

MAINTENANCE AGREEMENT

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



Agreement #: 002805

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND B.T. MANCINI CO., INC.

THIS AGREEMENT made and entered into at Menlo Park, California, this 20 day of September, 2019, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and B.T. MANCINI CO., INC., 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: Arrillaga Gymnasium replacement padding and inspection.

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).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$10,000 as described in Exhibit "A," Scope of Services. All payments 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, the FIRST PARTY shall submit a statement describing the services performed to CITY. 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 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before 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:

Derek Schweigart
Community Services
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-2267
dsschweigart@menlopark.org

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

David Fan
B.T. MANCINI CO., INC.
876 S. Milpitas Blvd.
P.O. Box 361930
Milpitas, CA 95035
408-942-7900

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.

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 contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' 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 workers' 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 a copy of all declarations of coverage exclusions. 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 on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' 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. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

| |
|--|
| <p>12. PAYMENT OF PERMITS/LICENSES</p> |
| <p>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.</p> |
| <p>13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS</p> |
| <p>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.</p> |
| <p>14. OWNERSHIP OF WORK PRODUCT</p> |
| <p>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.</p> |
| <p>15. REPRESENTATION OF WORK</p> |
| <p>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."</p> |
| <p>16. TERMINATION OF AGREEMENT</p> |
| <p>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:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.</p> |

| |
|---|
| 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, the prevailing party shall be entitled to 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 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 September 15, 2019 through November 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.

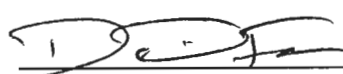
26. STATEMENT OF ECONOMIC INTEREST

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 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

9/18/19

Date

David Fan

Printed name

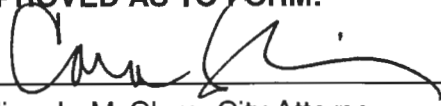
Sales Manager

Title

94 157 6295

Tax ID#

APPROVED AS TO FORM:

For 

William L. McClure, City Attorney

9/30/19

Date

FOR CITY OF MENLO PARK:

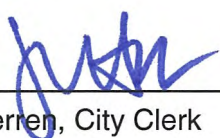


Derek Schweigart, Community Services Director

9/20/19

Date

ATTEST:



Judi A. Harren, City Clerk

10/7/19

Date

EXHIBIT "A" – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's Community Services Department. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

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 separately for each separate scope of work agreed to between the CITY and 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 at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

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 before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

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 before 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 Community 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 "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 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 agreement.
- 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.



B.T. MANCINI CO., INC.

(408)942-7900
(408)945-1360
btmancini.com

876 S. Milpitas Blvd.
P.O. Box 361930
Milpitas, CA 95035

DIR #1000002989
CA Contractors Lic. #229210
NV Contractors Lic. #0010497

TO Arrillaga Family Gymnasium
ATTN Jarrod Harden
PHONE 650-330-2220
EMAIL jwharden@menlopark.org

DATE 6/27/19
NAME OF JOB Arrillaga Gym Pad Replace / Service
LOCATION Menlo Park, CA
PLANS BY NA
DATE OF PLANS NA

We propose to: Furnish furnish and install install only the following for the above project in accordance with the following terms and conditions and those appearing on the reverse side of this sheet.

Service Option #1:

Materials:

- 1) Furnish and Install **Nine (9) Porter Athletic Wall Pads.**
 - a) QTY Eight (8) 2" Durasafe Wallpads, 2'x8' without Margins; 19 oz.
 - b) QTY One (1) 2" Durasafe Wallpad, CUSTOM SIZE 2'x8' or less; 19 oz.
 - c) QTY One (1) Molded Wall Pad Insert; Double-Gang; Gray
 - d) Wall Attachment Clips and Panel Clips included.

Service Option #2:

Materials:

- 2) Furnish and Install **One (1) Porter Athletic FRAME Pads ONLY.**
 - a) Includes Frame Pads ONLY. Does NOT include the Judge's Stand Pads.

Service Option #3:

Service:

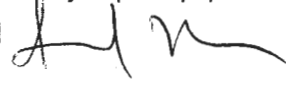
- 3) Time & Materials (T&M) labor to check all existing wall pads. Any pads with the Panel Clips coming off, reattach to the backer and secure with adhesives or hardware, and reinstall.
 - a) This work does NOT include any Wall Backing, any Gypsum work, any painting/patching, floor base, or other surrounding construction work.
 - b) At the end of each work day and upon completion of work, time and material tags **MUST** be signed by customer to track the cost of work and guarantee payment for work performed.
 - c) **Eight (8) hour charge minimum for first day. All labor is rounded up to four (4) hour block beyond that.**

CONTINUED ON PAGE 3

QUOTATION ACCEPTANCE:

This quotation, unless otherwise noted, will remain in effect for 30 days from the above date. Upon acceptance by the Buyer and credit approval by the B.T. Mancini Co., Inc. this instrument shall constitute a binding contract. In the event the Buyer elects to issue his own purchase order or contract based on this quotation, the conditions contained herein shall be deemed to be incorporated in said purchase order or contract. This proposal expressly limits acceptance to the terms of The General Conditions of Sale contained herein. No terms additional or different from the General Conditions will be accepted, including, but not limited to, any terms which establish a "condition precedent" to the Buyer making payment to the Seller other than any "condition precedent" already contained in this proposal.

The undersigned hereby accepts this proposal and states that he has read the General Conditions of Sale on page two.

