline will automatically be rejected by the system. It will not allow submissions once the deadline closes. Hard copies in any form will not be accepted. No faxed submittals will be accepted. Electronic submittals are the only form of submittal that will be accepted.

The Contractor is responsible for all costs associated with the Proposal submission.

9. EVALUATION PROCESS

Proposals will be evaluated by the City evaluation committee. Points will be assigned based on the proposer's qualifications, ability, approach, effectiveness, and efficiency in supporting each item being rated with consideration for the selection criteria identified in Section 6.

Criteria		Possible Points
1.	Firm Description, Qualifications and Experience	20
2.	Project Team, Qualifications and Experience	30
3.	Proposed Work Plan and Approach	40
4.	Cost Proposal/Pricing Table	10
	Total Possible Points	100

After the City's evaluation committee reviews all submitted written proposals, the top ranked Contractors may be invited to deliver a presentation and participate in an interview. The details of the interview will be provided in a letter provided to the Contractors invited. However, a final determination of the highest ranked proposer and recommendation to proceed with contract negotiations may occur without an interview selection process.

If an interview is conducted, it will occur after the proposals have been evaluated.

The evaluation committee will again rank the interviewed contractors, and the highest ranked proposer will be identified, based on the best overall ranking among the committee members. Contract negotiations will then begin with the highest ranked proposer. If negotiations with the highest ranked contractor are not successful, in consideration of either the scope or cost, the second ranked team will be invited to negotiate, and so on.

10. COST PROPOSAL

A pricing table for the project will be evaluated with the initial submittal. The pricing table (Attachment B) shall be submitted separately under the Fee Submission section in the Business Opportunity webpage with Blackberry Farm Golf Course Maintenance in the subject line. The pricing table will be further analyzed and negotiated with the highest-ranked proposer in alignment with the final scope of work prior to the issuance of a contract for the services identified in this RFP.

The cost proposal shall include the following:

- Proposal price shall be inclusive of all costs to manage, furnish and install materials, and implement all aspects of the Scope of Work and Technical Specifications, Attachment A.
- The lump sum price for each item must include all direct, indirect, overhead, and markup. Final fee will be formalized in contract documents as a “not to exceed amount.”
- Line items shall be broken out by subtask, as indicated in the cost template. Proposers must provide a price for each item in the cost template, even optional tasks.
- If optional tasks are proposed, those shall be identified individually. Approval of the individual optional tasks is at the City’s discretion.
- No markups shall be allowed on reimbursable expenses and the maximum markup on each subcontractor shall be 5%.

The pricing table approved in the final contract shall be used when contracted services are increased or decreased through any future contract amendment.

11. SELECTION CRITERIA

Highly qualified Contractors will demonstrate the following evaluative criteria listed below, not necessarily in order of importance, specifically in line with the evaluation criteria identified in Section 8:

- Prior experience performing similar types and magnitude of work.
- Success and range of experience in previous projects, especially projects of similar scope, including quality of work, success in meeting project deadlines, success in meeting project budget, and related criteria.
- Qualifications and experience of key staff persons proposed to perform the work.
- Established structure and program for delivering assignments and ability to adhere to schedules and budgets.
- Specific approach or solutions that align best with the expected scope of work.
- Ability to adapt to changes and factors throughout the process that may affect the project outcome.
- Ability to provide a range of services that meet the project needs.
- Ability to meet the City’s schedule for the project.

- Special knowledge material to the projects and their execution.
- Understanding and experience related to local, regional, and state agencies.
- Experience in Cupertino and the south San Francisco Bay Area.
- Firm organization and location.

12. SELECTION PROCESS

The City's Purchasing Officer will recommend to the awarding authority the highest ranked proposer who successfully negotiated the scope and cost with the City.

13. DISCLAIMERS AND RESERVED RIGHTS

This Request for Proposal does not commit the City to award a contract or to pay any costs incurred in the preparation of a proposal or participation in response to this RFP.

The City reserves the right to accept or reject any or all proposals received, waive any irregularities, negotiate with qualified proposers, select firms which, in its opinion, best serve the City's interests or cancel the Request. The City reserves the right to reject any proposal that is determined to contain false, misleading, or materially incomplete information.

The City reserves the right to require any proposer to submit additional clarifying data or other information the City deems necessary to substantiate the costs presented by the proposer. The City may also require the proposer to revise one or more elements of its proposal in accordance with contract negotiations.

14. CONTRACT REQUIREMENTS

Within ten calendar days of the date the selected Contractor is notified of award by the City it shall execute a standard City of Cupertino Professional/Specialized Services agreement. The Agreement will define basic contractual relationships with attachments that specify the Scope of Services, compensation schedule, and deliverable schedule. A sample City Professional/Specialized Services Agreement is attached to this RFP as Attachment C. Note that the indemnity and insurance requirements that are included as Attachment D are identified in the agreements and must be accepted without modification.

