



CITY OF CUPERTINO REQUEST FOR PROPOSAL

FOR

Below Market Rate Housing Program Administrator

[202X-## - xxx]

Issue Date:
November 3,
2025

Due Date:
December 3,
2025

Contact Person during Proposal Period:
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COMMUNITY DEVELOPMENT DEPARTMENT
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REQUEST FOR PROPOSAL CITY OF CUPERTINO

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1. INVITATION

The City of Cupertino (City) invites proposal submittals from qualified consultants to provide services to administer the City's Below Market Rate (BMR) Housing Program. The City has a population of approximately 60,000 resident and approximately 22,000 housing units. The City's Housing Mitigation Program (BMR Program) was adopted in 1992 to generate affordable housing. The ordinance requires developers to provide a specified number of affordable owner-occupied and rental units. BMR for-sale units are made available to median and moderate-income households. BMR rental units are made available to low and very low-income households. The units are managed in accordance with City Council adopted guidelines, known as Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units (BMR Admin Manual) which is available for view on the City's Housing website. These units are subject to deed restrictions which ensure that the units remain affordable for the longest possible period of time. Since the adoption of this ordinance, the City has secured 260 total BMR units, of which 118 units are for-sale units and 142 are rental units. 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). [xxx -].

The Consultant scope of services may include, but is not limited to the Administration Services, BMR Purchase Program Services, and BMR Rental Program Services listed in Attachment A – Scope of Work.

The City intends to review proposals received and select the highest qualified consultant who can deliver the program at efficient cost pricing.

2. PROJECT SCOPE OF WORK

The Consultant will perform under the general direction of the Housing Division within the Community Development Department and consult with other City personnel in administration of the Below Market Rate Housing program. The scope of work includes general administration as the primary contact handling inquiries and correspondence from applicants, current homeowners and renters, and property managers; maintenance of the waitlist and lottery system, necessary marketing and outreach for the program; facilitation of sales and purchases of BMR units for ownership; initial pricing and improvement assessments for home valuation; facilitation of escrow closing and recordation of deed restricting documents; monitoring of units and properties for compliance with rent limits; income recertification of participating tenants; maintaining policies compliance with relevant federal, state, regional, and local guidelines for administering low-income housing units; and other tasks as more thoroughly detailed in Attachment A – Scope of Work. The Consultant will provide staff who will work offsite but provide required to support the City while interacting with the community at outreach events and public hearings for the Housing Commission or City Council, if applicable.

3. SUBCONSULTANTS

Subconsultants or subcontractors that will support the lead Consultant 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. Subconsultant 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
Optional Pre-Proposal Meeting	October 23, 2025
Request for Proposals Released	November 3, 2025
Deadline for Consultant Questions	November 24, 2025 by 12:00 PM PST
City Response to Questions Deadline	November 26, 2025 by 5:00 PM PST
Request for Proposals Due	December 3, 2025 by 5:00 PM PST
Evaluation of Proposals	Winter 2025
Contract Award	Spring 2026

5. OPTIONAL PRE-PROPOSAL MEETING

The City will offer an optional pre-proposal meeting for prospective proposers to learn about the project and ask clarifying questions. The date and time of the meeting is as follows:

Date: October, 23, 2025

Time: 5:30 PM PST

Duration: 30 minutes

Virtual Meeting Link: [insert](#)

6. SUBMITTAL REQUIREMENTS

The Proposal submittal is not to exceed 20 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.

Consultant proposal submissions are to provide the following information:

- business type (corporation, partnership, sole proprietorship)
- firm's organization structure,
- background and general qualifications,
- subconsultants, and
- recent experience with working in Below Market Rate Program Administration in California, particularly in the City of Cupertino and the San Francisco Bay Area.

MINIMUM QUALIFICATION

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

1. Consultant must have a valid Cupertino Business License; and
2. Consultant, or its subconsultant, must have previous experience administrating a Below Market Rate Housing program for a city or county municipality.

