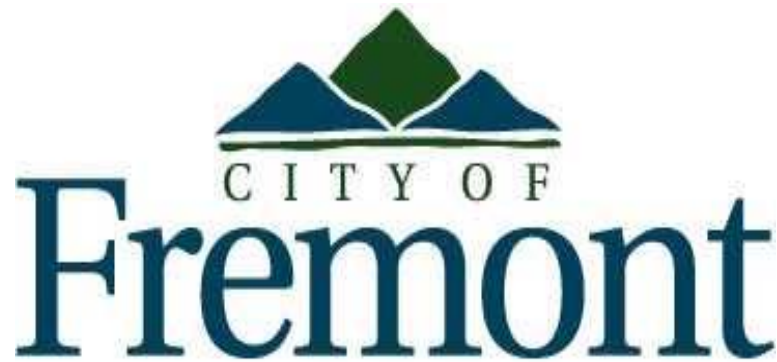




City of Fremont

Request for Proposals:

For: Computer Software Training

RFP #13-001

**PROPOSALS DUE NOT LATER THAN:
2:00 PM ON TUESDAY, MAY 15, 2012**

Deliver Proposals to:

**Purchasing Division, Finance Department
3300 Capitol Avenue, Building B
Fremont, CA 94538**

**Request for Proposals
Computer Software Training**

RFP SUMMARY

- A.** The CITY OF FREMONT (hereinafter "City") hereby requests proposals for the Computer Software Training (hereinafter "Services"), and will receive proposals in the Purchasing Division at 3300 Capitol Avenue, Building B, Fremont CA, 94538, up to the hour of 2:00 p.m., on the 15th day of May, 2012. Official proposals will **not** be accepted via fax or e-mail. **Late submittals will not be accepted. City receipt means actual delivery and acceptance by an authorized City Representative in the City's Purchasing Division.**
- B. SCOPE OF SERVICES.** The City has prepared a Services outline, which is attached as Exhibit "1" to this Request for Proposals ("RFP"), and generally includes training employees in various computer software applications.
- C. REQUESTS FOR CLARIFICATION OF THE RFP.** If any vendor making a proposal (alternatively, "Proposer" or "You") has any question regarding the meaning of any part of this RFP, or finds discrepancies in or omissions from this RFP, the Proposer shall submit a written request for an interpretation to www.bidsync.com. All addenda issued by the City in regard to this RFP shall be considered a part of the specifications provided to the interested vendors for preparation of their proposals, and the specifications as modified by the addenda should be addressed in writing in the Proposer's response. Addendums will be posted at www.bidsync.com.
- D. SUBMITTAL OF PROPOSALS.** Instructions for the submittal of proposals are set forth throughout this RFP. Generally, each proposal shall be submitted with a cover letter and four attachments, including: (A) Scope of Services, (B) Price list, (C) Statement of Qualifications, and (D) Proposed Service Agreement Terms. Proposals shall be submitted in a sealed envelope clearly marked on the outside: **"SEALED PROPOSAL FOR RFP #13-001-COMPUTER TRAINING SERVICES – DO NOT OPEN WITH REGULAR MAIL."**
- Number of copies: 2 printed copies of the proposal are required for City purposes. One copy shall be clearly marked, **"MASTER COPY"**.
- E. CITY'S REVIEW OF PROPOSALS.** All responsive proposals will be reviewed and evaluated by the City to determine which Proposal best meets the City's needs as specified in this RFP. The criteria by which the

City will evaluate the proposals are described in this RFP. The City reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process. The City reserves the right to negotiate the terms of the Services Agreement described within this RFP with one or more Proposers.

F. AWARD OF AGREEMENT. The City currently anticipates awarding a City Services Agreement to the successful Proposer on or before June 1, 2012. The contract will not take effect until July 1, 2012. No proposal or agreement to provide these Services shall be binding upon the City until a Services Agreement (pre-approved by the City Council if required by the City's Purchasing Ordinance) is signed by the successful Proposer and the City.