Business License Requirements: The Contractor and their subcontractor 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 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.

Failure of the selected contractor to make a timely submission may result in a rescission of acceptance of the proposal by the City and an award of the contract to another proposer.

Attachment A – Scope of Work and Technical Specifications

The following services are to be performed after 5:30 a.m. and before 6:00 p.m. Power equipment of any type (except for electric golf carts) are not allowed before 7:00 a.m. City owned golf carts are not available for Contractor use.

1. PUTTING GREENS

1.1 Scope

Greens shall be maintained disease and weed free. Complete renovation of any green is not included in this maintenance project.

1.2 Mowing Frequency

Greens to be mowed six times per week, year-round. Contractor shall recycle grass trimmings in the Green waste dumpster on-site.

1.3 Height of Cut

The grass on the putting greens is to be 0.135 of an inch.

1.4 Changing Cups

Contractor shall change the cup location on each green daily, year-round. Placement is to be at least eight feet from the edge of the green, on a level surface. When requested, use the 1/3 rule – 1/3 of the pins back, 1/3 pins middle, 1/3 pins up.

1.5 Fertilization

Contractor to collect soil samples six times per year to determine recommended nutrients, rates of application and frequency of application, with the goal of a sustainable fertility program. Use organic fertilizers, for example, Earthworks or approved equivalent. The City shall determine which of the greens are to be tested. Contractor to use Logan Laboratories or City approved equal for soil testing and recommendations. All fertilizer shall be applied in accordance with all applicable laws, codes, specifications and policies, and at a minimum rate that is consistent with healthy turf.

1.6 Aerification/Top Dressing/Verti-Cutting

Contractor is to perform DryJect aerification or equal two times per year in March/April and September/October, and overseed with Pencross bentgrass in September. Perform a Dryject Maximus aerification or equal in July. Verti-cut greens monthly during the growing season.

Top-dress with TD320 from TMT enterprises or City approved equal.

1.7 Pesticide Application

All pesticide application shall be completed by a qualified person in accordance with all applicable laws, codes, specifications, and policies. Greens to be maintained disease and weed free. Apply all chemicals sparingly. Applications shall be as per EPA regulations. Contractor must possess material safety data sheets (MSDS) for all materials. All posting and re-entry requirements must be followed. Contractor to submit a written report of all pesticide applications every two months. Contractor to be present at the annual pesticide use meeting conducted by the City. A recommendation by a licensed Pest Control Advisor (PCA) that is familiar with the Blackberry Farm Golf Course and with its setting and protected natural resources is required for applications, and a licensed staffer with a current

Qualified Applicator License (QAL) or is a Qualified Applicator Certificate holder (QAC) shall be on site and provide oversight during applications is required. All work shall adhere to all laws, regulations, and applicable guidelines for all pesticide applications. Contractor may be required to obtain a Restricted Materials Use Permit and Notice of Intent from the County of Santa Clara Division of Agriculture prior to any applications.

1.8 Protection of Creek

No runoff from fertilizer, pesticide, or chemical applications shall flow into creeks or ponds nor to drainage inlets that discharge to creeks or ponds.

1.9 Interseeding

Contractor shall interseed greens with City approved mix of creeping bentgrass two times per year, in the spring and fall at a rate of 2 lbs. per 1,000 square feet unless otherwise directed.

1.10 Litter Control

Contractor shall assess the area on a regular basis for the removal of all litter (i.e. paper, leaves, cans, bottles, tree branches, etc.).

2. COLLAR MAINTENANCE

2.1 Mowing Frequency

Collars to be mowed two times per week in the spring, summer, and fall. Collars to be mowed one time per week in the winter.

2.2 Height of Cut

The grass on the collars is to be ½ inch year-round.

2.3 Fertilization

Fertilization of the collars to be applied in the same manner as the greens.

2.4 Weed Control

Weed control of the collars to be applied in the same manner as the greens.

3. TEE MAINTENANCE

3.1 Mowing Frequency

Tees to be mowed three times per week in the spring, summer, and fall. Tees to be mowed two times per week in the winter.

3.2 Height of Cut

The grass on the tees is to be ½ inch year-round.

3.3 Fertilization

Contractor to collect soil samples six times per year to determine the recommended complete fertilizer to use. Contractor to use Logan Laboratories or City approved equal for soil testing and recommendations. Fertilizer to be applied four times per year in March, May, late August and October. The application rate shall be at the manufacturer's recommended rate. All fertilizer shall be

applied in accordance with all applicable laws, codes, specifications, policies, and at minimum rates consistent with healthy turf. Special care shall be taken to prevent fertilizer or fertilizer-containing runoff from getting into creek areas.

