



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and the Cupertino Chamber of Commerce (“Contractor”), a Limited Liability Company for technical assistance services to existing and prospective businesses located in the City of Cupertino and is effective on the last date signed below (“Effective Date”).

2. SERVICES

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

3. TIME OF PERFORMANCE

3.1 This Agreement begins on the Effective Date and ends on April 30, 2025 (“Contract Time”), unless terminated earlier as provided herein. Contractor’s Services shall begin on the effective date and shall be completed by April 30, 2025. At the end of the term, the City shall have options to extend the term on a year-to-year basis up to an additional four years. The City shall exercise each one-year option by providing written notice to the Contractor at least 30 days prior to the expiration of the applicable term. Upon exercise of the option, the parties will amend Section 4.1 to reflect the increase in the contract compensation. 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 \$52,000 annually (“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. In the event the City exercises its option set forth in Section 3.1, this Section 4.1 will be amended to increase the annual amount by \$52,000 as necessary.

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

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

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement.

Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

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

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

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

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

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

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

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed

information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

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

9. ASSIGNMENT

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

10. PUBLICITY / SIGNS

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

11. INDEMNIFICATION

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

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

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

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

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

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

11.6. This Section 11 shall survive termination of the Agreement.

12. INSURANCE

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

13. COMPLIANCE WITH LAWS

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

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

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735,

1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

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

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

14. PROJECT COORDINATION

City Project Manager. The City assigns Daniel Degu 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 Deborah Feng 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 therefore 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

Either party may terminate this Agreement for cause or without cause at any time. Contractor will

be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

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

18. ATTORNEY FEES

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

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

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

21. ENTIRE AGREEMENT

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

22. INSERTED PROVISIONS

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

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in

no way affect, limit, or amplify the terms or provisions of this Agreement.

24. SEVERABILITY/PARTIAL INVALIDITY

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

25. SURVIVAL

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

26. NOTICES

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

<p>To City of Cupertino Office of the City Manager 10300 Torre Ave., Cupertino CA 95014</p> <p>Attention: Daniel Degu Email: danield@cupertino.gov</p>	<p>To Contractor: Cupertino Chamber of Commerce Inc. 20455 Silverado Ave., Cupertino CA 95014</p> <p>Attention: Deborah Feng Email: deb@cupertino-chamber.org</p>
---	--

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 Tina Kapoor

Title Deputy City Manager

Date Apr 4, 2024

CONTRACTOR

By Deborah L. Feng

Name Deborah L. Feng

Title Chief Executive Officer

Date Apr 3, 2024

APPROVED AS TO FORM:

Christopher D. Jensen

CHRISTOPHER D. JENSEN

Cupertino City Attorney

ATTEST:

Kirsten Squarcia

KIRSTEN SQUARCIA

City Clerk

Date Apr 4, 2024

Exhibit A - Scope of Work
CUPERTINO CHAMBER OF COMMERCE

Services to include, but not limited to, the following:

1. Technical Assistance:

- a. Provide technical assistance services to existing and prospective businesses located in the City of Cupertino and seeking such assistance, including in-person, phone, and email during normal business hours (Monday through Friday 9 am to 5 pm), as well as provide information online through the Chamber website. Information shall include, but not limited to topics such as:
 - How to open, operate, or grow your business in Cupertino
 - Contacts for City services and departments
 - Help ensure that individuals and organizations doing business in the City of Cupertino possess a current business license.
 - Community events above and beyond those not already provided by the Chamber
 - Recreational amenities
 - Retail shopping and dining amenities
 - Lodging and conference facilities
 - Refer businesses and individuals to other businesses located in Cupertino.
 - Other general information requests
- b. Support business programs and initiatives developed by the City including but not limited to the Cupertino Business Outreach Program and business surveys.
- c. Plan and host at least four (4) technical assistance seminars/webinars each year and select topics with the City that are pertinent to small businesses such as public safety in commercial areas, doing business in Cupertino focused on multi-lingual and multi-cultural businesses, green business practices, digital marketing, etc.
- d. Participate in and secure business representation for exercises related to business resiliency and continuity as part of the City's Emergency Operations Plan (EOP) update.
- e. Assist the City with economic development research or business stakeholder focus groups as needed to gather feedback from the business community.
- f. Participate in Small Business Technology Platform as a resource provider and conduct outreach to onboard small businesses on the platform.
- g. Coordinate ribbon cuttings for new business openings for businesses with a valid Cupertino business license and regardless of membership status with the Chamber.

2. Marketing & Promotion/Information Dissemination:

- a. Develop and produce a Cupertino Dashboard with relevant Cupertino demographic and economic data in coordination with the City. This dashboard will be updated

quarterly. The City will use this data for business attraction and retention efforts, and to identify emerging trends, and where appropriate, recommend new policies.

