



**CITY OF PALO ALTO UTILITIES
AND ADMINISTRATIVE SERVICES**

**REQUEST FOR PROPOSAL (RFP) NUMBER FTTH01
CITYWIDE ULTRA-HIGH-SPEED BROADBAND SYSTEM**

PRE-BID CONFERENCE:	9:00 AM; Thursday, October 19, 2006
RFP SUBMITTAL DEADLINE:	3:00 PM; Tuesday, November 28, 2006
CONTRACT MANAGER:	Kathy Bradley
PROJECT MANAGER:	Joe Saccio

**CITY OF PALO ALTO
PURCHASING/CONTRACT ADMINISTRATION
250 HAMILTON AVENUE
PALO ALTO, CA 94301
(650) 329-2271**

REQUEST FOR PROPOSAL (RFP) NO. FTTH01

TITLE: ULTRA-HIGH-SPEED BROADBAND SYSTEM

1. INTRODUCTION

The City of Palo Alto is seeking proposals for the construction and management of a citywide Ultra-High-Speed Broadband system. The required services and performance conditions are described in the attached Attachment C, Project Background and Scope of Work.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals (RFP) for your review and submittal (see asterisk):

- Attachment A – Bidder's Information Form*
- Attachment B – Certification of Non-discrimination*
- Attachment C – Project Background and Scope of Work
- Attachment D – Sample Agreement for Professional Services
- Attachment E – Sample Table Format, Qualifications of Firm Relative to City's Needs
- Attachment F -- (Not Applicable to this RFP)
- Attachment G – Insurance Requirements*
- Attachment H – Vendor Experience Check List*

The items identified with an asterisk (*) shall be filled out, signed by the appropriate representative of the company and returned with submittal.

3. INSTRUCTIONS TO BIDDERS

3.1 Pre-Proposal Conference

A Pre-Proposal conference will be held Thursday, October 19, 2006 at 9:00 a.m. in the Council Chambers Conference Room, 250 Hamilton Avenue, Palo Alto, CA. All prospective bidders are strongly encouraged to attend.

3.2 Examination of Proposal Documents

The submission of a Proposal shall be deemed a representation and certification by the bidder that it:

- 3.2.1 Has carefully read and fully understands the information that is provided by the City to serve as the basis for submission of this proposal.
- 3.2.2 Has the capability to successfully undertake and complete the responsibilities and obligations of its proposal.

- 3.2.3 Represents that all information contained in the proposal is true and correct at the time of submittal.
- 3.2.4 Did not, in any way, collude or conspire, directly or indirectly, with any person, firm, corporation or other bidder in regard to the amount, terms or conditions of its proposal.
- 3.2.5 Acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by bidder, and bidder hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on the ground that the bidder was not fully informed to any fact or condition.

3.3 Addenda/Clarifications

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received by the City no later than 1:00 p.m., Wednesday, November 1, 2006. Correspondence shall be addressed to Kathy Bradley, Contract Administrator, City of Palo Alto, 250 Hamilton Avenue, Palo Alto, CA 94301 or e-mailed to kathy.bradley@cityofpaloalto.org. Responses from the City will be communicated by Addendum to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFP and shall be acknowledged on the Bidder's Form.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives, including those given at the Pre-Proposal Conference.

3.4 Submission of Proposals

All proposals shall be submitted to:

City of Palo Alto
Purchasing and Contracts Administration
250 Hamilton Avenue, Mail Stop MB
Palo Alto, CA 94301

Proposals must be delivered no later than 3:00 p.m. on Tuesday, November 28, 2006. All proposals received after that time will be returned to the bidders unopened.

The bidder shall submit 7 copies of its proposal in a sealed envelope, addressed as noted above, bearing the bidder's name and address clearly marked, "RFP NO. FTTH01 FOR ULTRA-HIGH-SPEED BROADBAND." The

use of double-sided paper with a minimum 30% post-consumer recycled content is strongly encouraged.

3.5 Rights of the City of Palo Alto

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred by any bidder in the preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based in its sole discretion;
- Reject any and all proposals for any reason;
- Re-issue the Requests for Proposals;
- Postpone opening for its own convenience;
- Remedy technical errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the bidders;
- Accept other than the lowest price offer;
- Waive informalities and irregularities in the proposals; and
- Enter into an agreement with another bidder in the event the bidder fails to execute an agreement with the City.

An agreement with the City shall not be binding or valid unless and until it is approved by the City Council and executed by authorized representatives of the City and the bidder.

3.6 Proposal Certification

Upon submittal, each proposal shall be deemed submitted for no less than 180 days and cannot be revoked or withdrawn during that period.

3.7 Proprietary Proposal Materials

The City will endeavor to treat as confidential, trade secret, etc. all proposal materials, in accordance with applicable law. Labeling an item as “proprietary” does not necessarily afford protection from public disclosure under California law. All proposals are available for inspection under the California Public Records Act when the award-of-contract staff report is sent to City Council.

3.8 Availability of Drawings to Bidders

City of Palo Alto Utilities (CPAU) staff maintains drawings and records that describe the poles, conduits, and associated infrastructure owned by the City for the purpose of distributing utilities throughout Palo Alto. These drawings and records will be made available for inspection to bidders.

3.9 Errors in Proposals

Bidders are responsible for errors and omissions in their proposals. Any such errors and omissions will not serve to diminish their obligations to the City of Palo Alto.

