AGREEMENT WITH INDEPENDENT CONTRACTOR

Contractor Name and Address
Group 4 Architecture Research + Planning, Inc.
211 Linden Avenue
So. San Francisco, CA 94080
(650) 871-0709
DMerkes@g4arch.com

Contractor: Upon completion of work or agreed-upon work periods, mail invoice with above Agreement Number to:
Department: Public Works - Engineering
Attention: Ruben Niño
Address: 701 Laurel Street
City, State, Zip: Menlo Park, CA 94025
Phone: (650) 330-6740

Menlo Park Library Sorting Room Renovation Project

It is agreed between the City of Menlo Park, California, and Contractor as follows:

1. **Services to be performed by Contractor.** In consideration of the payments hereinafter set forth, Contractor shall perform services for City in accordance with terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto for the City of Menlo Park.

2. **Contract Term.** The term of this agreement shall be from _3/30/15_ to Project Completion unless mutually agreed upon by City and Contractor in writing.

3. **Payments.** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," City shall make payment to Contractor in the manner specified herein and in Exhibit "A." Payments shall be monthly for the invoice amount or such other amount as approved by City. City shall have the discretion to approve the invoice and the work competed statement. Payment shall be for the invoice amount or such other amount as approved by City. 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 Contractor’s relevant records pertaining to the charges. In the event that the City makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the City at the time of contract termination. The City reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for all services under this agreement exceed **$13,200.00** unless mutually agreed upon in writing by the City and Contractor.

4. **Relationship of the Parties.** Contractor agrees and understands that the work/services performed under this agreement are performed as an Independent Contractor and not as an employee of the City and that Contractor acquires none of the rights, privileges, powers or advantages of City employees.

5. **Insurance and Indemnity.** Contractor, at its own expense, shall provide and keep in force, commercial liability insurance insuring against liability for bodily injury and property damage arising out of its work in an amount of not less than One Million Dollars ($1,000,000.00) for injury to, or death of one person in any one accident or occurrence, and in an amount of not less than One Million Dollars ($1,000,000.00) for injury to, or death of more than one person in any one accident or occurrence, and in the amount of not less than One Million Dollars ($1,000,000.00) per occurrence in respect to damage to property. City shall be named as an additional insured on Contractor’s insurance policy. Contractor shall provide City with a certificate of insurance coverage evidencing said coverage, including a copy of all declarations of exclusions, prior to commencing work. The Contractor 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. Contractor shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of contractor pursuant to this Agreement, in the amount of not less than One Million Dollars ($1,000,000) 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. To the full extent permitted by law Contractor agrees to defend, indemnify and hold City, its employees, agents, and officers, harmless from any and all claims, damages, and liability in any way occasioned by or arising out of the contractor’s negligent performance of services under this agreement, breach of contract or construction defects arising out of Contractor’s work.
6. **Non-assignability.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of City, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.

7. **Termination of Agreement.** The City may, at any time, terminate this Agreement, in whole or in part, for the convenience of City, by giving written notice specifying the effective date and scope of such termination. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereinafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the City and shall be promptly delivered to the City. Upon termination, the Contractor may make and retain a copy of such materials. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

8. **Worker’s Compensation Insurance.** Contractor agrees and understands that the City does not provide Worker’s Compensation Insurance to, or on behalf of, the Contractor for the work/services performed, but that said insurance is the sole responsibility of the undersigned.

9. **Payment of Permits/Licenses.** Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.

10. **Non-Discrimination.** No person shall illegally be excluded from participation in, denied the benefits of, or be subjected to discrimination under this Agreement on account of their race, sex, color, national origin, religion, age, or disability. Contractor shall ensure full equal employment opportunity for all employees under this Agreement.

11. **Retention of Records.** Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a federal agency, and the state of California.

12. **Merger Clause.** This Agreement, including Exhibit “A” and Exhibit “B” attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document’s date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the City. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit “A” attached hereto, the terms, conditions, or specifications set forth herein shall prevail.

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**THIS CONTRACT IS NOT VALID UNTIL SIGNED BY BOTH PARTIES**

![Signature]

Jesse T. Quiggin, Public Works Director

![Signature]

Carmela Aguilar
Attest: City Clerk

Dawn E. Merkes
Contractor Name Printed

![Signature]

Dawn E. Merkes
Contractor Signature

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94-2376500
Contractor’s Tax I.D. Number or Social Security Number

Attachment:  Exhibit A – Scope of Work
Exhibit B – Dispute Resolution
EXHIBIT A SCOPE
OF WORK
City of Menlo Park
Menlo Park Library Sorting Room Renovation

I. INTRODUCTION AND GENERAL INFORMATION

1.0 PROJECT DESCRIPTION
This contract is for architectural renovation of the Menlo Park Library’s book sorting room located at 800 Alma Street. The renovation work is limited to the book sorting room and adjacent office and hallway. Scope of work includes removing existing walls, doors, patch and repair, new wall and door, ceiling modification, and relocation of existing electrical.

