

**DRAFT CONSULTANT SERVICES AGREEMENT BETWEEN THE
CITY OF SUNNYVALE AND CASPER AIRPORT SOLUTIONS, INC. FOR
AIRPLANE NOISE MONITORING SYSTEM**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CASPER AIRPORT SOLUTIONS, INC. ("CONSULTANT").

WHEREAS, CITY is in need of specialize services in relation to the design and installation of the Airplane Noise Monitoring System; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be one (1) year from the execution date, unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by CONSULTANT for performance of the services. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "A". Total compensation shall not exceed Two Hundred Thirty Five Thousand Two Hundred Sixty Five and No/100 Dollars (\$235,265.00).

CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AGENCY shall not accept employment or an obligation which is inconsistent or incompatible with AGENCY's obligations under this Agreement.

Pursuant to CITY's Standard Conflict of Interest Code CITY has determined that certain individuals performing services under this Agreement may be required to file a Statement of Economic Interest (Form 700) depending on the position, which can be found at www.fppc.ca.gov. To facilitate electronic submittal of Form 700, send the following information to cityclerk@sunnyvale.ca.gov: 1. CONSULTANT's employee(s) first and last name; 2. CONSULTANT's employee(s) email address; 3. Date CONSULTANT's employee(s) will begin work under this contract; 4. (if known) Date CONSULTANT's employee(s) will cease work under this contract.

Government Code Section 91013 provides that any person who files a statement after its deadline shall be liable in the amount of \$10 per day, up to a maximum of \$100, in addition to any administrative penalty (up to the statutory maximum, currently \$5,000) imposed by the Fair Political Practices Commission (FPPC). If we do not receive your statement, our agency is required to refer this matter to the FPPC or other appropriate enforcement agency.

7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

8. Compliance with Laws

- A. CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual).

This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.

- B. CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Hold Harmless/Indemnification

CONSULTANT agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C."

12. CITY Representative

Teri Silva, Assistant City Manager as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Greg Maxwell, Airport Solution Manager shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Teri Silva, Assistant City Manager
Office of City Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Heleen Erkamp, CEO
Casper Airport Solutions, Inc.
1055 Westlakes Dr. Suite 300
Berwyn, PA 19312

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services

performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing signed by all parties.

18. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

19. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST: CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM: CASPER AIRPORT SOLUTIONS, INC.
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

Exhibit A Scope of Work

PROJECT NO.	PROJECT OBJECTIVES	DATE SUBMITTED
F20-014	Casper Airport Solutions will deliver a turnkey NOMS system to the City of Sunnyvale which includes: <ul style="list-style-type: none"> • Casper Noise (internal flight/noise analysis application) • Casper Flight Tracker (public flight tracking web site) • Casper Noise Lab (community engagement web site) • Permanent noise monitoring terminals (quantity TBD) 	11/08/2019


1. Project Deliverables









Sunnyvale (SYV) Casper project deliverables up to and including system acceptance.






DELIVERABLE NO.	DESCRIPTION
1	Draft NMT site selection report - detailing current conditions and recommendations for number and placement of permanent NMTs
2	Draft design document - detailing the core services and options the city wishes to procure, the number of NMTs and the primary and secondary NMT sites where a detailed site assessment should be undertaken
3	Final site selection report - including site survey, optimal placement of the NMT on the property for solar power and optional 24-hour portable noise monitoring results to establish ambient noise levels and suitability for monitoring aircraft noise
4	Final design document - detailing the plan for installation of applications and NMTs
5	Evaluation version of applications (Casper Noise, Flight Tracker and Noise Lab) for initial testing and further customization
6	Initial on-site user training of evaluation application versions
7	Install permanent noise monitoring terminals
8	Deliver final NMT installation test report (dashboard report that shows that all NMTs are online and data is being downloaded to the server)
9	Punchlist – major remaining/deficient items to be resolved prior to system acceptance
10	Final version of software (Casper Noise, Flight Tracker and Noise Lab)
11	Final Acceptance testing report – to verify completion of the operational test, and support system acceptance by the city

2. List of Project Tasks

The major project tasks are detailed on the following pages, with associated deliverables. and are also contained on the attached Work Breakdown Structure.

TASK	WEEKS	DELIVERABLE
Start of Project	1	
Kickoff meeting at the City	1	
Deliver draft NMT site selection report	1	

Requirements workshop	1	
NMT site visit	1	
Deliver draft design document	1	
System Design	1-6	
Deliver final site selection report	2	
Develop system architecture	2-4	
Develop system design document	1-4	
Deliver and review system design document	5-6	
Installation Preparation	5-12	
Prepare NMT installation	5-12	
Casper Noise System Setup	5-11	
Configuration of system for City	5-10	
Delivery of evaluation version of the application	11	
Public Flight Tracking Website and Noise Lab Setup	11-13	
Setup of public website	11-12	
Delivery of evaluation version of the applications	13	
Evaluation	13-16	
Initial on-site user application training	13	
Discuss evaluation version on-site with the City	13	
Make changes based on evaluation feedback	14-15	
Factory acceptance test	16	
Installation of NMTs	14-18	
Installation	14	
Tuning and testing	15-17	
Deliver final NMT installation test report	18	
System Delivery	18-19	
On-site testing	18-19	
On-site training	19	
System Live	19-21	
System live	19	

