

# PROFESSIONAL SERVICES AGREEMENT

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620



Contract #: 2105

## AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND CLIMBON/CHARLES WHITWAM

THIS AGREEMENT made and entered into at Menlo Park, California, this 27th day of April, 2017, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and ClimbOn/Charles Whitwam, hereinafter referred to as "FIRST PARTY."

It is agreed between the CITY and FIRST PARTY as follows:

### 1. SERVICES TO BE PERFORMED BY FIRST PARTY

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services for the City of Menlo Park as set forth in Exhibit "A", Scope of Services, attached hereto.

### 2. AGREEMENT TERM

The term of this agreement shall be from July 4, 2017 to July 4, 2017 unless mutually agreed upon by CITY and FIRST PARTY in writing.

### 3. COMPENSATION AND PAYMENT

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 FIRST PARTY in the manner specified herein and in Exhibit "A." This compensation shall be based on the rates described 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 completed statement. 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. In the event that the CITY makes any advance payments, FIRST PARTY agrees to refund any amounts in excess of the amount owed by the CITY at the time of agreement termination. 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 **\$1600.00** unless mutually agreed upon in writing by the CITY and FIRST PARTY.

### 4. RELATIONSHIP OF THE PARTIES

FIRST PARTY 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 of Menlo Park and that FIRST PARTY acquires none of the rights, privileges, powers or advantages of City employees.

## 5. INSURANCE AND INDEMNITY

### 1. General Liability Insurance:

FIRST PARTY, 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 FIRST PARTY shall provide CITY with a certificate of insurance coverage evidencing said coverage, including a copy of all declarations of exclusions, prior to commencing work.

### 2. Automobile Liability Insurance:

The FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this Agreement 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. To the full extent permitted by law FIRST PARTY 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.

### 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 in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

## 6. NON-ASSIGNABILITY

FIRST PARTY 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 FIRST PARTY under this Agreement shall become the property of the CITY upon FIRST PARTY'S receipt of final payment and shall be promptly delivered to the CITY. Upon termination, the FIRST PARTY may make and retain a copy of such materials. FIRST PARTY 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

FIRST PARTY agrees and understands that the CITY does not provide Worker's Compensation Insurance to, or on behalf of, the FIRST PARTY for the work/services performed, but that said insurance is the sole responsibility of the undersigned.

## 9. PAYMENT OF PERMITS/LICENSES

FIRST PARTY 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. FIRST PARTY shall ensure full equal employment opportunity for all employees under this Agreement.

**11. RETENTION OF RECORDS**

FIRST PARTY 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" 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 Agreement is not valid until signed by both parties.

**FIRST PARTY:**

  
\_\_\_\_\_  
Signature


5/7/17  
\_\_\_\_\_  
Date

Charles Whitwam  
\_\_\_\_\_  
Name

President  
\_\_\_\_\_  
Title

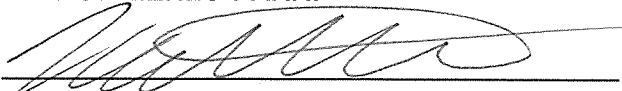
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**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
William L. McClure, City Attorney

5/22/17  
\_\_\_\_\_  
Date

**CITY OF MENLO PARK:**


  
\_\_\_\_\_  
Signature

5/10/17  
\_\_\_\_\_  
Date

Matt Milde  
\_\_\_\_\_  
Name

Recreation Coordinator  
\_\_\_\_\_  
Title

**ATTEST:**

  
\_\_\_\_\_  
Pamela Aguilar, City Clerk, City of Menlo Park

5/23/17  
\_\_\_\_\_  
Date

## **Exhibit A**

**CITY:** City of Menlo Park  
**EVENT:** 4th of July Parade & Celebration

**FIRST PARTY:** ClimbOn / Charles Whitwam  
**VENDOR NUMBER:** 12005  
**ADDRESS:** 1580 Flores Drive  
Pacifica, CA 94044

**SERVICE DESCRIPTION:** ClimbOn will be providing two climbing walls for the 4th of July Parade & Celebration event.

**DELIVERY DATE:** Tuesday, July 4, 2017  
**DELIVERY TIME:** 12:00 PM to 2:30 PM  
**DELIVERY LOCATION:** Burgess Park  
701 Laurel Street  
Menlo Park, CA 94025

**PAYMENT SCHEDULE:** \$1,600.00 due upon delivery

**ADDITIONAL DOCUMENTS:** N/A

**EXHIBIT PREPARED BY:** Monica Bugaoan-Abakan, Special Events Assistant  
**DATE:** Thursday, May 9, 2017

**NOTES:** N/A