3.4 Aerification

Contractor to aerate four times per year in May and October and as needed.

3.5 Overseeding

Contractor to overseed four times per year with perennial rye grass, at eight pounds per 1,000 square feet unless otherwise directed. Contractor to use seeder/slicer (verti-cutting) unit for distribution.

3.6 Tee Markers

Contractor shall move and rotate daily. Keep 10 feet apart and eight feet from back of tee box (except where markers do not allow).

3.7 Permanent Yardage Markers

Contractor to keep markers visible at all times.

3.8 Weed Control

Contractor to apply broadleaf weed control two times per year, in the spring and fall.

Broadleaf weed control shall at a minimum control English daisy, clover, spurge, and chickweed. Contractor to apply one crabgrass control in spring. The appearance of other broad leaf weeds will require the use of appropriate control measures. All weed controls shall be applied in accordance with all applicable laws, codes, specifications, and policies.

3.9 Protection of Creek

No runoff from fertilizer, pesticide, or chemical applications shall flow into creek areas, nor to drain inlets that discharge to creek areas.

3.10 Seed and Topsoil Tees

Contractor to place seeds and sand/organic compost mix on tees daily to repair divots.

3.11 Litter Control

Contractor shall assess the area on a regular basis for the removal of all litter (i.e. paper, leaves, cans, bottles, tree branches, etc.).

4. FAIRWAY MAINTENANCE

4.1 Mowing Frequency

Two to three times per week in growing season and one to two times per week in winter.

4.2 Height of Cut

Fairway grass shall be kept at ¾ inch year-round.

4.3 Fertilization

Contractor to collect soil samples six times per year to determine the recommended complete fertilizer use. Contractor to use Logan Laboratories or City approved equal for soil testing and

recommendations. Fertilizer to be applied four times per year in March, May, late August, and October. The application rate shall be at the manufacturer's recommended rate. All fertilizer shall be applied in accordance with all applicable laws, codes, specifications, policies, and at minimum rates consistent with healthy turf. Special care shall be taken to prevent fertilizer or fertilizer-containing runoff from getting into creek areas.

4.4 Aerification/Verti-Cutting

Contractor to aerate, verti-cut one time per year in April or May.

4.5 Overseeding

Contractor to overseed one time per year with perennial rye grass, at eight pounds per 1,000 square feet unless otherwise directed. Contractor to use seeder/slicer (verti-cutting) unit for distribution. Perform spot overseeding as needed with perennial rye grass.

4.6 Weed Control

Contractor to apply broadleaf weed control two times per year, in the spring and fall. Broadleaf weed control is for, but not limited to, English daisy, clover, spurge, and chickweed. Contractor to apply one crabgrass control in spring. All weed controls shall be applied in accordance with all applicable laws, codes, specifications, and policies.

4.7 Protection of Creek

No runoff from fertilizer, pesticide, or chemical applications shall flow into creek areas, nor to drain inlets that discharge to creek areas.

4.8 Litter Control

Contractor shall assess the area on a regular basis for the removal of all litter (i.e. paper, leaves, cans, bottles, tree branches, etc.).

5. ROUGH MAINTENANCE

5.1 Mowing Frequency

Rough to be mowed two times per week, year-round.

5.2 Height of Cut

Rough to be kept at a height of 1 to 1 ½ inches, year-round.

5.3 Fertilization

Contractor to collect soil samples six times per year to determine the recommended complete fertilizer use. Contractor to use Logan Laboratories or City approved equal for soil testing and recommendations. Fertilizer to be applied four times per year in March, May, late August, and October. The application rate shall be at the manufacturer's recommended rate. All fertilizer shall be applied in accordance with all applicable laws, codes, specifications, policies, and at minimum rates consistent with healthy turf. Special care shall be taken to prevent fertilizer or fertilizer-containing runoff from getting into creek areas.

5.4 Aerification/Verti-cutting

Contractor to aerate, verti-cut one time per year in April or May.

5.5 Weed Control

Contractor to apply broadleaf weed control two times per year, in the spring and fall. Broadleaf weed control is for, but not limited to, English daisy, clover, spurge, and chickweed. Contractor to apply one crabgrass control in spring. All weed controls shall be applied in accordance with all applicable laws, codes, specifications, and policies.

5.6 Protection of Creek

No runoff from fertilizer, pesticide, or chemical applications shall flow into creek areas, nor to drain inlets that discharge to creek areas.

5.7 Litter Control

Contractor shall assess the area on a regular basis for the removal of all litter (i.e. paper, leaves, cans, bottles, tree branches, etc.).