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

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

- A. Cover Letter - The cover letter of interest shall include an overview of the firm's qualifications and the name, address, and telephone number of the principal person the City shall contact regarding the proposal and DUNS number of the Consultant. 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. Firm and Project Team Qualifications and Experience – List all previous cities and counties the firm has previously serviced with Below Market Rate Housing Administration. Work listed should represent the firm's qualifications, expertise and technical capabilities to fulfill all services specified and required to successfully accomplish the work. Provide the years worked for each municipality and reference contact information for each.

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 subconsultants 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. Pricing and Costs - 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. Line items shall be broken out by subtask, when appropriate.

In this proposal, provide a schedule of fees that correspond to the duties to be

completed to perform all work listed in Attachment A - Scope of Work. The schedule of fees should also include charging rate by various level of staff to be used for charging for tasks outside the base proposal. Proposals with low costs will score high in this category.

Include an annual cost breakdown that estimates the number of times each work item will need to be completed through an entire program year. This calculation should be tailored to the size of the City of Cupertino's BMR portfolio and the City's specific procedures to be completed in the BMR Admin Manual. This will be used as the total annual funding request for the applicant's response to RFP.

To be considered for a multi-year agreement, include a proposed annual percentage adjustment, and include additional annual schedule of fees and annual cost breakdowns for a second, third, and/or fourth year of service.

- D. 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. Describe the proposed approach for addressing the required services and the firm's ability to meet the City's schedule, outlining the approach that would be undertaken in providing the requested services. Additionally, identify an approach to resolve potential critical issues and other elements of concern.

Proposers are encouraged to suggest technical or procedural innovations that have been used successfully in BMR Administration and optional services may be used for the benefit of the program. List any specific use of technology programs that would streamline the timeline of delivery or provide a higher quality of service.

- E. California/Bay Area Integration – Describe how your firm's program delivery model remains current and reflective of the rapidly changing landscape of affordable housing law in the State of California and/or Bay Area region. List any specific laws or policies related to administration of low income housing that led you to updating your program to further greater affordable housing goals or align your program with new regulations. Mention any state or regional Housing efforts that you are either involved in or staying cognizant of that you are actively working to align your program, that if selected, would make the City of Cupertino's BMR Administration program more integrated with BMR Administration programs in the Bay Area and/or state of California.
- F. Contract Acceptance - The Consultant must specifically agree, in writing, to accept the Professional/Consulting Services agreement, including specifically the City's Indemnification requirements and insurance coverage requirements, without modification, in the submitted proposal. If a Consultant 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 Nicky Vu at nickyv@cupertino.gov by November 24, 2025, 12:00 pm PST. Include “RFP for [# - BMR Program Administrator]” in the subject line.

8. SUBMITTAL PROCESS

Interested firms must submit an electronic PDF format copy of their proposal to Nicky Vu at nickyv@cupertino.gov or to the Housing Division at housing@cupertino.gov by December, 3, 2025, 5:00 pm PST. Include “RFP for [# - BMR Program Administrator]” in the subject line. If a cost proposal is requested with the RFP submittal, submit under separate cover to purchasing@cupertino.gov.

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. 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 Consultant 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 5.

Criteria		Possible Points
1.	Firm and Project Team Qualifications	30
2.	Pricing and Costs	30
3.	Work Plan Approach	30
4.	California/Bay Area Integration	10
	Total Possible Points	100

After City’s evaluation committee reviews all submitted written proposals, the top ranked Consultant’s 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 Consultant’s 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 consultants 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 consultant 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 cost proposal from the highest ranked proposer shall be submitted under separate cover after the City completes the evaluation of proposals. The cost proposal shall include hour and fee breakdown by the tasks detailed in Project Description and Scope of Work.

Line items shall be broken out by subtask. Proposers must provide a price for each item in the cost proposal, 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 subconsultant shall be 5%.

