AGREEMENT FOR SERVICES
BETWEEN THE CITY OF MENLO PARK
AND
KUTZMANN AND ASSOCIATES, INC.

THIS AGREEMENT made and entered into at Menlo Park, California, this 29th day of August, 2014, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and Kutzmann and Associates, Inc., a corporation, hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called:

Plan Check Services

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

I. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A", Scope of Work.

II. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this contract will be as set forth in Exhibit "B", Schedule For Work. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "B". Neither party shall hold the other responsible for damages or
delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other’s employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the Agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this Agreement.

III. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all inclusive fee that shall not exceed $200,000 per fiscal year as detailed in Exhibit "C", COMPENSATION AND PAYMENT. This compensation shall be based on the rates shown on Exhibit "C". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY.

B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, a statement describing the services performed shall be submitted to CITY by the FIRST PARTY. This statement shall include, at a minimum, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.
IV. **EQUAL EMPLOYMENT OPPORTUNITY**

A. FIRST PARTY, with regard to the work performed by it under this Agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that applicants for employment, and employees, are treated during employment, without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

V. **PROSECUTION OF WORK**

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "B", Schedule For Work).
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FIRST PARTY’s proposed schedule for the various services required pursuant to this contract will be as set forth in Exhibit "B", Schedule For Work. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "B". Neither party shall hold the other responsible for damages or
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A. CITY shall pay FIRST PARTY an all inclusive fee that shall not exceed $200,000 per fiscal year as detailed in Exhibit "C", COMPENSATION AND PAYMENT. This compensation shall be based on the rates shown on Exhibit "C". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY.

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B. FIRST PARTY shall take affirmative action to insure that applicants for employment, and employees, are treated during employment, without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

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FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "B", Schedule For Work).
VI. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. FIRST PARTY shall not assign this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30% of the stock ownership or ownership in FIRST PARTY from the date of this Agreement is executed, then CITY shall be notified prior to the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this Agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this Agreement.

VII. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this Agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY’s services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

VIII. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY’s work by CITY does not operate as a release of FIRST PARTY from said understanding.
This Agreement is entered into by CITY with the express understanding and agreement that the work will be performed by and/or under the direct supervision of the following persons with the duties as follows:

FIRST PARTY shall not reassign the work to other persons without the prior written approval of CITY.

IX. NOTICES

All notices hereby required under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to CITY shall be addressed as follows:

Ron LaFrance, Building Official
Community Development
701 Laurel St.
Menlo Park, CA 94025
(650) 330-6723
rjlafrance@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Kutzmann and Associates, Inc.
Patricia Kutzmann
39355 California St., Suite 200
Fremont, CA 94538

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

X. HOLD HARMLESS

The FIRST PARTY shall indemnify and hold harmless the CITY, its agencies, their officers, and employees from all claims, suits or actions of every name, kind and description, based on negligence or willful misconduct, brought for, or on account of, injuries to or death of any person or damage to property to the extent resulting from the performance of
any work required by this Agreement by FIRST PARTY, its officers, employees and subcontractors. The duty of the FIRST PARTY to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the FIRST PARTY to indemnify the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782 of the California Civil Code. Notwithstanding anything to the contrary neither party shall be liable to the other for any indirect, special or consequential loss or damages resulting from or arising from this Agreement, including, without limitation business interruptions.

XI. INSURANCE

A. FIRST PARTY shall not commence work under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.

B. There shall be a contractual liability endorsement extending the FIRST PARTY’s coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to the CITY, at the address shown in Section IX, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.

1. Worker’s Compensation and Employer’s Liability Insurance:

The FIRST PARTY shall have in effect during the entire life of this Agreement Worker’s Compensation and Employer’s Liability Insurance providing full statutory coverage. In signing this Agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement".
2. **Liability Insurance:**

The FIRST PARTY shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY’s operations under this Agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars ($1,000,000) per occurrence or One Million Dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence, Two Million Dollars ($2,000,000), in annual aggregate. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than One Million Dollars ($1,000,000) for each occurrence combined single limit or not less than One Million Dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and three hundred thousand dollars, ($300,000) property damage.

3. **Professional Liability Insurance:**

FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this Agreement, in the amount of not less than One Million Dollars ($1,000,000) per claim and aggregate combined single limit. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

C. **CITY and its subsidiary agencies, and their officers, and employees shall be named as additional insured on any such policies of commerical general and automobile liability insurance, except professional liability and worker's compensation, which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, and employees shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other**
insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

E. Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

XII. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

XIII. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall become the property of CITY. The reuse of FIRST PARTY’s work products by City for purposes other than intended by this contract shall be at no risk to FIRST PARTY.