6. EQUIPMENT AND STORAGE

6.1 Green Equipment

The City encourages the contractor to use environmentally-friendly, or green, equipment and supplies for this contract. Any portable motorized landscape equipment used for maintenance is required to have a noise level reading of 65dBA or less measured at a distance of 50 feet, as certified by the manufacturer, per municipal code 10.48.010.

6.2 Equipment Maintenance

All mowing equipment shall be on a regular preventative maintenance schedule for hydraulic and oil lines to minimize damage to turf and protect the creek and wildlife habitat from leaks. Hydraulic hoses shall be changed off-site every six months.

6.3 Greens

Mowing equipment shall be nine or more bladed and a reel-type mower with a frequency of cut at a minimum of .25 at 3.6 mph.

6.4 Tees

Mowing equipment shall be seven or more bladed and a reel-type mower with a frequency of cut at a minimum of .53 at 4.2 mph.

6.5 Fairways

Mowing equipment shall be six or more bladed and a reel-type mower with a frequency of cut at a minimum of .67 at 5 mph.

7. PARKING LOT AT GOLF COURSE ENTRANCE

7.1 Sweeping

Contractor shall sweep every two weeks. Manually using a blower is acceptable during the hours of 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends, per municipal code 10.48.051.

7.2 Loose Trash and Garbage Cans

Contractor shall pick up trash and check area daily. Contractor shall remove and dispose all trash from the parking lot.

7.3 Broken Glass/Bottles

Contractor shall pick up and dispose of broken glass or similar potentially harmful materials immediately.

8. MAINTENANCE BUILDING/AREA

8.1 Building

Contractor shall not enter the maintenance building before 5:30 a.m. Contractor shall inspect all equipment for leaks daily. Contractor shall fix leaks and clean up any spills or leaks immediately. Contractor may use the building to store any equipment or materials necessary for regular course maintenance. Contractor shall not store any equipment or vehicles in the maintenance building, that are not used for regular course maintenance. No barbecues, washing of personal cars, or fires of any kind are allowed. Smoking is not allowed anywhere on the course, patio area, maintenance building or adjacent parking lot, per municipal code 10.90.020.

8.2 Restrooms at Maintenance Building

Public restrooms exist on the golf-facing side of the golf maintenance building. The public restrooms will be cleaned and maintained by the City or the City's designee.

8.3 Green Waste Dumpster

Contractor shall contact the City supervisor when the green waste dumpster is full. City is responsible for emptying dumpster. Contractor is responsible for keeping the area around dumpster, free of garbage and debris. Green waste dumpster is to be used for debris collected as a result of golf course maintenance only.

8.4 Blackberry Farm Park Dumpsters

Contractor may dispose of garbage and recycling collected as a result of golf course maintenance only, in the designated dumpsters at Blackberry Farm Park.

9. ENTRY AREA AND PRO SHOP GROUNDS

9.1 Flower Beds

Contractor shall replant the two planter boxes located near the pro shop, a minimum of two times per year. Contractor shall weed, mulch, water, and replenish as needed, year-round. The planter box located on the number one tee measures approximately 4.5 feet by 35.5 feet (160 sq. ft.). The planter box located near the entrance gate, measures approximately 8 feet by 34 feet (272 sq. ft.).

9.2 Landscape Shrubbery

Contractor shall trim monthly and as needed.

9.3 Patio and Walkways

Contractor shall sweep daily. Manually using a blower is acceptable during the hours of 7:00

a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends, per municipal code 10.48.051.

9.4 Trash and Recycling Containers

Contractor shall pick up trash and empty trash cans located on the patio, daily. Contractor shall empty the cardboard recycling containers located next to the pro shop at least one time per week.

9.5 Foot Brushes and Air Hose

Contractor shall clean and check weekly and replace when worn.

9.6 Leaks from Contractor-owned Golf Carts

Contractor shall clean immediately.

10. IRRIGATION

10.1 Maintenance

Contractor shall maintain the irrigation system, including irrigation main and lateral lines, sprinkler heads, valves, and controllers in good operation, functioning properly, and conforming to related laws, codes, and regulations. Leaks in the irrigation system shall be repaired by the Contractor. Contractor shall provide an itemized cost proposal that includes labor rate and materials for the repair of leak using the Hourly Rate table in Attachment B. Any damage to the irrigation system caused by Contractor's equipment or carelessness while carrying out maintenance operations shall be repaired without charge.

10.2 Frequency

Contractor shall irrigate as required to maintain adequate moisture for growth rate and appearance. Contractor is to hand water, as needed, all portions of the course that do not receive adequate water from the irrigation system. Irrigation shall be performed at night or early morning when it does not interfere with golf play. Irrigation controller programs shall be adjusted as required.