3.10 Bidders' Experience and Qualifications

The City of Palo Alto seeks proposals from companies that are financially capable of assuming some or all of the financial risk associated with deploying such an ultra-high-speed broadband system in Palo Alto. Bidders should have experience with the installation and operation of telephone, high speed data, cable television networks, and other related services, or, experience with contracting with retail service providers of the above services. Bidders should also have experience with placement and maintenance of outside plant infrastructure.

4. PROPOSED RFP TIMELINE

The RFP Timeline is as follows:

RFP Issued	September 27, 2006
Pre-Proposal Meeting	October 19, 2006
Deadline for questions, clarifications	November 1, 2006
Proposal submittal deadline	November 28, 2006; 3:00 PM
Finalists identified	Week of December 18, 2006
Bidder Interviews	Week of January 8, 2007

5. INFORMATION TO BE SUBMITTED (to be submitted in this order only)

These instructions govern the format and content of the proposal. The intent of the RFP is to elicit responses that can communicate the bidder's degree of understanding of the City's requirements and its approach to successfully provide the products and/or services on time and within budget. In addition to the required Proposal content outlined in **Attachment C, Project Background and Scope of Work**, all Proposals shall address the following informational items in the order listed below and shall be numbered 1 through 6 in the proposal document.

5.1 Chapter 1 – Proposal Summary

This Chapter shall discuss the highlights, key features and distinguishing points of the proposal. A separate sheet shall include a list of individuals and contacts for this proposal and how to communicate with them. Limit this chapter to a total of three (3) pages, single-line spacing, including the separate sheet.

5.2 Chapter 2 – Profile on the Proposing Firm(s)

This Chapter shall include a brief description of all parties involved in the proposal, including a discussion of the relevant firms' financial stability, capacity and resources.

5.3 Chapter 3 – Qualifications of the Firm(s)

This chapter will be in addition to the completed Attachment H – Vendor Experience Checklist.

This Chapter shall include a detailed description of the bidder's qualifications and previous experience in designing, procuring, installing and maintaining communication infrastructure, fiber, and broadband IP data networks. Provide in a table format (see Sample Table Format, Qualifications of Firm Relative to City's Needs, Attachment E) descriptions of pertinent project experience with other public municipalities and private sector that includes a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, and the period over which the work was completed, Give a brief statement of the firm's adherence to the schedule and budget for the project.

If the bidder will be offering certain elements of the project through one or more subcontractors, sufficient information and data with respect to each subcontractor must be provided to demonstrate that each has the requisite experience to perform the function assigned by the bidder.

Proposals must include the following information on the bidder:

- 5.3.1 Background of the organization showing products, technologies, professional strengths and abilities, total number of years in business, years supplying telecommunications services, general scope of services provided, and number of employees.
- 5.3.2 Complete information on all company principals and their experience in these technologies.
- 5.3.3 A narrative description and organizational chart depicting the management of the firm's organization and its relationship to any business entity or subsidiary.
- 5.3.4 Description of current operations, the number and scope of other projects currently ongoing or set to begin within the next six (6) to twelve (12) months.
- 5.3.5 Statement whether the bidder or any corporation or other entity which has a direct or indirect controlling interest in or is controlled by the bidder or any subsidiary corporation or other entity has:
 - Filed for bankruptcy (dissolution or reorganization) within the past five (5) years
 - Been suspended or barred from bidding on government (federal, state or local) contracts

- Been subjected to any federal, state, or local audits
- Had any contracts relevant to the work requested in this RFP terminated either voluntarily or involuntarily within the past five (5) years

5.3.6 Listing of most relevant completed projects related to design, implementation, and/or operation of telecommunications networks, in which the bidder has been involved in the past five (5) years.

5.3.7 References for most relevant completed projects, including company name, address, contact name and title, phone number, email address, and description of the service provided. Each reference shall include a descriptive project summary, financial structure, and role of firm/principal in project.

5.3.8 Description of all completed projects related to design, implementation, and/or operation of telecommunications networks that are similar in type, size, scale, or complexity to the project as outlined in this RFP.

5.3.9 For each project, the total capital and annual operating costs, time between project milestones, marketing and sales performance, contact references, role of Firm principals in the project, Quality of Service characteristics, and explanation of any regulatory issues that required resolution.

5.3.10 Description of any work involving public-private partnerships, diverse stakeholders, and extensive public processes and participation.

5.4 Chapter 4 – Financial Qualifications

This chapter will include the following:

5.4.1 A narrative description of the firm's financial condition and willingness to undertake and complete the project as proposed and to furnish services in accordance with this RFP. Include all required sources of funding for this project.

5.4.2 Copies of operating budgets and audited financial statements for the past three (3) years, as well as, for publicly traded companies, a copy of the latest Forms 10-K, 10Q, and 8K filed with the Securities and Exchange Commission. If the bidder has not been in business for the past three (3) years, please confirm commencement date of doing business and provide audited financial statements for the years it has been in operation. If Forms have not been filed with the Securities and Exchange Commission, please indicate that and include copies of the bidder's latest quarterly financial reports as well as a copy of the bidder's most recent annual report.

- 5.4.3 Two (2) bank references with correspondent contact names, addresses, phone numbers and email addresses.
- 5.4.4 Any other information not specifically requested above that the bidder believes to be demonstrative of its financial capacity.

5.5 Chapter 5 – Project Staffing

Key personnel will be an important factor considered by the review committee. Changes in key personnel may be cause for rejection of the proposal. This Chapter shall include the following information:

- 5.5.1 A professional resume for each of the key personnel to be assigned to the project and their relevant related experience;
- 5.5.2 Descriptions of key personnel's proposed roles and responsibilities on this project;
- 5.5.3 A proposed project manager who would be responsible for the day-to-day management of project tasks and would be the primary point of contact with the bidder;
- 5.5.4 An organizational chart of the proposed project team.