- b. Support ad-hoc requests for information and services from individuals, organizations, and businesses that pertain to the greater Cupertino community.
- c. Market and promote business-related City events held in Cupertino.
- d. Conduct outreach and education regarding prospective policy changes, and new city rules and regulations (wages, waste reduction, transportation, Single Use Plastics, etc.) to all businesses in the City.
- e. Design and promote current and future marketing campaigns (for example #ShopCupertino and #CupertinoCares).
- f. Support Small Business Saturday activities and highlight all small businesses in the City.
- g. Create, produce, and maintain an online publication to include information on the City, community, and businesses of Cupertino. Digital publication to be updated quarterly.
- h. At its office, the Chamber will make available information provided by the City, which may include, but not limited to:
 - The Scene
 - Recreation Brochure
 - City Contact Information
 - Other materials as they become available
- i. As appropriate and or as requested by the City, the Chamber will promote community events, programs, services, and alerts.
- j. Conduct and share surveys and survey results relevant to the economic health of Cupertino.
- k. Working closely with the City Manager's Office, create a Cupertino promotion strategy for major regional events, including the Superbowl and World Cup Soccer, to present the City in a positive manner and to draw Cupertino into the events.

3. **Events/Meetings:**

- a. Provide and promote opportunities for City representatives to present and connect with businesses at various Chamber and other meetings including but not limited to the Asian American Business Council, Legislative Action Committee, Chamber Board, and Chamber community forums.
- b. Host a quarterly professional Women's business luncheon or speaker series to provide networking opportunities for women in business and hear from a speaker or special presenter on related topics at City facilities at no charge, or other venues around Cupertino, and online.
- c. Assist city staff in scheduling and participate in Cupertino Business Outreach Program (CBOP) in-person and virtual meetings with Cupertino businesses.
- d. Organize commercial and retail broker breakfasts.

- e. Attend City and other associated meetings as needed.

4. Other Provisions:

- a. Provide Chamber membership for the City at no charge currently set at \$3,000 for the established rate for employers with 201 to 300 employees. Benefits of this membership to include registration and meals for two City staff (City Manager and/or designee) as well as all Councilmembers at events hosted by the Chamber including:
 - o Chamber Star Awards
 - o LAC in-person meetings
 - o Lunar New Year Luncheon
 - o Other events as hosted by the Chamber
- b. Chamber activities not related to this or other agreements with the City, will be regulated by the Municipal Code and Policies of the City of Cupertino.
- c. The City of Cupertino will provide quarterly updates of City of Cupertino business license holders upon request of the Chamber via email.

Reporting Requirements:

The Chamber will track information on a quarterly basis directly related to this Agreement and report to the City a summary of services referenced below rendered to Chamber members and non-members. These reports may include, but not limited to:

- 1. Technical Assistance:
 - o Number of businesses served.
 - o Sector and size of businesses served, and services rendered.
 - o Number of ribbon cuttings or grand openings held for Cupertino businesses.
- 2. Marketing & Promotion/Information Dissemination:
 - o Summary of ad-hoc requests for information.
 - o Summary of business seminars and events organized including topics, attendees, other pertinent outcomes.
 - o Summary of outreach efforts around new city policies, rules, regulations.
 - o Summary online impressions generated for marketing and promotions of campaigns.
- 3. Events/Meetings:
 - o Key performance indicators (KPIs) around marketing efforts including social media metrics.

- Summary of the outreach conducted for events.
 - Summary of broker breakfasts, in partnership with the City, including attendee contact information and leads generated.
4. Key successes achieved during the period.
 5. Recommendations for future endeavors that advance the common goals of the agreement.

The reports will be in a format mutually agreed to in writing by the City and the Chamber. The City, where appropriate, will provide publicly available data to Chamber staff when partnering to implement activities outlined in this scope of work.

Exhibit B – Schedule of Performance

Cupertino Chamber of Commerce

The initial term of this agreement is one year from the effective date as defined in the signed agreement. The City Manager reserves the right, upon mutual consent and notice to the Chamber, to extend the contract for up to four additional years for the total term not to exceed five years. The scope and budget are expected to be the same for additional years, however with Chamber's consent and subject to the expenditure limits approved by the City Council, the City Manager can update the scope to best address the needs of the business community at the time as economic conditions change or new priorities emerge.

The Chamber will work monthly to accomplish the deliverables outlined in Exhibit A. The Chamber will receive compensation at the hourly rate established in Exhibit C.

Exhibit C – Compensation
Cupertino Chamber of Commerce

Invoicing and Payments: The Chamber will submit monthly invoices which will include the number of hours spent on the Agreement scope. The City will pay at the rate of \$50/hr for the worked performed. In no event shall the total amount paid under this Agreement exceed \$52,000 annually.

EXHIBIT D
Insurance Requirements
Design Professionals & Consultants Contracts

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

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
 Not required. Consultant has provided written verification of no employees.
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. If written on a claims made form:
 - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
 - b. Insurance must be maintained for at least five (5) years after completion of the Services.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

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

Additional Insured Status

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

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City’s option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

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

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

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

Higher Insurance Limits

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

Adequacy of Coverage

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Name Of Additional Insured Person(s) Or Organization(s): City of Cupertino It's officers, agents & employees (see manuscript for primary wording)</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Effective Date: 08/10/2018

Name of Person or Organization (Additional Insured):

City of Cupertino

SECTION II – WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the endorsement Schedule, but only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” arising out of or relating to your negligence in the performance of “your work” for such person(s) or organization(s) that occurs on or after the effective date shown in the endorsement Schedule.