10.3 Water Conservation

Irrigation controllers shall be programmed to maintain course appearance and health of vegetation while maximizing water conservation. Contractor may be required to reduce irrigation on the tees, fairways, and rough while providing the necessary water to keep the greens healthy at all times. Adjustments to the irrigation cycle may also be necessary to meet any drought restrictions imposed by Santa Clara Valley Water District and California State Water Board.

10.4 Monitoring

Contractor shall check the system daily, year-round. Contractor shall make corrections for coverage, clogging of lines, removal of obstacles, tilting of heads, and management of plant materials that obstruct the spray, as they occur.

10.5 Wind Problems

In areas where wind creates problems of spraying on to private property or road rights of way, operation shall occur during a period of lowest wind velocity.

10.6 Testing for Adequate Soil Moisture

Contractor shall determine by visual observation, plant resiliency, turgidity, examining cores

removed by soil probe, and moisture sensor devices.

10.7 Water Cost

Water costs shall be paid by the City.

11. OTHER AREAS

11.1 Benches and Tee signs

Contractor shall immediately remove any damaged bench and notify the City. City is responsible for replacing benches and tee signs.

11.2 Ball Washers

Contractor shall check for water and soap and supply these daily. Contractor shall replace tee towels monthly or more often if towel is frayed, discolored, or aesthetically unpleasing. City is responsible for replacing ball washers.

11.3 Trash Cans

Contractor shall empty trash cans located on the course, daily, or more frequently if trash cans are overflowing. City is responsible for the replacement of trash receptacles.

11.4 Debris and Trash

Contractor shall remove immediately and dispose of debris and trash in a safe and legal manner.

11.5 Tee Markers

Contractors shall have two sets on each hole. Missing or broken markers shall be replaced immediately.

11.6 Yard Markers

Contractor shall replace any yard markers as needed.

11.7 Out of Bounds and Hazard Stakes

Contractor shall replace out of bounds or hazard stakes, immediately, if missing or broken.

11.8 Flags, Poles, and Cups

Contractor shall replace flags, poles, and cups including at the nine-hole foot golf course, when they are discolored, frayed, or damaged in any way.

11.9 Sand Traps

Complete renovation of any sand trap is not included in this maintenance project. Contractor shall rake daily. Contractor shall keep sand at a minimum of four inches in depth and keep clear of all weeds. When using a power rake, Contractor shall stay approximately one foot from edge of trap. When hand-raking edge of trap, sand shall be pushed inward on the low side and pulled outward on the high side. Contractor shall edge traps monthly and as needed. Sand shall not be dragged out of the trap when exiting the trap with a power rake.

11.10 Sand Trap Rakes

Contractor shall keep two rakes per sand trap, or more, as needed. Missing or broken rakes shall be replaced immediately.

11.11 Trees

Any tree removal or tree replacement is the responsibility of the City. Contractor shall keep all trees trimmed at least eight feet from the ground to prevent damage to golf cart tops and maintenance equipment, except for trees and shrubs along the creek which shall only be trimmed as acceptable by City staff. Contractor shall maintain trees in a safe, healthy, and aesthetically pleasing condition at all times. Contractor shall mow, weed, and/or mulch tree wells as needed. Contractor shall immediately remove any broken tree limbs. Downed brush shall be removed as soon as possible. All trimmings or debris shall be removed from the course unless they are chipped and used for mulch on site. City shall be responsible for removal of dead or fallen trees unless the dead or fallen tree was a result of the Contractor's negligence.

11.12 Weed Control (Non-Selective)

Contractor shall use mechanical method of trimming or removing undesirable vegetation in tree wells, perimeter and interior fence lines, barriers, railroad ties, delineators, and along edges of golf play areas that are along the creek or associated native planting areas.

11.13 Foot Bridge

Contractor shall inspect the foot bridge daily for safe conditions and repair the structure immediately when necessary.

11.14 Driving Range

Contractor shall cut grass weekly. Contractor to collect soil samples six times per year to determine the recommended complete fertilizer use. Contractor to use Logan Laboratories or City approved equal for soil testing and recommendations. Fertilizer to be applied four times per year in March, May, late August, and October. The application rate shall be at the manufacturer's recommended rate. All fertilizer shall be applied in accordance with all applicable laws, codes, specifications, policies, and at minimum rates consistent with healthy turf. Special care shall be taken to prevent fertilizer or fertilizer-containing runoff from getting into creek areas.

11.15 Perimeter Fencing

City is responsible for all repairs and replacement of perimeter fencing and safety netting.

11.16 Vandalism and Graffiti

Contractor is responsible for the removal/repair of graffiti and vandalism to Contractor- owned property. City is responsible for the removal/repair of graffiti and vandalism to any City-owned property.

11.17 Wildlife

In accordance with Cupertino Municipal Code 8.01.160, "no person shall use a leg-hold steel jawed trap, steel jawed trap, or steel leg-hold trap, as defined in Fish and Game Code Section 4004, in any urban service area boundary, as defined in Government Code Section 56080."