XIV. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A".
XV.  TERMINATION OF AGREEMENT

A.  CITY may give thirty (30) days written notice to FIRST PARTY, terminating this contract in whole or in part at any time, either for CITY’s convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations. Upon receipt of such notice, FIRST PARTY shall:

1.  Immediately discontinue all services affected (unless the notice directs otherwise); and

2.  Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this Agreement, whether completed or in process.

B.  If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

C.  If the termination is due to the failure of FIRST PARTY to fulfill its Agreement, CITY may take over the work and prosecute the same to completion by contract or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.

D.  If, after notice of termination for failure to fulfill Agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this section.

E.  The rights and remedies of the CITY provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
XVI. **INSPECTION OF WORK**

It is FIRST PARTY’s obligation to make the work product available for CITY’s inspections and periodic reviews, during normal business hours and upon advance request by CITY.

XVII. **BREACH OF AGREEMENT**

A. This Agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of the CITY.

B. The CITY reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this Agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of Agreement.

XVII. **SEVERABILITY**

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

XIX. **CAPTIONS**

The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this Agreement.
XX. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this contract, the prevailing party shall be entitled to litigation costs and reasonable attorneys’ fees. The Dispute Resolution provisions are set forth on Exhibit “D”, ‘Dispute Resolution’ attached hereto and by this reference incorporated herein.

XXI. TERM OF AGREEMENT

This Agreement shall remain in effect for the period of July 1, 2014 through June 30, 2019, unless extended, amended, or terminated in writing by in writing by CITY.

XXII. ENTIRE AGREEMENT

This document constitutes the sole Agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document’s date. Any prior Agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

City of Menlo Park
A Municipal Corporation

By

Alex D. McIntyre

Title City Manager
"CITY"
ATTEST:

Pamela Aguilan
City Clerk, City of Menlo Park

FIRST PARTY:

Kutzmann and Associates, Inc.

By

Title President
"FIRST PARTY"
Exhibit A

Scope of Work

FIRST PARTY will provide plan check services for CITY upon request, including but not limited to, review of commercial and residential plans and documents for compliance with the current editions of the California Building Code, California Plumbing Code, California Mechanical Code, National Electric Code, California Title 24 Disabled Access and Energy Conservation regulations, and any local amendments to the above codes hereinafter referred to as "THE CODES". Partial review of plans for compliance to THE CODES will be performed upon request of CITY. In case of disputes in interpretation or application of THE CODES, the final decisions lie with CITY and the authors of THE CODES.

FIRST PARTY will prepare a complete and legible list of corrections citing code references and include the name and phone number of the plan checker who will be available to answer any applicant question. After each review, the list of corrections shall be sent via mail and/or facsimile to both the applicant and CITY. If required for clarification or to expedite the plan review, items shall be discussed by telephone directly with the applicant. When the plans are in compliance, they shall be stamped "approved" on every page, signed, and forwarded via UPS or other carrier to the City of Menlo Park Building Division.
Exhibit B

**Turn Around Time:**

For all moderate sized projects, FIRST PARTY will return the list of corrections to CITY within ten (10) to fifteen (15) working days from the time the plans are received. The turn-around time for rechecks of plan based on the list of correction will completed within three (3) to five (5) working days. FIRST PARTY can negotiate the turn-around time with CITY for exceptionally large projects.


## Exhibit C

### Schedule of Charges:

<table>
<thead>
<tr>
<th>PERSONNEL</th>
<th>Hourly Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan Checkers</td>
<td>$90.00 - $100.00</td>
</tr>
</tbody>
</table>

Fees are generally seventy percent (75%) of plan-check fees collected by CITY.

The fees cover all services associated with a project plan review, including:

- Delivery of design documents to CITY;
- First, second, and third reviews, if necessary, to approved projects;
- Pre-application, pre-construction, or additional meeting attendance for unusual or complex projects.
EXHIBIT “D”

DISPUTE RESOLUTION

D1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

D2.0 Mediation

D2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph 3.1.

D3.0 Arbitration

D3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph 2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the contract.

D3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:

D3.3 Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.

D3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.

D3.5 All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
D3.6 The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.

D3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.

D3.8 The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.

D3.9 Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.

D3.10 The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.