Deliver punchlist of outstanding items	20	
Deliver final version of applications	21	 
Final Acceptance	21-24	
30-day operational test	21-24	
All issues resolved (operational test completed)	25	
Deliver final acceptance testing report	25	 

3. Out of Scope

This project will NOT accomplish or include the following:	The complaints module in Casper Noise, complaint handling functionality in the public Casper Flight Tracker, Casper Noise Lab and all associated complaint reporting will not be included as part of the scope of the project and residents using the public portal will be directed to submit complaints directly to SJC Airport
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4. Project Assumptions

Assumptions about the project that directly affect the pricing proposed

NO.	ASSUMPTIONS
1	The city will be responsible for all costs and activities associated with procuring permits, easements, electrical service and fencing if required for NMT installation
2	Casper's planning for NMT installation does not include costs for trenching for electrical power and assumes that electric power is available at the selected sites and or solar power will be used as an alternative
	Casper will be responsible for concrete foundation, mast, cabinet and installation of all associated hardware inside the cabinet
3	Casper assumes that the wireless modems used to transmit data from the NMT to the server will be placed under the city's existing wireless contract, to be managed and paid by the city

Exhibit B Compensation Schedule

A. Airplane Noise Monitoring (ANM) System		
Proposers shall itemize costs for the ANM system on this	One-time Project Cost	Remarks
1. Hardware, including installation: \$	\$ 127,714	
a. Permanent Noise Monitor \$	\$ 127,714	Cost for 4 noise monitors including installation.
b. Portable Noise Monitor \$	N/A	Not included in our Base Proposal; we have included the cost for a portable NMT as an optional item
2. Software (SaaS) \$	\$ 20,340	Includes Software implementation cost
3. Analytical Services \$	\$ 5,000	
2. On-line services, if not included in Base System (specify)	\$ -	Included in Base System
3. Additional Software Modules and Costs, if applicable	\$ -	Included in Base System
4. Pricing for additional customization \$	\$ -	All included in Base System
5. Consulting Services for Noise Monitor Locations \$	\$ 9,000	
6. Project Management \$	\$ 16,000	
7. Software Support Warranty	\$ 45,461	Includes License/Maintenance and Support for first year
a. If applicable, state cost to provide service during the initial warranty period (specify number of years)		
8. Training	\$ 3,000	
On-Site User Training.		
9. System Implementation.	\$ -	Included; no additional cost
10. System Documentation	\$ 750	
11. Other Costs – Please describe.	\$ -	Included; no additional cost
12. Customization for Professional Services Post Implemen	\$ -	Included; no additional cost
13. Pricing for Any Additional Customization: \$	\$ -	Included; no additional cost
Describe below:	\$ -	
Reporting	\$ -	
TOTAL ONE-TIME COSTS \$	\$ 227,265	
Optional items		
	One-time Project Cost	Remarks
Portable Noise Monitor \$	\$ 15,500	Excluding annual maintenance and calibration cost.
short-term noise monitoring to validate location. Price per location.	\$ 1,000	

B. Licensing, Maintenance and Support for a period of up to nine (9) years following initial warranty				
1. Annual Licensing, Maintenance and Support – ANMS				
a. Software System: Licensing/ Maintenance & Support	Yearly License Cost	Yearly Maintenance and Support Cost	Total Yearly Cost	Remarks
1. Year Two (2) \$ \$	\$ 27,305	\$ 18,660	\$ 45,964	License/Maintenance and Support for Casper Noise and Casper Noise Lab (incl. public flight tracker)
2. Year Three (3) \$ \$	\$ 27,851	\$ 19,033	\$ 46,884	Included an inflationary increase of 2% on yearly basis
3. Year Four (4) \$ \$	\$ 28,408	\$ 19,413	\$ 47,821	
4. Year Five (5) \$ \$	\$ 28,976	\$ 19,802	\$ 48,778	
5. Year Six (6) \$ \$	\$ 29,556	\$ 20,198	\$ 49,753	
6. Year Seven (7) \$ \$	\$ 30,147	\$ 20,602	\$ 50,748	
7. Year Eight (8) \$ \$	\$ 30,750	\$ 21,014	\$ 51,763	
8. Year Nine (9) \$ \$	\$ 31,365	\$ 21,434	\$ 52,799	
9. Year Ten (10) \$ \$	\$ 31,992	\$ 21,863	\$ 53,854	
TOTAL MAINTENANCE AND SUPPORT COSTS \$	\$ 266,348	\$ 182,017	\$ 448,365	
TOTAL TEN YEAR LIFECYCLE COST \$	\$ 675,630			

Exhibit C

INSURANCE REQUIREMENTS FOR CONSULTANTS/CONTRACTORS

Consultant/Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$X,XXX,XXX per occurrence and \$X,XXX,XXX aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$X,XXX,XXX per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to

commencement of work.

Subcontractors

CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to this insurance requirements. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.