12. BLACKBERRY FARM WEST SIDE RESTROOMS

Contractor shall open the restrooms located on the west side of the park between 6:00 a.m. and 6:30 p.m. on the weekends and holidays except for December 25 and January 1. City shall provide Contractor a list of observed holidays by December 1, each year.

13. RECYCLING OF VEGETATION

13.1 Recycling Required

Contractor shall recycle all vegetative material generated. No clippings may be dispersed in the rough or on the fairways. Clippings may be recycled in out of play areas in amounts and locations approved by the City. Clippings may not be recycled on the creek bank or within 8 feet of the creek edge or in a manner that might result in clippings getting into the creek channel at any time. If buildup of pine needles, leaves and grass clippings become excessive in these areas the Contractor will be required to remove them and place them in the vegetation recycling containers provided by the City.

13.2 Recycling Facilities

The City shall provide vegetation recycling containers which will consist of totes or bins as required by the quantity of material generated from the maintenance operations.

14. WILDLIFE CONSIDERATIONS

Contractor is to note that a number of federally- and state-protected wildlife species inhabit the Stevens Creek corridor and portions of the golf course. Among the species are steelhead fish, turtles, woodrats, various birds of prey such as hawks, owls and white-tailed kites, and various migratory birds and songbirds. These animals and their habitat are protected by various federal and state regulations. Those regulations affect activities that could affect wildlife directly or indirectly, including actions on the golf course that could affect the creek and its water quality. Such actions include fertilizer use, pesticide use, irrigation practices, operation of the golf course ponds, vehicle washing, and other procedures.

Contractor shall meet with City staff and representatives annually to review maintenance activities relative to these considerations. Contractor is encouraged meet with City representatives more frequently as needed to ensure compliance. Further considerations are noted below.

15. NESTING BIRDS

Contractor shall be aware of nesting birds on trees within the golf course. If tree trimming or removal is required during the nesting period, the Contractor shall conduct a survey for nesting birds on the entire golf course prior to performing the work.

16. TERRESTRIAL WILDLIFE

Vegetation Trimming and Removal: No vegetation along the creek edge or any trees in any location on the golf course shall be trimmed or removed from February 1 to August 31, unless it has been reviewed for presence of nests and protected wildlife by a biologist or qualified professional or City Staff.

Tree Removal: Certain trees are protected by City ordinance. No tree shall be removed or significantly pruned without advance approval by the City representative.

Bird Breeding Season: Breeding season for raptors, birds of prey such as hawks and owls, is normally from February 1 to August 31, with highest activity usually from early or mid March onward. Most such birds and their nests and breeding are protected by law. Routine golf course operations may proceed during breeding season. However, during this time contractor shall endeavor to reduce disturbing activities, such as loud noises or vibration, within 250 feet of a raptor nest site and within 400 feet of a white-tailed kite nest site. Songbird nests are generally protected within a 100 foot radius.

Rodenticide Use: Use of any and all rodenticides [to poison squirrels, gophers, mice, rats] or chemicals is banned, unless authorized in advance in writing by the City.

Lighting: Contractor is to minimize use of nighttime lighting, especially in the vicinity of the creek. Contractor is to operate the golf maintenance facility in a manner that minimizes use of outdoor lighting to the extent feasible. Lights shall only be used when workers are present unless the City provides advance authorization in writing. This stricture applies to outdoor lighting of the maintenance yard.

Emissions: Contractor is to minimize the use of exhaust- and emission-producing equipment to the extent compatible with performance of the work (See 6.1 Green Equipment). Contractor shall favor the use of equipment powered by electrical, batteries or hand rather than diesel, gas or oil, as feasible.

Wildlife Reporting: Contractor shall report any observations of the following to the City representative within 1 working day:

- active raptor nests
- turtles
- woodrats [potentially San Francisco dusky-footed woodrat]
- frogs [potentially California red-legged frog]
- salamanders [potentially California tiger salamander]
- other potentially protected wildlife

17. AQUATIC WILDLIFE

Federally-threatened steelhead inhabit the section of Stevens Creek that is adjacent to the golf course, year round. This fish species is highly protected. Their survival depends on clean cool water, free of harmful levels of fertilizers, pesticides, storm water runoff pollutants, and organic waste. The principal methods to achieve this are minimizing total use of these contaminants, restricting the type of inputs, and having an acceptable method of application via an Integrated Pest Management Plan (IPM). The City has adopted such a plan as discussed elsewhere in this document.

Contractor is strongly encouraged to operate in conformance with Pilot Salmon Safe Certification Standards for Golf Courses, latest version (May 2018, Version 1.3) available at www.salmonsafe.org and compliance with the City's NPDES permit.

