

PROFESSIONAL SERVICES AGREEMENT

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



Agreement #: 002613

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND MOSS ADAMS LLP

THIS AGREEMENT made and entered into at Menlo Park, California, this 28 day of March, 2019, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and MOSS ADAMS LLP, 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: purchasing process internal audit

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:

1. 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 Services (the "Project").

2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A", Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A". 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 Work Product (defined in Section 14 below) within one month after completion of all of FIRST PARTY's activities required under this Agreement.

3. 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 "A", Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$39,590 as described in Exhibit "A", Scope of Services. This compensation shall be based on the rates described in Exhibit "A". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- 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 project title, Agreement Number, 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.

5. 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 employees and applicants for employment, are treated 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.

6. 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, and such changes of stock ownership will materially impact the services provided by FIRST PARTY hereunder, 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.

7. 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.

8. 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.

9. NOTICES

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

Lenka Diaz
 Administrative Services Department
 City of Menlo Park
 701 Laurel St.
 Menlo Park, CA 94025
 650-330-6649
 lddiaz@menlopark.org

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

Mark Steranka
 Moss Adams LLP
 999 Third Ave
 Seattle, WA 98104
 (206) 302-6409
 mark.steranka@mossadams.com

With a copy to:
 Moss Adams LLP
 999 Third Avenue, Suite 2800
 Seattle, WA 98104
 Attn: General Counsel
 Legal@mossadams.com

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.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants (each, "Indemnified Party") from all third-party claims, suits or actions brought for, or on account of, injuries to or death of any person or damage to real or tangible personal property to the extent resulting from the negligence, recklessness, or willful misconduct of the FIRST PARTY during performance of any work required by this Agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code. In order to seek indemnification hereunder, the Indemnified Party shall provide FIRST PARTY with prompt written notice of such claim and cooperate with FIRST PARTY in handling the claim. FIRST PARTY shall be entitled to control the handling of such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this Agreement until all insurance required under this Section 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 carve-back to contractual liability exclusion in FIRST PARTY'S Commercial General Liability policy extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this Agreement. FIRST PARTY shall notify CITY of any cancellation of the policy, unless FIRST PARTY promptly obtains replacement coverages meeting the requirements of this Section 11. 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" (not required if the FIRST PARTY is a Sole Proprietor).
 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 and One Million Dollars (\$1,000,000) in aggregate, or One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including . 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 accident 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 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.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured (blanket endorsement acceptable) on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the 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, agents, employees, and servants 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. A any deductibles or self-insured retentions shall be the responsibility of Contractor.

- F. FIRST PARTY shall not commence work under this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- G. There shall be a carve-back to contractual liability exclusion in FIRST PARTY'S Commercial General Liability policy extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this Agreement. FIRST PARTY shall notify CITY of any cancellation of the policy, unless FIRST PARTY promptly obtains replacement coverages meeting the requirements of this Section 11. 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" (not required if the FIRST PARTY is a Sole Proprietor).
 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 and One Million Dollars (\$1,000,000) in aggregate, or One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including . 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 accident 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 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.
- H. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured (blanket endorsement acceptable) on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the 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, agents, employees, and servants 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.
- I. 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.
- J. A any deductibles or self-insured retentions shall be the responsibility of Contractor.

12. 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.

13. 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.

14. OWNERSHIP OF WORK PRODUCT

- A. All final reports and other completed deliverables of FIRST PARTY for this Project, which are delivered under this Agreement or which are developed, produced and paid for under this Agreement ("Work Product"), shall become the property of CITY. The reuse of FIRST PARTY's Work Products by City for purposes other than intended by this Agreement shall be at no risk to FIRST PARTY. FIRST PARTY may retain a copy of Work Products for archival purposes.
- B. FIRST PARTY shall own its workpapers and its internal engagement documentation, and any accounting-related general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials, or other intellectual property which may have been discovered, created, received, or developed by Consultant either prior to or as a result of providing services under the Agreement (collectively, "Consultant Materials").
- C. In the event Consultant Materials are provided to CITY, FIRST PARTY shall continue to own its Consultant Materials. CITY shall have non-exclusive, non-transferable license to use Consultant Materials for its own internal use and only for the purposes for which they are delivered to the extent they form part of a Work Product.
- D. Notwithstanding anything to the contrary in this Agreement, FIRST PARTY and its personnel are free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of CITY.

15. 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".