5.6 Chapter 6 -- End User License Agreement and Privacy Protection

Bidders will be required to provide a copy of the End User License Agreement (EULA) and any End User Privacy Protection policies they employ with the response to the RFP.

5.7 Chapter 7 – Default Consequences

Bidders must address the potential consequences of a default in performance by the party selected to build and operate a 100 Mbps broadband system. The proposal must also address the conditions under which the system may be required to be removed from the public rights-of-way.

6. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that an agreement, if awarded, may be based on either a not-to-exceed per-task budget or a fixed fee form of contract. Attachment D, Sample Agreement for Professional Services, is an exemplar of a contract the City might seek to negotiate in regard to the project. This format encompasses the general terms, conditions and requirements of a standard City contract. The compensation and mode of payment will be negotiated by the parties.

A bidder must be prepared to accept the general terms, conditions and requirements specified in the RFP, including but not limited to the Insurance Requirements outlined in Attachment G, or take exception to any such item. If an exception is not noted, then the bidder will be deemed to accept all terms,

conditions and requirements without qualification. Any term, condition or requirement that is not subject to an exception may not be subsequently negotiated at the request of the bidder.

If a bidder desires to take exception to any of the general terms, conditions, and requirements specified in the RFP, bidder shall provide the following information in Chapter 7 of their submittal package. Please include the following:

- Each proposed change to the general terms, conditions, and requirements specified in the RFP, including all relevant Attachments.
- The reasons, as well as specific recommendations, for alternative language.

The above factors will be taken into account in evaluating Proposals. Any proposal that takes substantial exception to the general terms, conditions and requirements of the RFP may be deemed non-responsive by the City, acting in its sole discretion, and will not be considered for an award of contract.

7. INSURANCE REQUIREMENTS

The selected bidder(s), at bidder's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment G, Insurance Requirements.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the Risk Manager of the City of Palo Alto as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The selected bidder agrees to provide the City with a copy of said policies, certificates and/or endorsement upon award of contract.

8. ADHERENCE TO LAWS AND REGULATIONS

The selected winning bidder agrees to comply with all applicable federal, state, and local laws. Pursuant to the California Environmental Quality Act, an environmental assessment will likely be required before construction may proceed. Any successful bidder offering video services will have to secure a Joint Powers Authority cable franchise and comply with all rules of that agreement **TO THE EXTENT SUCH REQUIREMENT IS CONSISTENT WITH APPLICABLE LAW.** (See <http://www.cityofpaloalto.org/cable/francise-agreement.html> for complete text of the agreement.)

9. IMPLEMENTATION DEPLOYMENT STATISTICS AND REPORTING

The winning RFP team's Project Manager is responsible to provide monthly and quarterly reporting of the progress of the installation and performance statistics [and budget] of the network as each phase becomes operational, and on an on-going basis after deployment.

- Services and service model usage

- Detailed network performance data
 - By service type
 - By service model usage.

- Current challenges and issues that may or are causing impact to:
 - Project schedule
 - Consumers
 - Physical network
 - Delivery of service / service models

10. PROPOSAL REVIEW AND SELECTION PROCESS

10.1 Evaluation Criteria

Proposals submitted in response to this RFP will be evaluated based on the following criteria:

10.1.1 General Criteria

- 10.1.1.1 Quality and completeness of proposal;
- 10.1.1.2 Bidder's experience, including the experience of staff to be assigned to the project, the engagements of similar scope and complexity;
- 10.1.1.3 Bidder's compliance with applicable laws, regulations, policies (including city council policies), guidelines and orders governing prior or existing contracts performed by the contractor;
- 10.1.1.4 References from customers of bidder.
- 10.1.1.5 Whether City would eventually own the system infrastructure.

10.1.2 Technical Criteria

- 10.1.2.1 Design quality and system features of proposed network;
- 10.1.2.2 Ability to operate system easily;
- 10.1.2.3 Ability to rapidly upgrade the system and supply new services easily;
- 10.1.2.4 Use of standards for construction of the network and delivery of ultra-high-speed broadband services;
- 10.1.2.5 Network capabilities and types of service offerings;
- 10.1.2.6 Network architecture;
- 10.1.2.7 Network performance/reliability/quality of service guarantees;
- 10.1.2.8 Network scalability;
- 10.1.2.9 Network management.

10.1.3 Financial Criteria

- 10.1.3.1 Bidder's business structure;
- 10.1.3.2 Bidder's and any subcontractors' financial capabilities and resources;
- 10.1.3.3 Estimated ongoing cost of system network maintenance and of

- end-user equipment;
- 10.1.3.4 Estimated cost of the project to the City;
- 10.1.3.5 Gross forecasted revenues (10 years);
- 10.1.3.6 Net revenue potential to the City (10 years);
- 10.1.3.7 Palo Alto customer price for service, cost to connect, and benefits.

10.1.4 Implementation/Operational Criteria

- 10.1.4.1 Project implementation schedule and timeline;
- 10.1.4.2 Bidder's apparent ability to perform the work within the timeline;
- 10.1.4.3 Environmental impact of proposed plan;
- 10.1.4.4 Bidder's prior record of performance with City and/or other customers;
- 10.1.4.5 Quality of service to Palo Alto customers likely to result from bidder's plan;
- 10.1.4.6 Bidder's plan for providing maintenance, repairs, parts and/or services, as well as future expansion or upgrades;
- 10.1.4.7 Availability of a local office.