Due to adverse impacts on fish and aquatic wildlife, use of the following pesticides is not allowed.

Salmon-Safe Urban High Hazard List of Pesticides (UHHL)

High hazard pesticides are a serious threat to salmon and other aquatic life. Pesticide formulations can also contain other ingredients that are potentially more toxic than the active ingredients, such as non-ionic surfactants. In addition to killing fish, high hazard pesticides at sublethal concentrations can stress juveniles, alter swimming ability, interrupt schooling behavior, cause salmon to seek suboptimal water temperatures, inhibit seaward migration and delay spawning. All of these behavioral changes ultimately affect survival rates.

The table below lists many of the pesticides known to cause problems for salmon and other aquatic life. Use this list to identify pesticides that require special consideration.

Note: This table lists only some of the currently available and commonly used pesticides.

SALMON-SAFE URBAN HIGH HAZARD LIST OF PESTICIDES			
Insecticides / Miticides			
abamectin	chlorpyrifos ^{1,2} (2)	imidacloprid ²	prallethrin ^{1,2}
acetamiprid	cyfluthrin ^{1,2}	indoxacarb ²	spinosad ²
alpha-cypermethrin ¹	cypermethrin ^{1,2}	lamda-cyhalothrin ^{1,2}	spiromesifen ¹
bifenthrin ^{1,2}	deltamethrin ^{1,2}	malathion ^{1,2} (1)	tralomethrin ¹
carbaryl ² (2)	esfenvalerate ^{1,2}	naled ¹ (3)	zeta-cypermethrin ¹
chlorantraniliprole ²	etofenprox ¹	novaluron	
chlorfenapyr ^{1,2}	fipronil ^{1,2}	permethrin ^{1,2}	
Fungicides			
acequinocyl	cyazofamid	folpet	thiram
azoxystrobin ²	cyprodinil	pentachlorophenol (PCP) wood treatment	trifloxystrobin ¹
captan (4)	difenoconazole	propiconazole ²	
chlorothalonil ^{1,2} (4)	fluazinam ¹	pyraclostrobin ^{1,2}	
copper ^{1,2}	fludioxonil ²	thiophanate methyl	
Herbicides			
2,4-D ² (4)	dithiopyr ²	linuron ² (4)	prodiamine
atrazine ²	diuron ² (4)	oxadiazon ²	triclopyr BEE ² (4)
benefin	diquat dibromide ²	oxyfluorfen ²	trifluralin ² (5)
diclofop-methyl	flumioxazin ²	pendimethalin ² (5)	
Very Highly Acutely Toxic and/or Highly Acutely Toxic* to fish and/or aquatic invertebrates. Based on EPA's Aquatic Life Benchmarks³. Pesticide names followed by a number in parentheses indicates the specific NOAA /NMFS Biological Opinion where it was assessed for jeopardy and/or habitat destruction/modification to endangered salmonids in accordance with the Endangered Species Act (https://www.epa.gov/endangered-species) regarding the 37 pesticides listed in the Washington Toxics Coalition (WTC) court settlement. Completed BiOps listed below⁴. * Active Ingredients Being Very Highly Acutely Toxic (LC50 or EC50 <100 ug/L) to BOTH fish and aquatic invertebrates. * Active ingredients determined to generally have very high potential for risk of off target movement through surface runoff, based on the pesticide's adsorption to soil/sediment and it's field dissipation half-life (persistence). http://ccpestmanagement.ucanr.edu/files/237465.pdf			

Table from Salmon-Safe Urban Standards Version 3.0, April 2021

If use of any of these pesticides is desired, Contractor must submit written documentation to City to demonstrate a clear need for use of the pesticide, that no safer alternatives exist, and that the method of application (such as timing, location, and amount used) represents a negligible risk to water quality and fish habitat. Contractor must secure authorization in advance from City and any involved regulators including Resource Agencies that use of the pesticide may proceed.

Note that some of these pesticides are included on the San Francisco Reduced Risk Pesticide List

("SF List"). They are hereby deleted from the SF List since they are not suitable for use near creeks and include but are not limited to:

- Triclopyr

These pesticides are not to be used on the golf course unless written authorization is secured in advance.

18. WATER QUALITY CONSIDERATIONS: PROTECTION OF CREEK & PONDS

Runoff: No runoff from any applications of chemicals, pesticides or fertilizer shall flow into creeks or ponds, including runoff from allowable products. No runoff other than clean rainwater shall flow into the creek. Contractor shall consider weather conditions and watering regimes in order to schedule application of fertilizer, pesticides and chemicals in a manner that prevents runoff to creeks or ponds. Contractor shall operate irrigation system and watering activities in a manner that prevents irrigation runoff as well. Contractor shall monitor and test for runoff of any chemicals, pesticides, or fertilizer to ensure runoff does not occur.