11. SELECTION CRITERIA

Highly qualified Consultants 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 administration work, including quality of work, success in meeting project deadlines, and success in meeting budgets
- Qualifications and experience of key staff persons proposed to perform the work.
- Providing a competitive and efficient cost pricing proposal
- 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.
- Special knowledge that demonstrates familiarity with greater Bay Area and California Housing efforts
- Understanding and experience related to local, regional, and state agencies.
- Experience in Cupertino and the south San Francisco Bay Area.

12. SELECTION PROCESS

The City's Purchasing Officer will recommend to the awarding authority the highest ranked proposer who successfully negotiated scope and project cost with the City. The awarding authority's acceptance of the proposal will be evidenced by a Notice of Award delivered to the selected consultant.

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 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 Consultant is notified of award by the City it shall execute a standard City of Cupertino Professional/Consulting 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/Consulting Services agreement is attached to this RFP as Attachment B. Note that the indemnity and insurance requirements that are included as Attachment C are identified in the agreements and must be accepted without modification.

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

I. Overview

The City of Cupertino (“City”) is seeking a qualified consultant to provide services to administer the City’s Below Market Rate (BMR) Housing Program.

II. Background

The City’s Housing Mitigation Program (BMR Program) was adopted in 1992 to generate affordable housing. The ordinance requires developers to provide a specified number of affordable owner-occupied and rental units. BMR for-sale units are made available to median and moderate-income households. BMR rental units are made available to low and very low-income households. The units are managed in accordance with City Council adopted guidelines, known as [Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units \(BMR Admin Manual\)](#) which is available for view on the [City’s Housing website](#). These units are subject to deed restrictions which ensure that the units remain affordable for the longest possible period of time. Since the adoption of this ordinance, the City has secured 260 total BMR units, of which 118 units are for-sale units and 142 are rental units. In accordance with all applicable Federal, State, and local laws, the contract for BMR Program Administration services will include, but is not limited to the following:

III. Administration Services

- Consultant will be the primary contact for the BMR Program and will handle all inquiries and correspondence from applicants, current BMR homeowners and renters, and property managers in buildings with units restricted under the BMR Program.
- Consultant will advertise the BMR Program, as needed, to solicit buyers and renters for available units and to establish a waiting list.
- Consultant will maintain a waiting list of qualified buyers and renters in accordance with the BMR Program guidelines. Maintenance of the waiting list includes reviewing required annual applications to remain on the waiting list, assisting City staff to conduct an annual lottery for new applicants, and sorting all applicants into the appropriate priority point level within the waiting list.
- Consultant will utilize the City’s procedures, ordinance(s), resolution(s), and guidelines in the implementation of the BMR Program.
- Consultant will provide suggestions to the City for potential modifications to the City’s application process, procedures, and/or guidelines to ensure effective operation of the BMR Program.
- Consultant will maintain marketing content for the BMR Program, including flyers, website, and other material as needed.
- When requested by the City, Consultant will advise and assist City staff on matters related to the BMR Program.
- As necessary, Consultant will provide access to translation in other languages.
- Consultant will manage all appeals submitted to the BMR Program.

IV. BMR Purchase Program Services

- Consultant will manage the entire sale process from advertising of available units to completing the closing on the BMR unit.
- Consultant will prepare and maintain the sales schedule for City approval.
- Upon receipt of one or more applications for the purchase of a unit, Consultant will ensure that each application is complete, verify eligibility, and confirm priority points. Consultant will rank the applications according to criteria in the City's written guidelines and coordinate approval with the City.
- Consultant will be available to answer any questions regarding the BMR Program and will help facilitate escrow closing. Consultant will also facilitate recordation of the resale restrictions, requests for notice of default, subordination agreements, and any other applicable documents with the title company prior to close of escrow.
- Consultant will maintain a list of local realtors and lenders interested in providing loans to qualified BMR Program applicants.
- Consultant will inspect prospective sales units, hold at least one "open house" for prospective buyers, assist buyers with locating a realtor, financing, coordinate appraisal, property and termite inspections, prepare disclosure statements, open and close escrows all in accordance with accepted real estate practices, and coordinate close of escrow to meet program deadlines (90 days in most cases).
- Consultant will provide or arrange Home Buyer education consistent with U.S. Department of Housing and Urban Development (HUD) standards.
- Consultant will monitor BMR units annually to confirm program compliance and investigate and manage potential defaults.
- Consultant will review and process requests for refinancing of BMR homes and junior loans in accordance with BMR Program guidelines.