REQUEST FOR PROPOSAL SCHEDULE:

RFP Released	April 11, 2012
Questions submitted by	May 2, 2012
Addendum, if needed	May 7, 2012
Proposals due to City	May 15, 2012

INSTRUCTIONS TO PROPOSERS

1. **TIME AND PLACE OF DELIVERY OF PROPOSALS.** It is solely Proposer's responsibility to ensure that their proposal is timely received by the City's Authorized Purchasing Division Representative at the place identified on the cover page of this Request for Proposals ("RFP").
2. **FORMAT OF ENVELOPE FOR PROPOSAL.** The Proposer shall submit the proposal in a sealed envelope clearly marked on the outside: **"SEALED PROPOSAL FOR RFP #13-001 – COMPUTER TRAINING SERVICES-- DO NOT OPEN WITH REGULAR MAIL."**
3. **FORMAT AND QUALITY OF PROPOSALS.** All proposals shall be prepared in a clear and concise manner. Unnecessarily elaborate or glossy proposals are neither expected nor desired. The emphasis of the proposal should be on responding to the requirements set forth in this RFP.
4. **PROPOSER'S SIGNATURE.** An authorized representative of the Proposer must sign the proposal cover letter which must: (1) identify this RFP by name of Services and number; (2) identify Proposer's full legal name, specify a contact person, and state Proposer's address, telephone number, fax number, and e-mail address; (3) express Proposer's willingness to comply with the procedures described in this RFP; and (4) incorporate the four Proposal Attachments A – D by reference.
5. **CONTENTS OF PROPOSAL.** Each proposal must, at a minimum, address Proposer's background, experience and qualifications to satisfactorily and competently render the Services. Each Proposer must attach the four separate Proposal attachments to their proposal cover letter, with the attachments labeled as follows: (A) Scope of Services, (B) Price list, (C) Statement of Qualifications, and (D) Proposed Service Agreement Terms. The contents of each such attachment should contain the information specified for them below.

5(A). Detailed Scope of Services. RFP Attachment "A" is a detailed Required Services Outline describing the Services that the successful Proposer should be able to perform or deliver. The Proposal Attachments are designed to allow the City to expeditiously compare and rank proposals; each Proposer's response should follow the Proposal Attachment "A" order and formatting specified. The "Services" definition to be integrated into the executed Service Agreement will be based upon Proposal "A," services described in the successful Proposer's proposal, and services and parameters agreed to between the parties in the final contracting negotiation process. Each proposal must at least include the following:

5(A)(1). A complete description of the RFP Attachment “A” qualifying services that Proposer offers to perform if awarded a contract. The Proposer may identify services supplemental to those specified in RFP Attachment “A” if they are offered to assist the City more efficiently and effectively achieve its Services objectives.

5(A)(2). The expected turnaround and performance time for each of the Services the Proposer is capable of performing.

5(B). Price List. Each Proposer must prepare a price list which states the proposed rates for the term of the Services Agreement for the Services.

5(C). Statement of Qualifications. Each Proposer must prepare a Statement of Qualifications which provides all of the following:

5(C)(1). A description of Proposer’s organizational size, stability, and capacity to provide the Services, which at least includes Proposer’s: (1) years in the computer training business, (2) its workforce size, (3) office locations that will primarily and/or secondarily provide the Services (please also list any other locations), (4) number of employees at the primary office location from which the Services will be provided, and (5) the primary office location’s operating hours.

5(C)(2). A description of Proposer’s experience performing similarly scoped services for customers of similar size, nature, and complexity as the City. The description should at least include the: (1) the number of years Proposer has performed such similar services; and (2) the customers for whom Proposer has recently performed such similar services. For the customers detailed include the name, contact person, address, and phone number of such reference customers; and describe what service were performed, the contract dollar amount, and the performance dates.

5(C)(3). A list of the principals, employees, agents, and sub-consultants (collectively, “Performers”) that Proposer proposes to assign to the City contract. This list should at least include a summary of the Performers qualifications (e.g., education, training, licenses, and experience), the proposed approximate number of hours each Performer will service the City account; and each Performer’s proposed assignment in relation to the City account. The City reserves the right to approve or reject all persons performing any of the Services.

5(D). Proposed Service Agreement Terms. Each Proposer must specifically identify and fully disclose all of the following:

5(D)(1). Any portions of the City's standard form service agreement (contained in RFP Exhibit "3") which the Proposer desires to amend (either by addition, deletion, or modification). Unless specifically eliminated from this RFP's requirements by the City, the terms and conditions contained in the City's standard form service agreement (RFP Exhibit "3") are additional specifications and requirements that the City will use to evaluate Proposer's submissions. Any Proposer with an objection to any such term or condition must expressly state said objection in Proposal Attachment "D" or it shall be deemed waived.