Equipment Washing: All equipment shall be washed within the equipment wash off area in the golf maintenance yard, or in an equivalent offsite facility that filters wash water and is connected to the sanitary sewer system. Screens shall be cleaned of grass clippings and other material after each use. No washing is permitted elsewhere.

Pond Maintenance: Ponds shall be kept free of excessive vegetation. Vegetation removal shall be done with hand or mechanical means. Such removal shall be timed to avoid wildlife breeding seasons in consultation with the City. Timing will ordinarily be September to January, or potentially as late as mid-March if nesting and protected wildlife are not present. Contractor shall avoid vegetation management during the nesting season. Locally native vegetation are acceptable to be planted.

A pond outlet/overflow pipe within the lower pond provides an emergency discharge to the creek. This outlet pipe must be capped at all times with a tight, sturdy, secure, 3/32" square mesh or tighter screen that is acceptable to City. If slotted the maximum opening width is 1/16". Pond water level shall be maintained sufficiently below the outlet pipe elevation such that NO POND WATER ENTERS THE OUTLET nor flows to the creek. Contractor shall check the screen to ensure that it is tight, intact and clear at least monthly and shall maintain the mesh in a clear clean condition.

When ponds are in operation, ponds shall be maintained with adequate water level to maintain habitat for existing fish and wildlife populations, unless the City authorizes otherwise. Ponds shall be operated in a manner that prevents algae growth. Avoid over fertilization that contributes to algae growth.

Attachment B – Pricing Table

Item	Description	Unit	Estimated Quantity	Unit Price	Total (\$)
1	Provide all services as set forth in Attachment A, Putting Greens, Tasks 1.1 – 1.10 , each month, January 1, 2026, through December 31, 2028	Month	36		
2	Provide all services as set forth in Attachment A, Collar Maintenance, Tasks 2.1 – 2.4 , each month, January 1, 2026, through December 31, 2028	Month	36		
3	Provide all services as set forth in Attachment A, Tee Maintenance, Tasks 3.1 – 3.11 , each month, January 1, 2026, through December 31, 2028	Month	36		
4	Provide all services as set forth in Attachment A, Fairway Maintenance, Tasks 4.1 – 4.8 , each month, January 1, 2026, through December 31, 2028	Month	36		
5	Provide all services as set forth in Attachment A, Rough Maintenance, Tasks 5.1 – 5.7 , each month, January 1, 2026, through December 31, 2028	Month	36		
6	Provide all services as set forth in Attachment A, Equipment and Equipment Storage, Tasks 6.1 – 6.5 , each month, January 1, 2026, through December 31, 2028	Month	36		
7	Provide all services as set forth in Attachment A, Parking Lot at Golf Course Entrance, Tasks 7.1 – 7.3 , each month, January 1, 2026, through December 31, 2028	Month	36		
8	Provide all services as set forth in Attachment A, Maintenance Building/Area, Tasks 8.1 – 8.4 , each month, January 1, 2026, through December 31, 2028	Month	36		
9	Provide all services as set forth in Attachment A, Entry Area and Pro Shop Grounds, Tasks 9.1 – 9.6 , each month, January 1, 2026, through	Month	36		

	December 31, 2028				
10	Provide all services as set forth in Attachment A, Irrigation, Tasks 10.1 – 10.6 , each month, January 1, 2026, through December 31, 2028	Month	36		
11	Other Areas				
11.1	Benches and Tee Signs	Each	1		
11.2	Ball Washers	Month	36		
11.3	Trash Cans	Month	36		
11.4	Debris and Trash	Month	36		
11.5	Tee Markers	Each	1		
11.6	Yard Markers	Each	1		
11.7	Out of Bounds and Hazard Stakes	Each	1		
11.8	Flags, Poles, and Cups	Each	1		
11.9	Sand Traps	Month	36		
11.10	Sand Trap Rakes	Each	1		
11.11	Trees	Month	36		
11.12	Weed Control (Non-Selective)	Month	36		
11.13	Foot Bridge	Month	36		
11.14	Driving Range	Month	36		
11.15	Perimeter Fencing	Each	1		
12	Opening of the Blackberry Farm of restrooms on the west end of the park on weekends and holidays, except December 25 and January 1	Hours	60		
	TOTAL COST				

Services – Hourly Rate

Item	Description	Standard Services Hourly Rate (\$)	Emergency Services Hourly Rate (\$)
A	Labor Rates Position: Position: Position: Position:		

Attachment C



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 _____, and is effective 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:

To City of Cupertino Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014 Attention: Email:	To Contractor: Attention: Email:
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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:

KIRSTEN SQUARCIA
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.