10.2 Selection Process

- 10.2.1 City Staff will return to Council with a proposed Evaluation Team.
- 10.2.2 Presentations - A small group of "short-listed" bidders may be asked to make a presentation to the Evaluation Team, detailing their proposals and business plan.
- 10.2.3 Negotiations - The City may initiate contract negotiations with another bidder in the event an agreement cannot be reached with the selected bidder.
- 10.2.4 Notice to Proceed - Upon successful negotiation and following the award and execution of a contract, the City will issue a Notice to Proceed to the successful bidder following approval of the RFP Services Contract.

11. POST-EVALUATION REQUIREMENTS

11.1 Approval of Drawing and Documentation

Once a successful party has been selected to deploy a network, all drawing and plans must be approved by the City. As-built drawings will be provided to the City in a similar format. Documentation will also be provided to the City for all devices placed in the public right-of-way.

12. COLLUSION

By submitting a proposal, each bidder represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the bidder has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the bidder has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

13. DISQUALIFICATION

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- 13.1 Evidence of collusion, directly or indirectly, among bidders in regard to the amount, terms or conditions of this proposal;
- 13.2 Any attempt to improperly influence any member of the evaluation team;
- 13.3 Existence of any lawsuit, unresolved contractual claim or dispute between bidder and the City;
- 13.4 Evidence of incorrect information submitted as part of the proposal;
- 13.5 Evidence of bidder's inability to successfully complete the responsibilities and obligation of the proposal;
- 13.6 Bidder's default under any previous agreement with the City, which results in termination of the Agreement.

14. GRATUITIES

City employees are subject to conflict of interest requirements. Therefore, no person shall offer, give or agree to give any City employee any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

ATTACHMENT A
Bidder's Information Form

BIDDER (please print):

Name: _____

Address: _____

Telephone: _____

FAX: _____

Contact person, title, telephone and fax number: _____

Bidder, if selected, intends to carry on the business as (check one)

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Limited Liability Company |

When incorporated? _____

In what state? _____

When authorized to do business in California?: _____

Other (explain): _____

ADDENDA

To assure that all Bidders have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received: 1; 2; 3; 4; 5; 6;

Or, _____ No Addendum/Addenda Was/Were Received (**check and initial**).

BIDDER'S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Bidder that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Bidder was not fully informed as to any fact or condition.

1. I
f
B
i
d
d
e

r is **INDIVIDUAL**, sign here

Date: _____
Bidder's Signature

Bidder's typed name and title

2. If Bidder is **PARTNERSHIP** or **JOINT VENTURE**, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date: _____
Member of the Partnership or Joint Venture signature

Date: _____
Member of the Partnership or Joint Venture signature

3. If Bidder is a **CORPORATION**, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_____ and _____
Title Title

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By: _____ Date: _____

Title: _____

By: _____ Date: _____

Title: _____

ATTACHMENT B
Certification of Non-discrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Bidder is **INDIVIDUAL**, sign here:

Date: _____
Bidder's Signature _____

Bidder's typed name and title

2. If Bidder is **PARTNERSHIP** or **JOINT VENTURE**, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date: _____
Member of the Partnership or Joint Venture signature _____

Date: _____
Member of the Partnership or Joint Venture signature _____

3. If Bidder is a **CORPORATION**, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_____ and _____
Title Title

of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By: _____ Date: _____

Title: _____

By: _____ Date: _____

Title: _____

ATTACHMENT C

PROJECT BACKGROUND AND SCOPE OF WORK

I. PROJECT OVERVIEW

The City of Palo Alto (“City”) is seeking a proposal for the development, construction and operation of a citywide ultra-high speed bandwidth system. Such a network must provide minimum symmetrical bandwidth of 100 megabits per second per end-user connection, and make affordable and available to the customer in Palo Alto: high speed data transport and Internet access; and voice, data, and video services.

II. CITY OVERVIEW

Palo Alto is a thriving community of nearly 60,000 people situated adjacent to Stanford University in the heart of Silicon Valley, approximately 25 miles south of San Francisco and 14 miles north of San Jose. Palo Alto enjoys international name recognition. Travelers from all over the world come for purposes of education or research at Stanford University, training or business with the high technology firms of the Stanford Research Park, or medical care at the Stanford Medical Center.

The City General Fund budget is approximately \$121 million for fiscal year 2005-2006, with eight departments. Palo Alto also owns its own Utilities, including Electric, Gas, Refuse, Storm Drainage, Wastewater Collection, Wastewater Treatment, and Water. Within the Electric Utility is a Telecommunications Division which operates the dark fiber ring (see below).

Palo Alto is a residential community of above-average household incomes and above-average educational levels. Approximately three-quarters of Palo Alto residents who are over the age of 25 have four or more years of college, half of whom have received at least one graduate degree. Also, an estimated 95% of households have an internet connection. Other key demographic statistics on Palo Alto include:¹

- Approximately 28,000 households
- 57% of population (in 2000) owned a home
- Median value of owner-occupied units (2000) was \$811,800
- Median household income (1999) was \$90,377
- Land area in square miles = 25.98

III. PROJECT BACKGROUND

In 1997, CPAU constructed a fiber backbone and is currently licensing dark fiber to interested parties such as telecommunications carriers, ISPs, and local businesses. The Backbone consists of 33 route miles (over 4,750 fiber-miles), with 144 or more strands of singlemode fiber along most routes. The Backbone is approximately 52% aerial and 48% underground. The Backbone

¹ Sources included: www.infoplease.com; City of Palo Alto Certified Annual Financial Report of June 30, 2005

passes Palo Alto's major business parks and terminates in several buildings within the City, and can be accessed at over 40 locations. (See <http://www.cpau.com/fiberservices/> for more details.)

