AGREEMENT WITH INDEPENDENT CONTRACTOR

Contractor Name and Address
MIG | TRA Environmental Sciences, Inc.
545 Middlefield Rd., Ste. 200
Menlo Park, CA 94025

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

Landscaping Assessment District - Professional Consulting & Levy Administration Services

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 _____9/10/15_______ 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 $7,050 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 general 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) 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) 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) per occurrence in respect to damage to property. City shall be named as an additional insured on Contractor's commercial general liability 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 Workers' Compensation coverage with statutory limits of liability, and Employer's Liability with minimum limits of liability of $1,000,000 each accident and each employee. Contractor shall furnish evidence of waivers of subrogation in favor of City for the Workers' Compensation and Employer's Liability policies. 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) per claim and annual aggregate. 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, officials and officers, harmless from any and all claims, liability for damages caused by contractor's negligent performance of services under this agreement.

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 upon Contractor's receipt of final payment 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 “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.

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

Received: 

**Ruben Niño, Assistant Public Works Director**

Date: 9/5/2015

Attest: City Clerk

**Paula Hartman**

Date: 9/21/2015

Contractor Name Printed

**Paula Hart**

Date: 9/10/15

Contractor Signature

94-3116998

Contractor’s Tax I.D. Number or Social Security Number

Attachment: Exhibit A – Scope of Work, Fee Schedule & Timeline
Exhibit B – Dispute Resolution
Date: September 9, 2015
Proposal No.: 44481.00
Prepared For: Ms. Azalea Mitch, P.E.
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
Email: aamitch@menlopark.org
Re: Atherton Channel Biological Study

Dear Ms. Mitch:

MIG|TRA Environmental Sciences, Inc. (MIG|TRA) is pleased to provide this scope of work for biological monitoring and reporting services related to the Atherton Channel clean-out project (project). We have qualified staff available to work on weekend days as requested in the RFP. This letter summarizes our understanding of the project and presents our proposed scope of work, budget and assumptions for pre-project surveys and biological monitoring in support of project permit compliance.

MIG|TRA is a recent merger of TRA Environmental Sciences, Inc., an environmental consulting firm, and MIG, a planning and design firm. TRA Environmental Sciences was founded in 1972 as a full-service environmental consulting firm, and MIG was founded in 1982. MIG is headquartered in Berkeley and has offices throughout the western United States. The MIG|TRA office is located in Menlo Park (but will move to San Jose in October 2015). Nationwide, MIG has 190 employees; the MIG|TRA office has 15 employees. The MIG Environmental Services Department (including MIG|TRA) has 30 employees. MIG|TRA is a federally certified woman-owned business by the General Services Administration (DUNS: 154641435), and is a corporation. We carry Commercial/General Liability Insurance, Automobile Liability Insurance, and Workers Compensation and Employers’ Liability Insurance in the amounts required to execute a contract with the City of Menlo Park.

The Project

The project involves the removal of debris and trash, vegetation, and roots on the side banks of the Atherton Channel (Channel) in Menlo Park, California. It does not require dewatering or water diversion. These maintenance activities are required to maintain channel capacity and prevent flooding of adjacent areas in the vicinity of Atherton Creek. It is our understanding that the appropriate resource agency permits have been issued for the project and that work is tentatively scheduled for October 2015.

The work site is approximately 1000 feet of the Atherton Channel between Highway 101 and Haven Court Bridge located at 3723 Haven Avenue. The Channel is approximately 10 to 15 feet wide.

Hand tools and a clamshell bucket will primarily be used to remove trash and debris and hand tools will be used for vegetation management on the creek banks.
Ms. Azalea Mitch
Atherton Channel Biological Study Scope of Work

of the LSAA. The permit conditions will be attached as an appendix to the report. This budget for this task includes time to address comments from the City and respond to one round of comments/report revision.

In the event any special-status species are detected during project surveys or on or around the project site during project activities, the monitoring biologist will submit California Natural Diversity Database (CNDDB) Field Survey Forms to the City and CDFW within 14 working days of the encounter.

Task 8: Administration and Quality Control
This task includes time for project coordination, communications with the project team, and senior manager review of the draft and final reports.

Project Staffing

This project will be staffed by biologists Lauren Huff and Megan Kalyankar, with oversight from Taylor Peterson. Resumes are attached, and their experience is summarized below. In addition, we have attached a list of monitoring experience and references for the two most recent monitoring events: the Holly Channel (at 101) and Belmont Channel clean out projects for San Carlos, and work with the California Water Service Company.