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this Agreement 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 or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. FIRST PARTY may terminate this Agreement only for cause, upon thirty (30) days' written notice to CITY. Upon receipt or issuance of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all Work Product.
- B. If termination is for the convenience of CITY or for cause by FIRST PARTY, 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 agreement or otherwise. In such case, FIRST PARTY may 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.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK
It is FIRST PARTY's obligation to make the Work Product available for CITY's inspections and periodic reviews upon request by CITY.
18. COMPLIANCE WITH LAWS
It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this Agreement, including but not limited to compliance with prevailing wage laws, if applicable.
19. BREACH OF AGREEMENT
<p>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.</p> <p>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.</p>
20. 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.
21. 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.
22. LITIGATION OR ARBITRATION
In the event that suit or arbitration is brought to enforce the terms of this Agreement, each party shall bear its own litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B", 'Dispute Resolution' attached hereto and by this reference incorporated herein.
23. RETENTION OF RECORDS
Contractor shall maintain all required records related to fees and expenses charged under this Agreement 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.
24. TERM OF AGREEMENT
This Agreement shall remain in effect for the period of _____, 2019 through September 30, 2019 unless extended, amended, or terminated in writing by CITY.

25. 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.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant **IS / IS NOT** required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the Agreement.

27. NO THIRD PARTY BENEFICIARIES

CITY and FIRST PARTY are the only parties to this Agreement and are the only parties entitled to enforce its terms. All services are for the exclusive use and benefit of the CITY. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third person.

28. LIMITATION OF LIABILITY

- A. EXCEPT FOR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR INDEMNIFICATION OBLIGATIONS, EACH PARTY'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE, INCLUDING BUT NOT LIMITED TO CONTRACT LIABILITY OR A PARTY'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT, IN THE AGGREGATE, EXCEED THE GREATER OF ONE HUNDRED FIFTY THOUSAND DOLLARS (\$100,000) OR THREE TIMES (3X) THE FEES PAID TO CONTRACTOR UNDER THE AGREEMENT; AND
- B. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

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

FIRST PARTY:

Mark Stevanica
Signature

3-21-19
Date

Mark Stevanica
Name

Partner
Title

91-0189318
Tax ID#

APPROVED AS TO FORM:

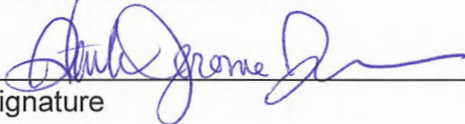


William L. McClure, City Attorney

3/26/19

Date

CITY OF MENLO PARK:



Signature

3/28/19

Date

Starla Jerome-Robinson

Name

City Manager

Title

ATTEST:



Judi A. Herren, City Clerk, City of Menlo Park

4/1/19

Date

EXHIBIT "A" – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's **Administrative Services Department**:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this Agreement. A notice to proceed will be issued by the CITY to FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY an all-inclusive fee of \$39,590, as follows:

SERVICE DESCRIPTION	AMOUNT
1. Start-Up and Management	\$3,424
2. Fact Finding	\$13,375
3. Analysis	\$11,770
4. Reporting	\$11,021
	\$39,590

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY prior to the commencement of the work.

A3. SCHEDULE OF WORK

The Parties understand that services of this nature will take approximately three to four months to complete from start-up to delivery of the final report. The overall timing will depend on the availability of key CITY personnel and the general timing of the work in relation to other relevant work impacting the CITY. FIRST PARTY'S proposed schedule for the various services required will be set forth as follows:

PHASE	MONTH 1	MONTH 2	MONTH 3	MONTH 4
1. Start-Up and Management				
2. Fact Finding				
3. Analysis				
4. Reporting				

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services prior to the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this Agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the **Administrative Services Director**.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the Agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount.

Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this Agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT A-1: SCOPE OF WORK

The phases and tasks that comprise our proposed work plan are described below.

PHASE 1: START-UP AND MANAGEMENT

At project initiation, we will review the **Error! Reference source not found.**'s expectations, project timing, deliverables, and outcomes.

Task 1.1–Initiate project

We will conduct a kickoff meeting with the **Error! Reference source not found.** to review expectations and discuss overall project scope, logistics, deliverables, timing, and progress reporting requirements. We will clarify the responsibilities of Moss Adams and **Error! Reference source not found.** personnel (e.g., providing requested documents and scheduling interviews), timing of specific project activities, and the format of each required deliverable. Also, we will establish an interview list and finalize our approach to each phase of the project.

Task 1.2–Develop risk assessment framework

A risk assessment framework is fundamental in setting the stage to properly conduct purchasing audits. We will establish a mechanism through which risk will be assessed in a straightforward manner. The results of the risk assessment will inform our audit activities.

Task 1.3–Perform project management

We will conduct rigorous project management for the duration of the project, including providing guidance to the audit team; coordinating with the **Error! Reference source not found.**; working issues and solving problems; monitoring progress against the approved work plan; and developing, submitting, and discussing progress reports with the **Error! Reference source not found.** Progress reports will be provided at the frequency requested by the **Error! Reference source not found.**

Task 1.4–Provide quality assurance

We believe it is important to recognize the need for quality by delivering excellent client service and engagement oversight. A partner will review all deliverables before submittal to the **Error! Reference source not found.**

Phase 1 Deliverables:

Interview list
Progress reports

PHASE 2: FACT FINDING

This phase encompasses fieldwork, including document review, interviews, walk-throughs, and an online survey, as well as the development of preliminary findings based on the results of fieldwork.