5(D)(2). Any actual or potential conflicts of interest as specified in Paragraph 11 of this RFP.

5(D)(3). The proposed Services Agreement term, specified in years. The City is seeking a five year term, but will consider alternative term durations.

6. CITY'S REVIEW OF PROPOSALS. The City will review each proposal submitted for responsiveness to the RFP and its specification after all proposals are received and opened. The City will further evaluate each Proposer's qualifications to satisfactorily perform the Services (which may include further investigation and reference checking by the City), the character of the Services that each Proposer is offering to perform, and any and all other objective criteria by which proposals may be ranked. The City may request clarifications about proposals directly from one or more Proposers. In reviewing the proposals, the City may further consider the following:

6(A). The qualifications (including education, training, licenses, experience, and past performance) of the Proposer and its agents, employees, and sub-consultants in completing projects of a similar type, size, and complexity. The City may consider Proposer's timely and accurate completion of similar projects within budget.

6(B). The feasibility of the proposal based upon the methodology of the proposed scope of services, and the reasonableness of the schedule of billing rates.

6(C). Proposer's understanding of the work to be completed based upon the clarity of the proposal and responsiveness to this RFP.

6(D). Proposer's proposed language for the Services Agreement.

7. **AWARD OF AGREEMENT.** The City shall notify those Proposers who will be considered for further evaluation upon completion of the review period. All Proposers so notified will be invited to make a presentation in accordance with City directions, and may also be invited to negotiate additional Services details with the City. Any delay caused by Proposer's failure to respond to the City's directions may lead to a rejection of their Proposal.

7(A). The City will send the successful Proposer(s), if any, a Service Agreement for their consideration via the United States mail. The successful Proposer(s) will then have ten business days from the date of City's cover letter to return the Service Agreement after having it signed by a person authorized to bind Proposer to its terms. The Services Agreement will be deemed entered into upon its execution by an authorized City representative. Final approval is subject to City Council approval if so required by the City's purchasing ordinance. No agreement shall be binding upon the City until a Service Agreement is signed by duly authorized representatives of both the Proposer and the City. Any such Service Agreement will be deemed made in the City of Fremont, Alameda County, and State of California.

7(B). The City reserves the right to reject any or all proposals, and to waive any irregularity. Any award of a Service Agreement by the City will be based upon a total review and analysis of each proposal.

8. **PROPOSALS ARE PUBLIC RECORDS.** Each proposer is hereby informed that, upon submittal of its proposal to the City in accordance with this RFP, the proposal is the property of the City.

8(A). Unless otherwise compelled by a court order, the City will not disclose any proposal while the City conducts its deliberative process in accordance with the procedures identified in this RFP. However, after the City either awards a Service Agreement or the City rejects all proposals, each proposal will be deemed to be subject to the public disclosure requirements of the California Public Records Act, (California Government Code sections 6250, *et seq.*) (the, "Act"), unless there is a legal exception to preclude public disclosure.

8(B). The City shall bear no obligation to defend the proposal or its contents from public disclosure under the Act. Any Proposer desiring to prevent public disclosure under the Act must: (1) clearly mark the confidential portions of its proposal "Confidential"; (2) upon City request, must identify the legal basis for non-disclosure under the Act; and (3) must expressly state in their proposal cover letter their binding promise to defend, indemnify, and hold the City harmless from any and all costs, harm, obligations, liabilities and litigation related to, or

arising out of, any claim or request for disclosure of the “Confidential” portion of the proposal made by any third party.

9. COSTS ASSOCIATED WITH PROPOSALS PREPARATION ARE VENDOR RESPONSIBILITY. All costs incurred by prospective vendors associated with the preparation of a response to this RFP and any subsequent demonstrations, analyses, studies, responses to inquiries, travel for purposes of competing for and/or negotiating a contract with the City are the sole responsibility of the Proposer.

10. CONFLICTS OF INTEREST. Each Proposer must disclose any existing or potential conflict of interest relative to the performance of the contractual services as a result of this RFP. Any relationship that might constitute an actual or potential conflict of interest must be disclosed. By submitting its proposal, each Proposer affirms that they have not given, nor do they intend to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a Proposer’s proposal. An award will not be made where a conflict of interest exists. The City will determine if a conflict of interest exists and whether it reflects negatively on the City’s selection of any particular Proposer. The City reserves the right to disqualify any Proposer on the grounds of an actual or apparent conflict of interest.