2.1 SCOPE OF WORK
The scope of the project includes the following tasks:
- Task 1: Existing Condition Documentation, Evaluation and Verification
- Task 2: Develop 95% Construction Documents- Plan Check
- Task 3: Develop 100% Construction Documents - Back Check and Bidding
- Task 4: Bid and Award
- Task 5: Construction Support Services (support as needed)
- Task 6: Additional Services

3.1 CITY RESPONSIBILITIES
During the term of CONSULTANT’s professional services under this AGREEMENT the following items will be the responsibilities of the CITY:
- The CITY’s Project Manager or authorized designee shall manage the CONSULTANT’s performance under the Agreement. CONSULTANT shall receive final direction only from the Project Manager or his or her authorized designee. The Project Manager shall resolve any conflicting direction from other groups, departments or agencies.
- Plan Check and coordination of schedule for Plan Check.
- The CITY shall provide reviews and comment on what may be necessary to complete final construction plans, specifications and cost estimates. At the completion of each task, the CITY shall provide written authorization to the CONSULTANT to proceed to the next tasks.

II. CONSULTANT’S BASIC SERVICES
The CONSULTANT’s scope of basic services for the Project includes:
Develop the conceptual design, construction documents, supporting the bidding and award of the construction contract and providing limited construction support services for the expansion/renovation of the book sorting room located in the City Library. The work includes architectural services comprising limited electrical services required to complete this renovation.
TASK 1: EXISTING CONDITION DOCUMENTATION
During this Task the CONSULTANT shall:

1.1 Existing site survey visit.

1.2 Set up and develop design drawings:
   - Plans and Elevations
   - Outline specifications to include material specifications, and phasing of construction work during the Library’s business hours.

Deliverables
- Design drawing package

TASK 2: 95% CONSTRUCTION DOCUMENTS - PLAN CHECK
During this Phase the CONSULTANT shall:

2.1 Incorporate review comments from City.

2.2 Develop Construction Documents drawings:
   - Plans, Elevations, Details, Schedules
   - Technical Specifications
   - Estimate of probable construction costs

2.3 Submit to Building Department for Plan Check

2.4 Meetings: One review meeting with the City.

Deliverables
- Construction documents package for Building Department review.
- Technical Specifications
- Costs model

TASK 3: 100% CONSTRUCTION DOCUMENTS - BACK CHECK AND BIDDING
During this Phase the CONSULTANT shall:

3.1 Incorporate review comments and refinements as identified by City.

3.2 Refine Construction Documents drawings:
   - Plans, Elevations, Details, Schedules
   - Electrical diagram
   - Technical Specifications
   - Estimate of probable construction costs

3.3 Submit to Building Department for Back Check until approval. An approved building permit shall define task 3 as finished.

Deliverables
- Response to Building Department review comments as needed.
- Package of documents to submit to Building Department.
- Updated costs model.
TASK 4: BID AND AWARD
During this Phase the CONSULTANT shall:

4.1 Review and response to Request for information (RFI) comments.
4.2 Update plans and spec to address contractor’s questions.
4.3 Issue one (1) addendum.
4.4 Attend the Pre-Bid meeting.

Deliverables
- Issue RFI’s responses during bid period.
- Issue required addenda

TASK 5: CONSTRUCTION SUPPORT SERVICES
During this Phase the CONSULTANT shall:

5.1 Review submittals and provide comments.
5.2 Response to RFIs.
5.3 Attend preconstruction meeting.
5.4 Attend two (2) site visits to review construction progress.

III. ADDITIONAL SERVICES

1.1 CONTINGENT SERVICES
If the following services are required due to circumstances beyond the CONSULTANT’s control, the CONSULTANT shall notify the CITY prior to commencing such services. If the CITY deems that such services are not required, the CITY shall give prompt written notice to the CONSULTANT. If the CITY indicates in writing that all or parts of such Contingent Additional Services are not required, the CONSULTANT shall have no obligation to provide those services.

1.2 Providing services required due to significant Project scope changes, including, but not limited to, size, quality, complexity, the approved Project schedule, or the method of bidding or negotiating and contracting for construction.

2.1 OPTIONAL SERVICES
The following services are not part of the CONSULTANT’s Basic Services and shall be performed by the CONSULTANT as Additional Services only if and when authorized by the CITY in writing:

2.2 Other services not specifically identified under Basic Services.
2.3 Civil Engineering services
2.4 Mechanical and Plumbing engineering services.
IV. FEE SCHEDULE

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<td>Task 1</td>
<td>Existing Condition Documentation</td>
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<td>Task 2</td>
<td>95% Construction Documents- Plan Check</td>
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<td>Task 3</td>
<td>100% Construction Documents - Back Check and Bidding</td>
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<td>Task 4</td>
<td>Bid and Award</td>
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<td>Task 5</td>
<td>Construction Support Services</td>
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<td>Task 6</td>
<td>Additional Services</td>
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**SUBTOTAL:** $12,700

Reimbursable Expense $500

**TOTAL:** $13,200
EXHIBIT “B”

DISPUTE RESOLUTION

B1.0 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:

B2.0 Mediation

B2.1 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.

B3.0 Arbitration

B3.1 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.

B3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:

B3.3 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.

B3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.

B3.5 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.

B3.6 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.

B3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.

B3.8 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.

B3.9 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.

B3.10 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.