Task 2.1–Review documents

We will gather relevant documentation for review. Examples include annual budgets, external financial audits from the past three years, any prior fraud incident reports, internal controls listings, policies and procedures, process diagrams, reports from any relevant studies, and relevant training materials.

The objectives of documentation review include gaining a sufficient understanding of your environment, further defining issues and surrounding facts, and gaining insights to prepare for interviews.

Task 2.2–Conduct interviews and walk-throughs

We will conduct interviews with **Error! Reference source not found.** personnel responsible for performing purchasing activities to identify areas of greatest risk and concern and gain an understanding of opportunities for improvement. We will work with the **Error! Reference source not found.** to schedule interviews. We will conduct interviews with representatives from relevant departments, since purchasing is a decentralized activity. As part of these interviews, we will also perform process walk-throughs. Walk-throughs are a roving interview whereby we will learn about the details of relevant processes, internal controls, compliance, and performance. Walk-throughs will also allow us to make initial observations to identify important questions and issues that require follow-up.

Task 2.3–Administer online survey

In addition to interviews and walk-throughs, our fact-finding process will include a brief survey via use of a web-based tool to gain input from purchasing customers within the **Error! Reference source not found.** The online survey will enable us to cost-effectively reach a broader audience within the **Error! Reference source not found.** and gain additional insights.

Task 2.4–Prepare preliminary findings

Based on the information we obtain through document review, interviews, walk-throughs, and the online survey, we will document our preliminary findings.

Task 2.5–Present preliminary findings

We will present preliminary findings to the **Error! Reference source not found.** The purpose of sharing preliminary findings is to verify facts to make sure the basis for each finding is accurate and valid and to avoid surprises by giving the **Error! Reference source not found.** a chance to preview findings. Findings will form the basis for analysis of opportunities for improvement.

Phase 2 Deliverables:

Document request list
Preliminary findings

PHASE 3: ANALYSIS

This phase will determine the significance of issues identified and how best to address them. An overview of each type of internal audit project is provided below.

Task 3.1–Understand current process and internal controls

We will gain an understanding of the **Error! Reference source not found.**'s current purchasing process and relevant system of internal controls. This information will help us to understand to what extent processes will need to change to match recommended policies and procedures.

Task 3.2–Evaluate policies and procedures

We will compare the **Error! Reference source not found.**'s policies and procedures with best practices to identify opportunities for improvement. For instance, we will look for opportunities to:

- Update the current Purchasing Policies and Procedures to conform to federal and state procurement standards
- Conform to industry best practices in procurement
- Improve process efficiency and end-to-end approval time
- Adopting strategies for collective purchasing agreements with other local governments
- Align authority and responsibility
- Reduce risks through training and oversight

Task 3.3–Prepare draft findings and recommendations

We will update findings and add draft recommendations based on our analysis. Recommendations will focus on implementing appropriate actions aimed at enhancing efficiency, reducing risks, and strengthening controls through changes to policies and procedures.

Task 3.3–Present draft findings and recommendations

We will present draft findings and recommendations to the **Error! Reference source not found.** The purpose of sharing draft findings and recommendations is to test the practicality of recommendations, and, again, avoid surprises.

Phase 3 Deliverables:

Draft findings and recommendations

PHASE 4: REPORTING

This phase covers the production of deliverables, including draft and final reports and annual audit plan.

Task 4.1–Submit draft report

Our work will be packaged in a draft report for review by the **Error! Reference source not found.** The draft report will include the necessary level of detail to allow the document to stand on its own and include the following:

- Executive summary
- Commendations (what is working well)
- Study objectives, scope, and methodology
- Findings and recommendations

Implementation plan

Management response (if desired by the **Error! Reference source not found.**)

Task 4.2–Submit final report

Based on feedback from the **Error! Reference source not found.**, we will revise the draft report and submit our final report.

Task 4.3–Present final report

We will present the final report to the **Error! Reference source not found.** and prepare a presentation to facilitate these briefings.

Phase 4 Deliverables:	Draft and final audit report Final report presentation
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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 B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Arbitration Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association (the "Rules"), 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 from the AAA's National Panel of Accounting and Related Services Arbitrators; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the AAA.
- B3.2** The provisions of the Rules 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 arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in professional liability litigation.
- B3.5** The parties shall be entitled to conduct full discovery, including without limitation, depositions, in accordance with the California Code of Civil Procedure.
- B3.6** 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.
- B3.7** The arbitrators must provide to the parties factual findings and the reasons on which the decisions of the arbitrators is based.
- B3.7** Final decision by the arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.9** All proceedings shall, to the extent permitted by law, be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award..
- B3.10** Costs and fees of the arbitrators shall be borne equally by the parties.
- B3.11** The award or decision of the 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.