V. BMR Rental Program Services

- Consultant will manage entire rental process including advertising of available units.
- Consultant will provide the property owner / manager of projects containing City BMR units with the most current income and rent guidelines upon issuance by HCD and HUD each year.
- Consultant will monitor BMR unit rents annually to ensure compliance with the required affordable rent levels under the BMR Program.
- Consultant will advise the property owner / manager regarding their compliance with the BMR Program.
- Consultant will verify the eligibility of prospective tenants qualified by the property manager.
- Consultant will accept and review expedited re-applications submitted from displaced BMR tenants aiming to re-apply to the BMR list to be rehoused throughout the year.
- Consultant will manage the entire recertification process annually to ensure renters maintain BMR Program eligibility. In the event that a renter no longer qualifies for the City's BMR Program, consultant will work with the property manager to terminate the tenant's BMR Program participation after the applicable appeal period has lapsed and to qualify a new applicant for that BMR unit.

VI. Estimated Project Timeline

Selected consultants will be awarded at minimum for one program year, FY 26-27 (July 1, 2026 – June 30, 2027), but may be considered for a 2 year (July 1, 2026 – June 30, 2028) or 3 year (July 1, 2026 – June 30, 2029) or other multi-year deal depending on the contract award size and available funding.

VII. Conflict of Interest

Consultant warrants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of the described in this Request for Proposals (RFP), and that it will not employ any person having such an interest. Consultant agrees to advise the City immediately if any conflict arises. Consultant further understands that it and its staff members must abide by all applicable statutes, rules, and regulations regarding conflicts of interest, including the Political Reform Act, Government Code Section 1090, and implementing regulations, including Title 2, Division 6, Section 18700 of the California Code of Regulations, and following.

VIII. Cost Proposal and Invoicing

The applicant will submit a cost proposal as part of the application to demonstrate both their knowledge of tasks needed to administer Below Market Rate housing and to provide a competitive cost estimate. If accepted, this Cost Proposal will be included as an attachment for the contract award to be used for submitting invoices for reimbursement on work items completed during the timeline of their contract award. Line items on the Cost Proposal shall be broken out by subtask.. Proposers must provide a price for each item in the cost proposal, 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 subconsultant shall be 5%.



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. **PARTIES**

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

2. **SERVICES**

2.1 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.

2.2 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 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 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 \$_____ ("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. 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 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 _____ 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 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	To Contractor: _____
Attention: _____	Attention: _____
Email: _____	Email: _____

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

CONTRACTOR

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

APPROVED AS TO FORM:

FLOY ANDREWS
Interim City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

DATE: _____

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)** 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 and \$2,000,000 general 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 Consultant'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 Form 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 CA 00 01 covering any auto (including owned, hired, and non-owned autos) 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 Consultant 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 all 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 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 if not available, through the addition of both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary and Non-Contributory Coverage

Except Workers Compensation, coverage afforded to City/Additional Insureds shall allow and be endorsed 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. If a carrier will not provide the required notice of cancellation or policy modification, the Consultant 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

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 General Liability, Automobile Liability and Workers' Compensation policies shall allow and be endorsed with a waiver of subrogation in favor of City, 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 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

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

Consultant must furnish acceptable insurance certificates and amendatory endorsements (or copies of the policies effecting the coverage required by this Contract), including 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 indemnification, defense, and 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.