This insurance is primary to and non-contributory with any other insurance maintained by the person or organization (Additional Insured), except for loss resulting from the sole negligence of that person or organization.

This condition applies even if other valid and collectible insurance is available to the Additional Insured for a loss or “occurrence” we cover for this Additional Insured.

The Additional Insured’s limits of insurance do not increase our limits of insurance, as described in **SECTION III – LIMITS OF INSURANCE**.

All other terms, conditions, and exclusions under the policy are applicable to this endorsement and remain unchanged.




CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/17/2023

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

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

PRODUCER  CATHERINE CHEN INSURANCE AGENCY INC. AGENT LICENSE NUMBR: 0E83624 20132 STEVENS CREEK BLVD CUPERTINO, CA 95014	CONTACT NAME: CATHERINE CHEN PHONE (A/C No. Ext): 408-863-0000 E-MAIL ADDRESS: CATHERINE.CHEN.JXFY@STATEFARM.COM	FAX (A/C, No): 408-863-1230	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED CUPERTINO CHAMBER OF COMMERCE INC 20455 SILVERADO AVE CUPERTINO CA 95014-4439	INSURER A: State Farm General Insurance Company		25151
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	
							MED EXP (Any one person)	\$	
							PERSONAL & ADV INJURY	\$	
							GENERAL AGGREGATE	\$	
							PRODUCTS - COMP/OP AGG	\$	
								\$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$	
							BODILY INJURY (Per person)	\$	
							BODILY INJURY (Per accident)	\$	
							PROPERTY DAMAGE (Per accident)	\$	
								\$	
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$	
							AGGREGATE	\$	
								\$	
F	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	Y	97-EB-G577-9	08/11/2023	08/11/2024	<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Annual Premium: 1184.00

Date paid: JUL-10-23

WAVIER OF SUBROGATION ADDED 11/15/2023 for City of Cupertino, its City Council, officers, officials, employees, agents, servants, and volunteers.

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Completed by an authorized State Farm representative. If signature is required, please contact a State Farm agent.

© 1988-2015 ACORD CORPORATION. All rights reserved.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

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

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

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

Schedule

<u>Person or Organization</u>	<u>Job Description</u>
CITY OF CUPERTINO ITS CITY COUNCIL OFFICERS OFFICIALS EMPLOYEES AGENTS SERVANT AND VOLUNTEERS 10300 TORRE AVE CUPERTINO CA 95014	REPORTING WORK WITH BUSINESS, OTHER EVENTS THAT EMPHASIZE THE MULTI-CULTURE NATURE OF THE CITY

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 11/15/23	Policy No. 97 EBG577 9	Endorsement No.
Insured CUPERTINO CHAMBER OF COMMERCE INC 20455 SILVERADO AVE CUPERTINO CA 95014-4439	Insurance Company State Farm Fire and Casualty Company	

Countersigned By _____

Professional Liability Errors & Omissions Insurance Declarations

This is a "Claims Made and Reported" Policy in which Claim Expenses are included within the Limit of Liability unless otherwise noted. Those words (other than the words in the captions) which are printed in Boldface are defined in the Policy.

Declaration Effective Date:	July 24, 2023	
Policy No.:	P102.164.398.1	
1. Named Insured:	Cupertino Chamber of Commerce	
2. Address:	20455 Silverado Ave Cupertino, CA 95014	
Email Address:	contact@cupertino-chamber.org	
3.A. Limit of Liability:	\$2,000,000	Each Claim
3.B.	\$2,000,000	Aggregate for all Claims
4. Deductible:	\$500	Each Claim
5. Notice:	Phone: 866-424-8508 Email: reportclaim@hiscox.com Mail: Hiscox 5 Concourse Parkway, Suite 2150 Attn: Direct Claims Atlanta GA, 30328	
6. Policy period:	From: July 24, 2023	To: July 24, 2024
At 12:01 A.M. (Standard Time) at the address shown above.		
7. Retroactive Date:	April 1, 1954	
8. Premium:	\$1,846.00	
9. Attachments:		

DPL D001 CW (11/19) - Professional Liability Errors & Omissions Insurance Declarations
 DPL P001 CW (05/13) - Professional Liability Coverage Form
 DPL E5424 CW (02/15) - Blanket Additional Insured Endorsement
 DPL E5019 CW (01/10) - Marketing Consulting Services Endorsement
 DPL E1901 CW (08/21) - Cyber Incidents Exclusion Endorsement
 DPL E5102 CA (01/10) - California Amendatory Endorsement
 INT N003 CW (01/19) - Policyholder Notice Electronic Delivery
 INT N001 CW (01/09) - Economic And Trade Sanctions Policyholder Notice

IN WITNESS WHEREOF, the Insurer indicated above has caused this Policy to be signed by its President and Secretary, but this Policy shall not be effective unless also signed by the Insurer's duly authorized representative.



President



Secretary



Authorized Representative

Date: July 24, 2023