

CONSULTANT AGREEMENT

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



Agreement #:	002754
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND R3	
THIS AGREEMENT made and entered into at Menlo Park, California, this <u>13</u> day of <u>August</u> , <u>2019</u> , by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and R3, 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: Zero Waste Implementation	
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.	
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 project related files, records, and materials 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).	

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:

Rebecca Lucky
Sustainability Manager
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6720
mfcancilla@menlopark.org

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

Garth Schultz
R3 Consulting Group, Inc.
2600 Tenth Street, Suite 424
Berkeley, CA 94710
510-647-9674
gschultz@r3cgi.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 from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the 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.

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, before 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

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

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. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

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.

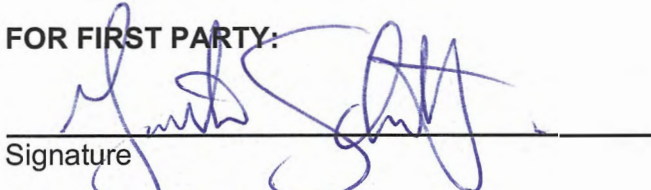
26. STATEMENT OF ECONOMIC INTEREST

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 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.

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

FOR FIRST PARTY:



Signature

Garth Schultz

Printed name

33-1030017

Tax ID#

August 5, 2019

Date

Principal

Title

APPROVED AS TO FORM:

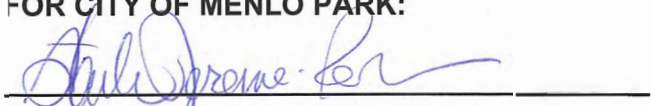


William L. McClure, City Attorney

8/13/19

Date

FOR CITY OF MENLO PARK:

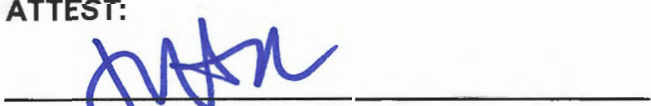


Starla Jerome Robinson, City Manager

8/13/19

Date

ATTEST:



Judi A. Herren, City Clerk

8/14/19

Date

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.

Northern California Office

1512 Eureka Road, Suite 220, Roseville, CA 95661
Tel: 916-782-7821 | Fax: 916-782-7824

San Francisco Bay Area Office

2600 Tenth Street, Suite 424, Berkeley, CA 94710
Tel: 510-647-9674

June 10, 2019

Ms. Rebecca Lucky
Sustainability Manager
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025

Subject: 2019-2020 High Diversion Support Services and On-Call Assistance

Dear Ms. Lucky:

R3 Consulting Group, Inc. (R3) is pleased to submit the attached proposal for High Diversion Support Services and On-Call Assistance for the 2019/2020 fiscal year. R3 and the City of Menlo Park (City) have a collaborative history of working together on projects related to sustainability, high diversion, zero waste, and more. As such, R3 is knowledgeable in the City's high diversion goals and is eager to assist the City and community in achieving those goals.

Based on our communications regarding the City's needs, R3 hereby proposes to provide the following services, which are further detailed below:

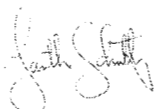
- Task 1: Assistance and Implementation of the Zero Waste Occupancy Policy and General On-Call Support;
- Task 2: Solid Waste Ordinance Update;
- Task 3: Construction and Demolition Ordinance Update; and
- Task 4: General On-Call Support.

* * * * *

We appreciate the opportunity to submit our proposal to the City. Should you have any questions regarding our proposal or need any additional information please contact me by phone at (510) 647-9674 or by email at gschultz@r3cgi.com. As Principal at R3, I am authorized to contractually obligate R3 and negotiate contracts on behalf of the organization.

Sincerely,

R3 CONSULTING GROUP



Garth Schultz | Principal

Scope of Services

Task 1 Assistance and Implementation of the Zero Waste Occupancy Policy

Task 1.1 Zero Waste Occupancy Implementation

In 2018/19, the City and R3 developed and are currently in the final stages of developing a policy around Zero Waste in the occupancy phase of buildings in the -LS, -O, or -RMU Zoning Districts of Menlo Park. The City plans to begin implementation on or before July 1, 2019. As such, R3 Project Analyst, Claire Wilson (or other appropriate staff if necessary), will be available to work on-site with the City one (1) day per week. Additionally, R3's Project Analyst will arrange bi-weekly project management conference calls with City staff and R3 principal Garth Schultz to discuss and make decisions regarding project strategy, implementation, and long-term action as a part of the Zero Waste Occupancy policy.

As a part of this task, R3 will:

- Be available for an R3 Staff person to work on-site work one (1) day per week (ten hours per day including transit time) or until City Staff and R3 determine frequency of on-site work be decreased;
- Conduct bimonthly call with City Staff and R3 Staff, including R3 Principal, for the term of this agreement;
- Assist in the implementation of the Zero Waste Occupancy requirements;
- Active tracking of permit applicants in the process;
- Active management of auditors, audit requirements;
- Assisting Planning and Building Departments in regards to Zero Waste Occupancy; and
- Other as-needed assistance as agreed upon by City Staff and R3 Principal.

Task 1 Deliverables

- One (1) electronic memorandum summarizing the efforts of implementation the Zero Waste Occupancy Requirements; and
- Other deliverables as agreed upon by City staff and R3.

Task 2 Solid Waste Ordinance Update

R3 will work from the current municipal code and make recommendations regarding the incorporation of recently passed legislation including but not limited to AB 341, AB 1826, AB 1594, SB 1383, and changes needed to assist the City in meeting its zero waste goals. Specific topics to be addressed include mandatory and universal recycling and organics collection services, special events requirements, and enforcement provisions.