In 2000, the Council approved a Fiber-to-the-Home trial for one year, to determine the feasibility of providing citywide fiber-to-the-home in Palo Alto, by offering the service to 66 homes in the Community Center neighborhood for one year. Service to trial participants began in 2001, and was quite successful in terms of customer satisfaction.

Given the trial's success, the Council approved the engagement of a consultant beginning May, 2002 to complete a business case study and determine whether a full-scale FTTH business would be viable for the City. As part of that business case, trial participants and Palo Alto residents were surveyed to determine potential market interest in the project. In September, 2002, the business case was completed, and Council agreed both to extend the timeframe for trial participants and to fund the development of a business plan.

In the business plan, the consultant assumed the Electric Fund would issue (tax-exempt) revenue bonds to fund the fiber build-out, and demonstrated that a FTTH utility could be economically viable over the 20-year bond financing period. However, in 2004, it was determined that in fact, the Electric Utility could not fund the FTTH project with revenue bonds; therefore financing costs would be greater than previously assumed.

In April and May, 2004, staff presented financing options to the Utilities Advisory Commission (UAC) and to the Council that reflected the additional legal information. The only legally and politically feasible options seemed to be finding a private investor or forming an Assessment District. The Council asked staff to monitor other California jurisdictions pursuing FTTH. In 2005, staff recommended, based on the uneven and sometimes turbulent progress of other California municipal efforts, ceasing work on the FTTH program, and discontinuing the trial.

Council approved the discontinuation of the trial, but requested that staff report back on the "legal and financial issues" to lay the groundwork for issuing an RFP for a private-sector partner to construct and operate a FTTH service. Then, in January, 2006, Council further directed staff to proceed with issuance of an RFP for the construction and operation of a high-speed broadband system.

IV. OBJECTIVES OF THE PROJECT

The primary goals for this system are:

1. Capability of providing to each customer a minimum bandwidth of 100 megabits per second symmetrical service;
2. Provision of at least data, video, and telephony services; and
3. Eventual City ownership of the physical system.

A secondary goal for the system is to promote competition between multiple service providers. In addition, the following features are preferred:

- An open system
- Network neutrality
- Minimal financial risk to the City.

V. SCOPE OF WORK

A. Requirements of the System

System requirements include:

- Provision of citywide access to service to residences and businesses in Palo Alto. Bidders may be wholesalers or integrated suppliers of those services.
- Voice, Video and Data “triple-play”. This standard broadband service offering as outlined below is the minimum acceptable service level. The transmission medium is left to the Bidder’s discretion, but must be able to provide 100 Mbps symmetrical data rate for each end-user’s hardware connection, with the following services available:
 - Voice: telephony (legacy analog or VoIP)
 - Video: commercial full spectrum “Cable” (analog) TV including HDTV and Video on demand.
 - Data: 100 Mbps symmetrical rate
- Highly Available, with reliability comparable to other competitive systems. Bidders will be asked to comment on the uptime characteristics of their proposed system.
- Phased Roll-Out: The network owner and service providers in their response should provide their strategy and plans to achieve full deployment.
- For low-density areas of the City, such as areas west of Highway 280, the 100 Mbps requirement may be relaxed, if access to basic service is provided to all users.
- Quality of System Service (QoS): Bidders need to provide QoS and packet prioritization for various classes of service such as First Responders, and various applications such as Voice over Internet Protocol (VoIP). Bidders must describe the quality of service capabilities of the proposed network.
- Systems Management: The network owner’s Network Operations Center, (NOC) is responsible for the monitoring and management of the network. NOC staff should have the tools and capability to centrally manage the network, be immediately notified in the event of network problems, and be able to dynamically reroute traffic or dynamically resolve capacity problems. The network owner must provide the capability to produce performance reports based on traffic classes and area served.
- Aesthetically Pleasing: All equipment and cabling for the network mounted within public view should blend into the existing architecture and not negatively affect the appearance of existing structures.
- Adherence to City Ordinances: All equipment must adhere to the Palo Alto Municipal Code and other City requirements and be approved by the City and its appropriate Boards and Commissions prior to deployment.
- Standards-Based: The System will need to be capable of delivering broadband services to devices built on industry standards-based technologies.

- The successful bidder will be required to apply for a cable franchise in accordance with P.A.M.C. Chapter 2.10, if the bidder proposes one or more technologies by which the bidder would be deemed to provide cable service in accordance with federal, state and/or local law **TO THE EXTENT SUCH REQUIREMENT IS CONSISTENT WITH APPLICABLE LAW.**

There is pending before Governor Schwarzenegger for his signature AB 2987, which would permit a video provider (one providing cable television as well as open video system services) to obtain a state franchise from the California Public Utilities Commission, not the JPA, in order to provide video programming services. If the video provider obtains a state franchise to provide these services, then it is unnecessary for the provider to also obtain a franchise from the JPA.

B. Project Manager / Management

The bidder must provide a Master Project Manager (PM) as the central point of contact for both the network owner installation and service provider(s) teams.

