

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND
CSG CONSULTANTS, INC. FOR
APPLE CAMPUS 2 PLAN REVIEW SERVICES**

THIS AGREEMENT, is entered into this twentieth day of October, 2016, by and between the CITY OF CUPERTINO, a California municipal corporation ("City"), and CSG Consultants, Inc., a California Corporation whose address is 550 Pilgrim Drive, Foster City, California 94404 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties").

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement.

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Consultant desire to enter into an agreement for plan review services at Apple Campus 2 upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on October 20, 2016, and shall terminate on December 31, 2018, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service pursuant to the schedule of performance set forth in Exhibit "A," attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one million one hundred and twenty thousand dollars (\$1,120,000.00) based on the rates and terms set forth in Exhibit "A."

4. **TIME IS OF THE ESSENCE**

Consultant and City agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner

commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

6. **INDEPENDENT PARTIES**

City and Consultant intend that the relationship between them created by this Agreement is that of independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by City to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA)**

Consultant assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Consultant shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

8. **NON-DISCRIMINATION**

Consistent with City's policy prohibiting harassment and discrimination, Consultant agrees that it shall not harass or discriminate against a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS**

Standard Indemnification:

Consultant shall, to the fullest extent allowed by law and without limitation of the provisions of this Agreement related to insurance, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out, pertaining to, or related to the negligent performance of this Agreement by Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and

expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. The acceptance of the Services by City shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the Services or termination of this Contract.

10. **INSURANCE:**

A. **General Requirements.** On or before the commencement of the term of this Agreement, Consultant shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D". Such certificates, which do not limit Consultant's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino by certified mail, Attention: City Manager." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

B. **Subrogation Waiver.** Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

C. **Failure to secure or maintain insurance.** If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **Additional Insured.** City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **Sufficiency of Insurance.** The insurance limits required by City are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. **Maximum Coverage and Limits.** It shall be a requirement under this

Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insured City. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

11. **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 this Agreement, and that it will not employ any person having such an interest. Consultant agrees to advise City immediately if any conflict arises and understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST TRANSFERS**

Consultant 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 without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL**

Unless prior written consent from City is obtained, only those people and subcontractors whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement.

Subcontractor further agrees to include these same provisions with any sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the subcontractor upon request. Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to City.

14. **PERMITS AND LICENSES**

Consultant, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

15. **REPORTS**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of City. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to City the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of City, and all publication rights are reserved to City. Consultant may retain a copy of any report furnished to the City pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by City in execution or implementation of: (1) The original Project for which Consultant was hired; (2) Completion of the original Project by others; (3) Subsequent additions to the original project; and/or (4) Other City projects as City deems appropriate.

C. Consultant shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by City.

16. **RECORDS**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and

shall be maintained for a period of three (3) years after Consultant receives final payment from City for all services required under this agreement.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. **NONAPPROPRIATION**

This Agreement is subject to the fiscal provisions of the Cupertino Municipal Code and Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

18. **ENVIRONMENTALLY PREFERABLE PURCHASING**

Consultant shall comply with the City's Environmentally Preferable Procurement Policy whenever practicable in completing any work under this agreement, including but not limited to:

- Using paper products made with recycled content and recycled/remanufactured toner and ink jet cartridges;
- Printing with soy or low volatile organic compounds (VOC) inks;
- Using energy-star compliant equipment;
- Using cleansers and working with janitorial contractors to meet Green Seal's Industrial and Institutional Cleaners Standard; and
- Ordering supplies electronically and practicing other internal waste reduction and reuse protocols.

19. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO CITY:
City of Cupertino
10300 Torre Ave.
Cupertino CA 95014
Attention: Albert Salvador, Building official

TO CONSULTANT:
Michael Loomis
CSG Consultants, Inc.
550 Pilgrim Drive
Foster City, CA 94404

20. **TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified and according to the requirements set forth in City's written notice of default, and in addition to any other remedy available to the City by law, the City Manager may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The City Manager shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

City shall pay Consultant for services satisfactorily performed up to the effective date of termination. If the termination is for cause, City may deduct from such payment the amount of actual damage, if any, sustained by City due to Consultant's failure to perform its material obligations under this Agreement. Upon termination, Consultant shall immediately deliver to the City any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of City.

21. **COMPLIANCE**

Consultant shall comply with all state or federal laws and all ordinances, rules, policies and regulations enacted or issued by City.

22. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

23. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

24. **WAIVER**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Consultant.

26. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

27. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

28. **CAPTIONS AND TERMS**

The captions 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. All unchecked boxes do not apply to this Agreement.

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

CONSULTANT
CSG Consultants, Inc.

MUNICIPAL CORPORATION
City of Cupertino

By _____
Title _____
Date _____

By _____
Title _____
Date _____

- Over \$175,000- Council Approval Required
- Over \$45,000- Department Head Approval Required
- Up to \$45,000- Designated Supervisor Approval Required

RECOMMENDED FOR APPROVAL

Albert Salvador, Building Official

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Exhibits: (Check box for exhibits that apply to this contract and attach)

- Exhibit "A"- Scope of Services, Schedule of Performance, Compensation
- Exhibit "B"- Insurance Requirements and Proof of Insurance

EXPENDITURE DISTRIBUTION

PO # 2017-	100-73-714 900-923
Amount	\$1,120,000.00
Total	\$1,120,000.00

Apple 2 Campus Project	Remaining Scope	Fee to completion
Phase I		
5 Site Structures	Building permit review ongoing; review of RFIs, deferred submittals; review up to 5 addendum submittals per building.	\$40,000
Theater	Review of RFIs, deferred submittals; review up to 4 addendum submittals.	\$50,000
Fitness Center	Review of RFIs, deferred submittals; review up to 4 addendum submittals.	\$40,000
General Administration	Attend coordination meetings, processing of submittals, coordination with other City departments.	\$100,000
Phase II		
Office Building	Review of RFIs, deferred submittals; review up to 4 addendum submittals.	\$50,000
Parking Structure	Review of RFIs, deferred submittals; review up to 4 addendum submittals.	\$60,000
R & D North and South	Building permit review ongoing; review of RFIs, deferred submittals; review up to 5 addendum submittals per building.	\$150,000
Visitor's Center	Building permit review ongoing; review of RFIs, deferred submittals; review up to 4 addendum submittals.	\$90,000
Marcom Building*	Project not yet submitted for review. Scope includes review for permit issuance; review of RFIs, deferred submittals; review up to 5 addendum submittals.	\$190,000
General Administration	Attend coordination meetings; processing of submittals; coordination with other City departments.	\$50,000
On-Site Plan Review	Up to 2 days per week as needed for project requirements.	\$300,000
Total		\$1,120,000

Exhibit B
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$500,000 each occurrence
	\$1,000,000 aggregate - all other
Property Damage:	\$100,000 each occurrence
	\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automotive liability coverage in the following minimum limits:

Bodily Injury:	\$500,000 each occurrence
Property Damage:	\$100,000 each occurrence
	or
Combined Single Limit:	\$500,000 each occurrence



(4) **Professional Liability**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.