11. CONTRACT TERMS The term of this contract shall be effective July 1, 2012 through June 30, 2014 with an option to extend the contract three (3) additional one (1) year terms through June 30, 2017.

12. PRICING Prices stated shall include all cost associated with the performance of the services specified, including materials, supervision, labor, transportation, delivery, Sales tax and rental costs. No other charges shall be allowed.

City is exempt from federal excise taxes on these products and services, but do, however, pay sales and uses taxes. Exemption certificates are available upon request.

Prices stated shall stay firm for the initial two year term of this Contract. If this contract is extended for additional option periods price adjustments may be made, however, any request for price adjustments shall be made prior to the beginning date of the contract option renewal.

Contractor shall calculate and make a request of the City that the price for the next renewal year be increased by the latest published Consumer Price Index (CPI), San Francisco Bay Area, San Jose, index; April-April publication. If publication of said CPI should cease, such percentage increase shall be determined by reference to a similar index, or as agreed upon by the parties.

Attachment A

SCOPE OF SERVICES

Basic PC Application Training – The City of Fremont seeks a personal computer application training organization to provide training services for computer applications to its employees.

The City is standardized on the Microsoft platform for basic end-user applications, currently utilizing MS Windows 7 Enterprise, Office 2010.

Basic PC Application Training in the following products is required.

- **Word 2010: Level 1 – Editing & Formatting Documents**
Students will explore the many basic formatting features of Microsoft Word and will learn to create, edit and save basic Word documents. Class exercises include working with text and paragraphs; inserting and formatting tables; working with symbols and graphics; and using Word's proofreading features.
- **Word 2010: Level 2 – Styles, Templates & Mail Merges**
Students will learn a variety of intermediate formatting skills to create, modify and enhance complex documents and build personalized efficiency tools using Word 2010.
- **Word 2010: Level 3 – Creating & Managing Long Documents**
This course is designed for persons who want to gain skills necessary to manage lengthy documents, collaborate with others, and secure documents. You will create, manage, revise and distribute documents.
- **Word 2010: Transition from Word 2003**
This course is designed for experienced Word users who have used earlier versions of Word and who recently or are planning to upgrade to Word 2010. You will identify and use the new and enhanced features.
- **MS Publisher 2010: Creating Newsletters & Publications**
Learn to create, format and edit publications like newsletters and flyers using Microsoft Publisher. Class exercises include modifying the layout and structure of a document, formatting text, working with graphics, and preparing a publication for distribution.
- **Excel 2010: Level 1 – Worksheets, Formulas & Formatting**

You will create and edit basic Microsoft Office Excel 2010 worksheets and workbooks. Even if you have used Excel on some level or are a self-taught user, you will learn a variety of short cuts and time saving tricks to enhance your spreadsheet use.

- **Excel 2010: Level 2 – Advanced Functions, Charts & PivotTables**
You will use advanced formulas and work with various tools to analyze data in spreadsheets. You will also organize table data, present data as charts, and enhance the look and appeal of workbooks by adding graphical objects.
- **Excel 2010: Level 3 – Macros, Auditing & What-If Analysis**
You will automate some common Excel tasks, apply advanced analysis techniques to more complex data sets, troubleshoot errors, collaborate on worksheets, and share Excel data with other applications.
- **Excel 2010: Transition from Excel 2003**
This course is designed for experienced Excel users who have used earlier versions of Excel and who recently or are planning to upgrade to Excel 2010. You will identify and use the new and enhanced features.
- **Access 2010: Level 1 – Creating Databases**
This course is designed for students who wish to learn the basic operations of the Microsoft Access database program to perform their day-to-day responsibilities, and to understand the advantages that using a relational database program can bring to their business processes.
- **Access 2010: Level 2 – Queries, Forms & Reports**
This course is designed for individuals who wish to learn intermediate-level operations of the Microsoft Access program. You will improve and customize tables, queries, forms and reports, and share Access data with other applications.
- **PowerPoint 2010: Level 1 – Creating Presentations**
You will explore the PowerPoint environment and create a presentation. You will format text on slides to enhance clarity. To enhance the visual appeal, you will add graphical objects to a presentation and modify them. You will also add tables and charts to a presentation to present data in a structured form. You will then finalize a presentation to deliver.
- **PowerPoint 2010: Level 2 – Working with Graphics & Animation**
You will enhance your presentation by using features that will transform it into a powerful means of communication. You will customize the PowerPoint interface to suit your requirements and use features to create

dynamic and visually appealing presentations. You will then finalize a presentation and secure it to authenticate its validity.