The PM is responsible for the identification and management of resources and dependencies including people, physical assets, financial or otherwise. The PM is responsible for the management and allocation of resources for the construction, implementation and operation of the network.

The successful Bidder must cooperate with the City on the use of Utility poles and undergrounding, and the PM will be the chief contact for this coordination.

C. Project Work Plan and Schedule

The PM must develop and present for City approval a complete Project Work Plan, including a full description of major tasks and subtasks, along with a proposed timeline for completing each one. The PM will be responsible for continuously maintaining the schedule for the complete roll-out of the project, and for providing status updates on a regular basis. The project schedule for design, implementation, and go-live activities shall be aligned and coordinated such that they are time- and cost-efficient. The PM is responsible for providing a detailed plan and schedule for each logical phase. The plan for each phase must be kept up to date, along with the roll-ups into the Master Plan.

D. Milestones

The PM is responsible for clearly identifying major milestones and their planned completion dates for the project. On-track, on-schedule, and on-budget information and status of overall project and next-step milestones will be included in regularly scheduled update meetings.

E. Customer Service

Bidder must, at minimum, adhere to the Quality of Service requirements of the Joint Powers Authority cable franchise and all applicable FCC rules. (See <http://www.cityofpaloalto.org/cable/franchise-agreement.html> for complete text of the agreement.) In addition, proof of customer service performance that exceeds industry

standards is required, with the goal of meeting the high service standards of the existing City Utilities.

Furthermore, bidders must describe how they plan to handle customer support calls, and detail any procedures that will be implemented due to an escalation of complaints. Lastly, bidders shall describe how they plan to handle customer trouble calls and dispatch emergency repair crews.

F. Customer Acquisition

The bidder must have proven ability to acquire and retain customers in a highly competitive environment that includes competition with no less than one incumbent provider.

G. Proposed technologies to achieve the City's primary goals

The bidder may propose any technology that has a proven field success rate that fulfills the requirements of this RFP.

H. Technology Description

Bidders must describe their technical approach, including as a minimum the following information:

- **Technologies:** Any technology that is based on industry standards and meets the City's 100 Mbps symmetrical service goal may qualify. Bidders should be able to demonstrate the capacity of the proposed technology.
- **Network Design:** A description of the design criteria, network elements, physical media, switching and routing architecture, interfaces, topology, protocols, system reliability, fault tolerance, availability, and operations and maintenance. In addition, describe the degradation of service expected under the worst case scenario.
- **Network Equipment:** A description of the type of networking equipment proposed, and reasons for its selection.
- **Interconnection and Interoperability:** A description of interconnection, interoperability, and conformance to published standards. A description of where, when, and how interconnection will occur. A description of how interoperability between networks will be achieved is also required.
- **Schematic:** A schematic view of how the networking equipment will be interconnected and integrated to create a citywide network.
- **Upgrade Plan:** A plan for upgrading infrastructure as service requirements grow.
- **Network Security:** Any network security measures that will be deployed to ensure privacy of customer communications and prevent intrusions on customer computers must be described in full.

- **Data Transport Performance Characteristics:** Bidders are requested to characterize the anticipated performance of the proposed network design for data transport. At a minimum, the following attributes shall be described:
 - **Throughput:** Describe the anticipated peak, mean, and minimum throughput for data transport between any two end stations on the network (specified in Megabits per second);
 - **Latency:** Describe the anticipated mean, minimum, and maximum latency for data transport between any two nodes on the network (specified in microseconds).

VI. CITY OF PALO ALTO OFFERING

The City's dark fiber ring may be considered a potential resource to the bidder. For example, the City will consider licensing to the successful bidder spare capacity along the fiber backbone, and, for a fee, CPAU may extend the fiber optic backbone more deeply into Palo Alto neighborhoods to interconnect with a successful bidder's nodes, hubs, or other centralized distribution points.

The City of Palo Alto owns the utility poles in Palo Alto, along with AT&T and/or Pacific Gas and Electric Company. All construction of new plant or relocation of existing plant in Palo Alto shall meet California General Order (GO) 95 and GO128 rules and regulations, among others. The City also owns conduits, and the City has the rights-of-way needed to provide distribution of utility services within Palo Alto.

Bidders are encouraged to propose other services the City could offer to help successfully deploy the requested services.

VII. ADDITIONAL REQUIRED ELEMENTS OF THE PROPOSAL

In addition to the required attachments listed above and in Section 5 of the main body of this RFP which need to be submitted, the bidder must include information on the following:

A. Financial Risk to the City: The City wishes to minimize its financial exposure in the development, construction and operation of the proposed system. However, the City recognizes the potential need to contribute financial or other assets to the project to achieve the primary goals. The financial risks assumed by the bidder should also be detailed regarding quantity and timing. Bidder must include specifically:

- Proposed financial and other contributions required from the City;
- Assessment of financial risk to the City; and
- Ways of mitigating the financial risk to the City.

B. Ownership: The City desires to own the system's fiber infrastructure, and at a minimum, it must maintain use and control over the dark fiber network. The City understands that the limitations of such ownership could be partly determined by the extent of the City's financial contributions to the project. The bidder should clarify the amount of investment required from the City in order to achieve substantial City ownership of the system infrastructure.

C. City Roles and Responsibilities: The bidder must specify the proposed roles of the City versus roles of the bidder vis-à-vis the construction, implementation, and operation of the high-speed-broadband network.

D. Description of Service Offerings: Bidders are requested to provide a detailed description of the services to be offered to residents and businesses at project inception, and others that will be phased in within the first 3 years of the project.