Taylor Peterson, Director of Biological Analysis – Ms. Peterson has 35 years of experience with the technical analysis and preparation of environmental documents. Her technical expertise is in the preparation of biological studies and wetland delineations in support of infrastructure projects, industrial projects, recreational projects, and commercial or housing development. Ms. Peterson will provide Senior Project Manager oversight, direction, and quality control for the project. She is currently overseeing monitoring activities at the Holly Channel in San Carlos and for a restoration project in California red-legged frog habitat in San Jose.

Lauren Huff, Senior Biologist I – Ms. Huff recently joined MIG|TRA as a Senior Biologist bringing her 14 years of experience as a wildlife ecologist and biologist to the firm. Ms. Huff is skilled in wildlife identification, reconnaissance-level site surveys, habitat assessments, nesting bird surveys and monitoring, wetland delineations, construction monitoring and compliance, mitigation monitoring, and vegetation and wildlife monitoring. Ms. Huff will monitor on alternate days from Ms. Kalyankar.

Megan Kalyankar, Biologist III – Ms. Kalyankar is an ecologist specialized in environmental impact assessment and biological monitoring. Ms. Kalyankar has experience in project site habitat assessment, determining if special-status plant and wildlife species could be present, construction monitoring, and mitigation monitoring. She has experience surveying for and providing management recommendations for nesting birds and a variety of special-status species Ms. Kalyankar will monitor on alternate days from Ms. Huff, and will prepare the report.

Budget

MIG|TRA will complete this scope of work for the fees presented in the following Cost Table. The Cost Table is based on our understanding of the project and assumptions we’ve made about the project. If unforeseen conditions are encountered, or if we experience delays or circumstances beyond our control, we will notify the applicant immediately to discuss modifications to the scope of services and/or project fees.

The LSAA does not require a biological monitor to be present all day during construction. We have budgeted for 46 hours per day for project monitoring, and have assumed that the monitoring period will be 5 days as stated in the RFP. If conditions allow, we will reduce our monitoring hours to save project costs.
Ms. Azalea Mitch  
Atherton Channel Biological Study Scope of Work

- **Permit Authorizations.** This scope of work assumes the City has obtained all of the state and federal authorizations required to complete the work, including any permits required under sections 401 or 404 of the Clean Water Act and any authorizations required under the federal Endangered Species Act. If we find state or federally listed species in the project area we will instruct the foreman to stop work and will inform the City immediately.

- **Meetings.** This scope of work does not include time for meetings with the project team or the resource agencies. Attendance at meetings can be provided on a time and materials basis with prior approval.

- **Agency Submittals.** MIG|TRA will provide its best efforts based on expertise in the required scientific disciplines, knowledge of the applicable regulations, and experience in preparing similar documents. We are required to make a full disclosure of any information we gather about habitat, presence of plant and wildlife species, or potential presence of species. It is our assumption that our work products will be provided in their entirety, particularly if they are provided to the resource agencies.

- **Permit Applications.** The scope does not include assistance with permit amendments or extensions. In addition, this scope of work does not include assistance with mitigation negotiations or implementation. This assistance can be provided under an amended budget.

- **Expense Estimates.** All expense estimates are typical estimates; actual expenses are billed at cost and may exceed or be less than the amounts shown. The upper limits shown here do not apply to expenses and travel cost in excess of those specifically budgeted. All MIG|TRA work products will be provided in electronic format. The applicant will be responsible for printing all hard copies.

Thank you for contacting MIG|TRA for this scope of service. We look forwarding to working with you on this project. If you have any questions regarding this proposal, or if we may be of further service, please contact me at your convenience.

Sincerely,

Taylor Peterson  
Director of Biological Analysis
Ms. Azalea Mitch  
Atherton Channel Biological Study Scope of Work  

noise and aesthetic impacts of increased pump equipment at Station 13 which is in a residential neighborhood and along the Portola Road scenic corridor; potential biological impacts of the proposed utility crossing of Sausal Creek; and traffic flow impacts from partial road closure during pipeline installation.

MIG|TRA is currently contracted to provide biological monitoring services for compliance with the biological mitigation measures in the Mitigation, Monitoring and Reporting Program (MMRP) for the project and a California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement for the pipeline crossing at Sausal Creek. The work will include preconstruction surveys for California red-legged frog, San Francisco garter snake, Pacific pond turtle, San Francisco dusky-footed woodrat and roosting bats, a worker training program, and biological monitoring during the installation of wildlife exclusion fencing, initial site clearing, and excavation of the bore entry and exit holes for the creek crossing.