- Windows 7: Level 1
Log on to Windows 7, explore its interface, identify the different components in the interface, customize the Windows 7 desktop, manage files and folders, use the common tools and programs available in Windows 7, and browse the Internet.
- Refresher Course Options
Training provider should have the ability to teach refresher courses on various Windows applications such as Word, Excel, and PowerPoint.
- Training provider's ability to teach Adobe Acrobat, Illustrator, InDesign & Photoshop as well as MS Projects and Visio, is highly desirable since we occasionally offer these classes to employees.

The training provider will be asked to provide training on-site at the City of Fremont and allow our employees to attend their publicly scheduled sessions as space permits.

The City will evaluate the potential provider's curriculum to identify the elements of training most appropriate to City employees. Courses conducted at the City of Fremont and at the training provider's facilities should be approximately 3 or 6 hours in length.

It is expected that approximately 130 City employees will participate in training opportunities each fiscal year. The types and levels of training in each software application will vary depending on employee needs and interest.

The on-site courses will be held in the City of Fremont's computer training room, which is currently located at 39550 Liberty Street, but will be relocated to 3300 Capitol Avenue, Building B, Fremont, CA, when a new classroom is completed. The current facility has workstations for a maximum of 12 students and one instructor.

If the City of Fremont cancels an on-site course, the training provider shall not charge the City if the course is cancelled 5 business days prior to the scheduled session.

If a City of Fremont employee signs up for an on-site course or a public course and does not cancel 5 business days prior to the scheduled session, the training provider will be allowed to bill the City for that course. However,

the training provider should allow that employee a make-up session of that course on a space available basis within 1 year.

Each student will be asked to complete a City of Fremont evaluation form after each course. If after a 90-day trial period the City determines that the course instruction is not satisfactory, the City will meet with the training provider to review the concerns. Training provider will be given 30 days to address the concerns. If after 30 days the problems have not been addressed, the City reserves the right to cancel the agreement with the training provider.

Once the training is underway, the City reserves the right to review course instructors and recommend changes to training provider, if deemed necessary.

If a City of Fremont employee takes a public course provided by the training provider and needs a refresher afterwards, the training provider will allow that employee to re-take the course on a space available basis within 1 year following the initial training.

SAMPLE SERVICE AGREEMENT
[INSERT #1**]**_____

This Service Agreement (hereinafter "Agreement") is made and entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter "City"), and [**INSERT #10** name of business and description of legal entity, i.e. LLC, Partnership, Corporation, etc.]_____, (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the "parties."

I. RECITALS

- A.** City requested a proposal from Consultant to perform the services generally including: [**INSERT #6**Describe services]_____
- B.** In response to the City's request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit "A," in return for the compensation described in this Agreement and Exhibit "B."
- C.** In reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C," the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 2. TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the

condition which purportedly caused the delay, and not later than the date on which performance is due.

3. PAYMENT.

3(A). Billing. In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefore (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant's billing rates (set forth on Exhibit "B," attached hereto and incorporated herein by reference). The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City.

3(B). "Not to Exceed" Compensation. The compensation payable to Consultant for the services identified in Exhibit "A" shall not exceed \$[***INSERT 11A***]_____. Consultant shall not perform any services beyond the services identified in Exhibit "A" without prior written authorization from the City's Authorized Representative. If the City's Authorized Representative provides authorization for additional services, the total compensation payable to the Consultant under this Agreement shall not exceed \$[***INSERT 11B***]_____.

3(C). Consultant's Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant's Authorized Representative. Consultant understands that, in entering into this Agreement, the City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its sub-consultants, if any) identified in Exhibit "C," attached hereto and incorporated herein by reference. Therefore, Consultant shall not replace its Authorized Representative, or any of the personnel or sub-consultants identified in Exhibit "C," without the prior written consent of the City. All services under this Agreement

shall be performed by, or under the direct supervision of, Consultant's Authorized Representative, as identified in Exhibit "C."

4(B). City's Authorized Representative. For the performance of services under this Agreement, the Consultant shall take direction from the City's Authorized Representative: [***INSERT 2***]_____, unless otherwise designated in writing by the City's Authorized Representative or the City Manager.