E. Services by Outside Parties: Bidders are requested to identify any services, if applicable, that will be provided by outside parties. Any available documents related to agreements with outside parties shall be attached.

F. Financial Model and Business Case: Bidders are expected to provide a Financial Model and Business Case in their response. These shall include:

1. Pro-Forma Income (Profit & Loss) Statement (years 1-10)
2. Annual cash flow projections, and a Statement of Cash Position (years 1-10)
3. Expected annual net income to the City based on the bidder's proposed contractual arrangement, and appropriate cash flow and breakeven analyses
4. Source of funding for Ultra-High-Speed Broadband system construction and operation
5. Preliminary market and competitive analyses to support the pro-forma income and cash flow statements
6. Forecasted customers by year and by service classification (years 1, 5, 10)

G. Warranty Terms: Describe all warranty terms and conditions, including price and performance guarantees.

ATTACHMENT D
AGREEMENT (SAMPLE ONLY)

CITY OF PALO ALTO CONTRACT NO. ____

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND

FOR PROFESSIONAL SERVICES

(Project Name)

This AGREEMENT is entered into _____, by and between the CITY OF PALO ALTO, a chartered city and a municipal corporation of the State of California ("CITY"), and _____, a _____ located at _____ ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to (**DESCRIBE WHAT CITY PLANS TO DO - E.G. CONSTRUCT A NEW LIBRARY**)("Project") and desires to engage a consultant to prepare (**DESCRIBE SERVICES - I.E. FEASIBILITY STUDY, DESIGN, ETC.**) in connection with the Project ("Services").

B. CONSULTANT has represented that it and any subconsultants have the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

D. CONSULTANT has agreed to perform the Services on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

Section 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of

all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution to _____(INSERT DATE OR IF NO DATE THEN "UPON COMPLETION OF THE SERVICES IN ACCORDANCE WITH THE SCHEDULE OF PERFORMANCE ATTACHED AS EXHIBIT "B")_____, unless terminated earlier pursuant to Section 20 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part of this Agreement. 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. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$_____). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed _____ Dollars (\$_____). The applicable rates and schedule of payment are set out in Exhibit "C", entitled "COMPENSATION," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (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 in Exhibit "C"). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's payment

requests shall be subject to verification by CITY.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

CONSULTANT shall report immediately to the CITY's project manager, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project or the performance of the Services.

All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT.

SECTION 9. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee

of the CITY. The manner and means of conducting the Services are the responsibility of and under the control of CONSULTANT, except to the extent they are limited by applicable law and the express terms of this Agreement.

CONSULTANT will be responsible for employing or engaging all persons necessary to perform the Services. All contractors and employees of CONSULTANT are deemed to be under CONSULTANT'S exclusive direction and control. CONSULTANT shall be responsible for their performance.

SECTION 10. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT'S obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 11. SUBCONTRACTING.

[OPTION A: NO SUBCONSULTANTS] CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

[OPTION B: SUBCONSULTANTS AUTHORIZED] Notwithstanding Section 10 above, CITY agrees that subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are identified in Exhibit "A". CONSULTANT shall be responsible for directing the work of the subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning such compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 12. PROJECT MANAGEMENT. CONSULTANT will assign _____ as the project director to have supervisory responsibility for the performance, progress, and execution of the Services. If circumstances or conditions subsequent to the execution of this Agreement cause the substitution of the project director or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY'S project manager. CONSULTANT, at CITY'S request, shall promptly remove

personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The city manager will represent CITY for all purposes under this Agreement. _____ is designated as the project manager for the CITY. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 13. DUTIES of CITY. To assist CONSULTANT in the performance of the Services, CITY will furnish or cause to be furnished the specified services and/or documents described in Exhibit "A" and such other available information as may be reasonably requested by CONSULTANT.

SECTION 14. OWNERSHIP OF MATERIALS. All drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the city manager or designee.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The

provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming the City of Palo Alto as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with Best's Key Rating Guide ratings of A-VII or higher which are admitted to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the

Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. WORKERS' COMPENSATION. CONSULTANT, by executing this Agreement, certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and certifies that it will comply with such provisions, as applicable, before commencing and during the performance of the Services.

SECTION 20. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

20.1. The city manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days' prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

20.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving ten (10) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

20.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

20.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion

20.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 21. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager.

To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited
above

SECTION 22. CONFLICT OF INTEREST

22.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

22.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

22.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 23. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT agrees that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Chapter 2.28 of the Palo Alto Municipal Code relating to Nondiscrimination

Requirements and the penalties for violation thereof, and agrees to meet all requirements of Chapter 2.28 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit "E".

SECTION 24. MISCELLANEOUS PROVISIONS.

24.1. This Agreement will be governed by the laws of the State of California.

24.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California or in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

24.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action.

24.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

24.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and CONSULTANTS, as the case may be, of the parties.

24.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

24.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

24.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This 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 24.8 shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

APPROVED AS TO FORM:

CITY OF PALO ALTO

Senior Asst. City Attorney

Assistant City Manager

APPROVED:

[CONSULTANT FIRM]

Director of Administrative Services

By: _____

Name: _____

INSURANCE REVIEW:

Title: _____

(If corporation: President or Vice-President)

Contract Manager

By: _____

Name: _____

Title: _____

(If corporation: Secretary or Treasurer)

Taxpayer Identification No.