Contact: Mark Bloom, Environmental Affairs PM, California Water Service Company, 1720 N. First Street, San Jose, CA 95112; (408)367-8377; Email: mabloom@calwater.com

San Carlos Storm Drain Maintenance Joint Aquatic Resources Permit Application (JARPA), Biological Assessments, and Construction Monitoring, San Carlos, San Mateo County, 2014 – Present: A portion of the City of San Carlos Capital Improvement Program (CIP) to addresses flooding that happens in the Industrial Road neighborhood during 10-year storm events. Based on an analysis completed by Schaaf & Wheeler in June 2014, 11 projects are required to address the problem. Some of these involve replacing storm drains in road rights-of-way, and some require dredging natural and man-made channels of sediment, vegetation and debris. Projects have been prioritized; the City will be implementing these projects over a period of several years.

As a subconsultant to Wilsey Ham Engineers, MIG|TRA prepared a Joint Aquatic Resources Permit Application for sediment removal at the first three channel locations scheduled for completion under the CIP, including 101-Holly Channel East, Belmont Creek, and 101-Holly Channel West.

Because the City obtained a CDFW, Lake and Streambed Alteration Agreement (LSAA) that addresses all of the projects identified in the CIP, an LSAA amendment was included with the JARPA to allow a one-time exception to exceed the annual limit on disturbance identified in the LSAA.

The 101-Holly Channel East project is near San Francisco Bay, and the USACE determined the need to consult with the USFWS regarding potential impacts to federally-listed salt marsh species. MIG|TRA prepared a Biological Assessment for the USACE to use in its consultation with the USFWS. MIG|TRA prepared a second Biological Assessment regarding potential impacts to Central California Coast steelhead and North American green sturgeon for consultation with NOAA Fisheries.

Contact: Mr. Donald Toy, Wilsey Ham Engineering, Surveying, and Planning, 3130 La Selva Street, Suite 100, San Mateo, CA 94403, Phone: (650) 349-2151, Direct (650) 286-8434, Email: DTOy@wilseyham.com

San Mateo Highlands, San Mateo County, 2014 – Present: MIG|TRA prepared and implemented a relocation plan for San Francisco dusky-footed woodrat, a special-status species that occurs in two areas associated with this residential development project. The relocation
BILLING RATES – 2015

Unless specified otherwise by prior agreement, invoices are submitted monthly showing time and charges for professional services by staff category and a separate figure for expenses. Invoices are payable upon receipt. Invoices unpaid past 30 days are subject to interest at 1 1/2% per month.

MIG|TRA Environmental Sciences, Inc., Labor (includes all overhead).

STAFF BILLING RATES

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>$/HR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal</td>
<td>210</td>
</tr>
<tr>
<td>Senior Project Manager III</td>
<td>180</td>
</tr>
<tr>
<td>Senior Project Manager II</td>
<td>160</td>
</tr>
<tr>
<td>Senior Project Manager I</td>
<td>145</td>
</tr>
<tr>
<td>Project Manager II</td>
<td>130</td>
</tr>
<tr>
<td>Project Manager I</td>
<td>115</td>
</tr>
<tr>
<td>Senior Biologist II/Senior Analyst II</td>
<td>145</td>
</tr>
<tr>
<td>Senior Biologist I/Senior Analyst I</td>
<td>130</td>
</tr>
<tr>
<td>Biologist III/Analyst III</td>
<td>115</td>
</tr>
<tr>
<td>Biologist II/Analyst II</td>
<td>100</td>
</tr>
<tr>
<td>Biologist I/Analyst I</td>
<td>85</td>
</tr>
<tr>
<td>GIS Analyst</td>
<td>110</td>
</tr>
<tr>
<td>CAD/GIS/Graphic Specialist</td>
<td>90</td>
</tr>
<tr>
<td>Support Staff</td>
<td>85</td>
</tr>
<tr>
<td>Field Crew</td>
<td>50</td>
</tr>
</tbody>
</table>

EXPENSES

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>BASIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial travel</td>
<td>cost +10%</td>
</tr>
<tr>
<td>Automobile travel</td>
<td>current IRS rate</td>
</tr>
<tr>
<td>Lodging/Meals</td>
<td>Cost + 10%</td>
</tr>
<tr>
<td>Photocopy (A and B sizes)</td>
<td>$0.10/image</td>
</tr>
<tr>
<td>Color copies</td>
<td>$0.50/image</td>
</tr>
<tr>
<td>Commercial report reproduction</td>
<td>cost +10%</td>
</tr>
<tr>
<td>Noise meter setup</td>
<td>$50/unit/day</td>
</tr>
<tr>
<td>Subcontractors</td>
<td>cost +10%</td>
</tr>
<tr>
<td>Other (lab, aerial photos, etc.)</td>
<td>cost +10%</td>
</tr>
</tbody>
</table>

Rates subject to revision effective January 1 of each year.
Ms. Azalea Mitch
Atherton Channel Biological Monitoring Scope of Work
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.