5. INFORMATION AND DOCUMENTATION

5(A). Information from City. City has made an effort to provide Consultant with all information necessary for Consultant's performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in City's possession.

5(B). Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, sub-consultant invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

5(C). Ownership of Work Product. All original documents prepared by Consultant (including its employees and sub-consultants) for this Agreement ("work product"), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand by the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City.

6. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or sub-consultants, including any negligent acts or omissions. Consultant is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City and

Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

- 7. CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and sub-consultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.
- 8. NONDISCRIMINATION.** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.
- 9. COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.
- 10. BUSINESS LICENSE.** The Consultant shall apply for and pay the business tax and registration tax for a business license, in accordance with Fremont Municipal Code title V, chapter 1, section 5-1100, *et seq.*
- 11. INSURANCE.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, sub-consultants, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements), and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent.

Concurrently with the execution of this Agreement by the Consultant, and prior to the commencement of any services, the Consultant shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Consultant shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

11(A). Minimum Insurance Levels. Consultant shall maintain insurance at the following minimum levels:

11(A)(1). Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

11(A)(2). Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

11(A)(3). Workers’ Compensation coverage as required by the State of California.

11(A)(4). Professional Liability coverage for damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

11(B). Endorsements. The insurance policies shall be endorsed as follows:

11(B)(1). For the commercial general liability insurance, the City (including its elected officials, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 11 85.

11(B)(2). Consultant's insurance is primary to any other insurance available to the City with respect to any claim arising out of this Agreement. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

11(B)(3). Consultant’s insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the City.

11(C). Qualifications of Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best’s rating of not less than “A:VII.”

- 12. REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-284-4050, and Consultant shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.
- 13. INDEMNIFICATION.** Consultant shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from performance, or failure to perform, under this Agreement.
- 14. TERM OF THE AGREEMENT.** The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit "A" and paragraph 2 of this Agreement. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit "B" or the maximum amount authorized under paragraph 3 of this Agreement.
- 15. DEFAULT.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.
- 16. NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized

Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City

To: Consultant

Attn: [*INSERT 12A***]**

Attn:[*INSERT 12B***]**

- 17. HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- 18. SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- 19. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.
- 20. ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 21. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written

consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

22. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

23. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

24. CONFLICTS. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

24. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

25. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

CITY OF FREMONT

CONSULTANT [see selection below]

[** INSERT FULL LEGAL NAME**]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

[see sample below for Pre-Approved as to Form if Unmodified & \$25,000 or Less]

By: _____
Title: City Attorney

1.

[PLEASE SELECT THE APPROPRIATE SIGNATURE BLOCK FROM THE FOLLOWING SAMPLES]

CORPORATIONS

Unmodified &
XYZ Land Development Inc,
a California corporation

APPROVED AS TO FORM
(Pre-Approved As to Form If
\$25,000 or Less):

By: _____

Its: _____

(needs to be officer from the operations side:
President, CEO, Vice President)

By: _____
Title: City Attorney

By: _____

Its: _____

(needs to be officer from the finance side: treasurer, CFO, secretary)

One corporate signature is acceptable if the person is an officer if the signature is notarized (although we would like you to ask for a corporate resolution showing that person is authorized to sign). A single signature where the person is not a corporate officer – eg general manager, etc – must be supported by a corporate resolution indicating that person has been delegated authority to sign contracts on behalf of the corporation

GENERAL PARTNERSHIPS

XYZ Land Development,
a California general partnership

By: _____

Its: General Partner

LIMITED PARTNERSHIPS

XYZ Land Development, LLP,
A California limited partnership

By: _____

Its: General Partner (need limited partnership agreement or certificate filed with state showing the person or entity is the general partner)

In many cases the general partner will be a corporation so the signature block would look like this:

XYZ Land Development, LP,
A California limited partnership

By: ABC Developers, Inc,
a California corporation

Its: General Partner

By: _____

Its: President, CEO, VP

By: _____

Its: Secretary, Treasurer, CFO

LIMITED LIABILITY COMPANY

XYZ Land Development, LLC,
a California Limited Liability Company

By: _____

Its: Managing Member (we need to see the operating agreement or certificate filed with secretary of state showing the person or entity is the managing member)

If the Managing Member is not an individual, but is a business entity then you would indent the signature block for the appropriate persons to sign as in the example for the limited partnership above.