(Compliance with Corp. Code § 313 is required if the entity on whose behalf this contract is signed is a corporation. In the alternative, a certified corporate resolution attesting to the signatory authority of the individuals signing in their respective capacities is acceptable)

Attachments:

- EXHIBIT "A" : SCOPE OF WORK
- EXHIBIT "B" : SCHEDULE OF PERFORMANCE
- EXHIBIT "C" : COMPENSATION
- EXHIBIT "D" : INSURANCE
- EXHIBIT "E" : NONDISCRIMINATION COMPLIANCE FORM

EXHIBIT "B" (of Contract)
SAMPLE ONLY

SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days specified below. The number of days to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY **[IF THERE IS A FIRM TERMINATION DATE IN SECTION 2 OF THE AGREEMENT ADD: "so long as all work is completed within the term of the Agreement"]**. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 10 days of receipt of the notice to proceed.

Milestones	Completion Number of Days From NTP
1.	____ days
2.	____ days
3.	____ days
4.	____ days
5.	____ days
6.	____ days
7.	____ days
8.	____ days
9.	____ days
10.	____ days

(Version 1 - use for task based compensation)
SAMPLE ONLY
EXHIBIT "C" (of Contract)
COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1, if applicable, up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Basic Services") and reimbursable expenses shall not exceed \$_____. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$_____. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's _____ may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed \$_____ and the total compensation for Additional Services does not exceed \$_____.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1 (_____)	\$ _____
Task 2 (_____)	\$ _____
Task 3 (_____)	\$ _____
Task 4 (_____)	\$ _____
Task 5 (_____)	\$ _____

Sub-total Basic Services	\$ _____
Reimbursable Expenses	\$ _____
Total Basic Services and Reimbursable expenses	\$ _____
Additional Services (Not to Exceed)	\$ _____
Maximum Total Compensation	\$ _____

REIMBURSABLE EXPENSES

CITY shall reimburse CONSULTANT for reimbursable expenses including, postage, mileage and other miscellaneous costs, at cost plus 10%. All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$_____.00 shall be approved in advance by the CITY’s project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY’s project manager’s request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT’s proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY’s _____ and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services:

[LIST CONSULTANT’S ASSUMPTIONS WHICH IF EXCEEDED WILL BE CONSIDERED AS ADDITIONAL SERVICES– IE 10 MEETINGS, 3 SUBMITTALS ETC]

ATTACHMENT E
 SAMPLE TABLE FORMAT
 QUALIFICATIONS OF FIRM RELATIVE TO CITY'S NEEDS

Project Name	Client	Description of work performed	Total Project Cost	Percentage of work firm as responsible for	Period work was completed	Client contact information*
<p>Did your firm meet the project schedule (Circle one) : Yes No</p> <p>Give a brief statement of the firm's adherence to the schedule and budget for the project:</p>						
<p>Did your firm meet the project schedule (Circle one) : Yes No</p> <p>Give a brief statement of the firm's adherence to the schedule and budget for the project:</p>						
<p>Did your firm meet the project schedule (Circle one) : Yes No</p> <p>Give a brief statement of the firm's adherence to the schedule and budget for the project:</p>						
<p>Did your firm meet the project schedule (Circle one) : Yes No</p> <p>Give a brief statement of the firm's adherence to the schedule and budget for the project:</p>						

*Include name, title and phone number.

**ATTACHMENT G
INSURANCE REQUIREMENTS**

I. CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH A BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION AUTOMOBILE LIABILITY	STATUTORY STATUTORY		
YES	COMPREHENSIVE GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	COMPREHENSIVE AUTOMOBILE LIABILITY, INCLUDING, OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES		\$1,000,000
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: PROPOSER, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY PROPOSER AND ITS SUBCONSULTANS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURES CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY – SEE SECTION 18, SAMPLE AGREEMENT FOR SERVICES.

II. SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE, **OR** COMPLETE THIS SECTION AND IV THROUGH V, BELOW.

A. NAME AND ADDRESS OF COMPANY AFFORDING COVERAGE (NOT AGENT OR BROKER):

B. NAME, ADDRESS, AND PHONE NUMBER OF YOUR INSURANCE AGENT/BROKER:

C. POLICY NUMBER(S):

D. DEDUCTIBLE AMOUNT(S) (DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL):

III. AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AND PROPOSER'S SUBMITTAL OF CERTIFICATES OF INSURANCE EVIDENCING COMPLIANCE WITH THE REQUIREMENTS SPECIFIED HEREIN.

IV. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURES"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURES.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURES UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

V. PROPOSER CERTIFIES THAT PROPOSER'S INSURANCE COVERAGE MEETS THE ABOVE REQUIREMENTS:

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW. SIGNATURE(S) MUST BE SAME SIGNATURE(S) AS APPEAR(S) ON SECTION II, ATTACHMENT A, PROPOSER'S INFORMATION FORM.

Firm: _____

Signature: _____

Name: _____
(Print or type name)

Signature: _____

Name: _____
(Print or type name)

NOTICES SHALL BE MAILED TO:

**PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.**

ATTACHMENT H

VENDOR EXPERIENCE CHECK LIST

Please check off the items with which your firm has had experience, and describe that experience.

Mark with "X" below	<u>Type of Experience</u>	<u>Municipal govt. context?</u> <u>(Mark Y/N)</u>
	Engineering services delivery	
	Regulatory and legal requirement fulfillment	
	Procurement	
	Operation and Maintenance	
	Business Plan Development	
	Financing Plan Devt and Implementation	
	Personnel Training	
	Resource Planning	
	Customer Service	
	Customer Billing	
	Other:	