We anticipate this task will require multiple drafts of the municipal code, and presentations and/or workshops to the City Council.

Please note this Task will be done in conjunction with Task 3 and will result in including new language in the City's Green Building Code to address Construction and Demolition program requirements.

As a part of this task, R3 will:

- Review the current draft municipal code update;
- Provide recommendations to incorporate new legislation and administrative/enforcement requirements;
- Participate in one (1) workshop on the draft ordinances (municipal code and C&D), and program options to provide support for generators to utilize the haulers for C&D hauling/processing;
- Revise the draft language based on feedback from the City Council workshop; and
- Present the revised draft language to the City Council for consideration.

Task 2 Deliverables

- One (1) solid waste ordinance with tracked changes with revised draft language;
- One (1) PowerPoint presentation for City Council; and
- One (1) final draft of ordinance language.

Task 3 Construction and Demolition Ordinance Update

Task 3.1 Evaluate Current Program

R3 will review the City's current Construction and Demolition (C&D) ordinance. During this review, R3 will look for areas to improve the City's ordinance to align with City's zero waste goals as well as incorporate applicable legislation. R3 will work with City staff to evaluate the effectiveness of the City's current program and offer policy recommendations to address concerns.

As a part of this task, R3 will:

- Review Menlo Park Municipal Code Chapter 12.48;
- Conduct interviews with City staff including the Building and Planning Departments;
- Review current C&D recycling packet and Green Halo template;
- Review effectiveness of penalties and the current deposit system; and
- Evaluate pathways to compliance that are currently utilized by City, including self-haul, debris boxes, outreach and educational tools, and other options if available to permittees.

Task 3.2 Recommended Program Approach

After evaluating the current system and assessing City priorities, R3 will develop a recommended program approach to C&D diversion in Menlo Park. The goal of the selected program approach is to improve customer/staff process to increase efficiency as well as strengthen the program to be in alignment with the City's zero waste goals, as well as promote and/or require best management practices. These best

practices include but are not limited to requiring 100% of recyclable materials to be diverted from disposal, source separation of materials on-site, promoting deconstruction, and other strategies.

As a part of this task, R3 will:

- Implement best management strategies to promote high diversion and align with the City's zero waste goals;
- Provide guidance and recommendations for enforcement or penalties related to non-compliance (permit holds, deposit, other);
- One (1) staff training for City Building and Planning Departments; and
- Provide recommendations for modifications to Menlo Park Municipal Code Chapter 12.48 if needed.

We will summarize our proposed program approach in a memorandum. We will first provide this memorandum to the City in draft form and adjust the program approach according to City comment prior to finalizing this memorandum. We will also provide "tracked changes" to the municipal code text where needed.

Task 3 Deliverables

- One (1) electronic memorandum summarizing recommendations;
- One (1) C&D ordinance with tracked changes with revised draft language; and
- One (1) PowerPoint presentation for City Council.

Task 4 General On-Call Support

this Task, R3 will provide as-requested support to the City in management and administration of its solid waste collection contract with Recology, its membership in SBWMA, and its on-call support relating to the City's rates and rate setting process. R3 will also provide on-call support to the City in setting 2020 rates, based on the maximum rates set by the City Council in November 2018, and using the rate structure and rate adjustment model provided to the City by R3 in 2017. The focus of these services will be to support the City in internalizing these functions for future rate setting years while providing a "double check" on the rate setting process to ensure accuracy in the second year of implementation.

This Task provides the City with on-call access to R3 services in support of:

- Management and administration support to the City's management of the franchise agreement with Recology;
- Support for 2020 rate setting, based on the rate structure already developed by R3 for the City; and
- Other on-call support for integrated waste management tasks, as identified and requested by the City.

Task 4 Deliverables

- Deliverables as agreed upon by City staff and R3.

Schedule and Budget

This proposal assumes a **start date of July 1, 2019** and a project **completion date of June 30, 2020**, for a total project term of exactly one (1) year. We are happy to revise this schedule if the City so desires.

Our total proposed budget for this engagement is equal to a not-to-exceed budget of **\$100,000**. Table 1 on the following page provides a per-task schedule and budget. We are happy to discuss potential modifications to these details to best meet the needs of the City.

**Table 1
 Tentative Schedule**

	Key Task	Start Date	End Date
1	Assistance and Implementation of the Zero Waste Occupancy Policy	July 2019	June 2020
2	Solid Waste Ordinance Update	September 2019	June 2020
3	Construction and Demolition Ordinance Update	September 2019	June 2020
4	General On-Call Support	July 2019	June 2020

**Table 2
 Project Cost**

	Task	Hours	Cost
1	Assistance and Implementation of the Zero Waste Occupancy Policy	335	\$55,000
2	Solid Waste Ordinance Update	124	\$20,000
3	Construction and Demolition Ordinance Update	87	\$15,000
4	General On-Call Support	75	\$10,000
	Total	621	\$100,000

Table 2
2018 Billing Rates and Charges

Classification	Hourly Rate
Principal	\$215 per hour
Project Director	\$215 per hour
Senior Project Manager	\$190 per hour
Project Manager	\$175 per hour
Senior Project Analyst	\$160 per hour
Senior Administrative Support	\$160 per hour
Project Analyst	\$145 per hour
Associate Analyst	\$130 per hour
Administrative Support	\$115 per hour
Reimbursable Costs (Included in Hourly Rates)	
Consultants/Subcontractors	As billed
Lodging and meals	Direct cost
Travel — Private or company car	At Current Federal Rate
Travel — Other	Direct cost
Delivery and other expenses	Direct cost

Payments

Unless otherwise agreed in writing, fees for work completed will be billed monthly at the first of each month for the preceding month and will be payable within 30 days of the invoice date.