Accepted 
By
Date 7/8/19

B.T. Mancini Co., Inc. *David Fan*
By David Fan
Date 6/27/19



GENERAL CONDITIONS TO AGREEMENT

1. **Definitions** – The word "Seller" as used herein means B.T. Mancini Co., Inc. and the word "Buyer" means the purchaser of material and services ("Work") hereunder from the Seller for the specific project referenced herein.
2. **Incorporation** – Buyer agrees that these General Conditions are a material part of the agreement between Buyer and Seller for the Work ("Agreement"), will be and hereby are incorporated into any further expression of that Agreement, and when in conflict with any other written terms and conditions governing Seller's performance of the Work, shall take precedence thereover.
3. **Prompt Performance** – Seller shall make reasonable efforts to perform the Work promptly in accordance with the terms of this Agreement, but shall not be liable for delay or schedule impacts arising from strikes, lockouts, fire, earthquake, war, governmental acts, Acts of God, or other events beyond Seller's reasonable control, whether affecting the production, loading, transportation, delivery, or installation of the Work.
4. **Warranty** – Seller warrants that the Work will be of good quality and new unless the Agreement requires or permits otherwise. For one (1) year from the date of substantial completion of the Work, Seller will at its sole discretion repair or replace any non-conforming Work under this warranty. Seller's warranty excludes remedy for damage or defect caused by abuse, alterations not executed by Seller, improper or insufficient maintenance, improper operation, normal wear and tear, and normal usage. Seller makes no other warranty, express or implied, regarding the Work, including the suitability thereof for any specific project. After substantial completion, Buyer's rights under this warranty are its sole and exclusive remedy against Seller for non-confirming Work.
5. **Delay** – In the event the Work is stopped or delayed for any cause beyond the reasonable control and not the fault of Seller, then Seller shall in addition to any remedies otherwise available, be entitled to an equitable adjustment to both the time and cost of performing the Work, and may, if such stoppage or delay continues for thirty (30) days, terminate this Agreement and be paid for all Work performed. Stoppage or delay shall be presumed not to be the fault of Seller unless proved otherwise.
6. **Indemnification** – To the fullest extent of Seller's own negligence, Seller agrees to indemnify Buyer against damages arising out of Seller's performance of the Work and resulting in bodily injury or property damage other than to the Work itself.
7. **Dispute Resolution** – In any legal proceeding related to this Agreement, and in addition to any costs otherwise recoverable, the prevailing party shall be entitled to its reasonable attorneys', experts', and consulting fees. Venue for any dispute shall lie in the county where the Work is to be performed or in Santa Clara County. This Agreement shall be governed by California law without regard to its choice of law provisions.
8. **Claims** – Claims by Buyer for shortages or for improper, defective or damaged material must be made in writing specifying in detail the nature and extent of the shortage, defect or damage within five (5) days of delivery, and accompanied by the original freight bill with a notation on the face thereof by local agent of the carrier as to the items and quantity short or damaged. Risk of damage shall be on Buyer when materials are delivered to a common carrier F.O.B. shipping point. Title to material shall remain with Seller until payment in full is made by Buyer.
9. **Limitation on Claims** – Any claim by Buyer, whether for breach of contract, tort, property damage, or personal injury must be made in writing within one (1) year of substantial completion of the Work, or such claim shall be deemed forever waived. Buyer and Seller hereby waive any claim against each other for consequential, special, exemplary, or other indirect damages.
10. **Protection and Security** – Buyer shall take reasonable steps to protect the Work installed and/or stored at the job site from damage, vandalism and theft, and shall provide, as appropriate, security guards and secure storage areas. Once accepted, damaged or stolen materials shall be Buyer's responsibility.
11. **Assignment** – Buyer shall not assign its rights or obligations under this Agreement, in whole or in part, without Seller's written consent.
12. **Bankruptcy** – In the event Buyer is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver over a substantial part of the Buyer's property, Seller shall have the right to terminate the Agreement, and in addition to any other remedies, collect for all Work performed.
13. **Payment** – Buyer shall pay Seller according to the following schedule for the Work:
 - (a) For materials delivered, the cost of those materials to Buyer shall be paid by the 10th day of the month following delivery.
 - (b) For installation, not less than 90% of the cost to Buyer performed in any month shall be paid by the 10th day of the following month.
 - (c) Retention shall be paid within thirty (30) days of the completion and acceptance of Seller's Work. The benefit of any reduction of the retention under any agreement between Buyer and its customer (for example, from 10% to 5%), will be passed proportionally on to Seller.
 - (d) Buyer shall not make any payment to Seller in the form of a joint check, or any other type of payment other than payment solely in the name of Seller, unless agreed to by the Seller in writing. Buyer's payment shall constitute acceptance of the Work. Any sums not paid when due shall bear interest at the rate of 1 1/2 % per month, annual percent rate 18%, until paid, provided that if such rate of late charge is not permitted by law, the highest legal rate shall be charged. In the event payment is not made as provided herein, Seller shall have the right to withhold further Work until paid, or upon five (5) days' written notice to Buyer, to terminate this Agreement and seek damages.
14. **Job Conditions** – Unless otherwise stated herein, the working surfaces and job conditions shall be ready to receive Seller's Work upon issuance of Buyer's notice to proceed. Seller is entitled to rely on Buyer's notice as representation that Buyer has carefully inspected and approved the work performed by others that it is to receive, align, abut, adjoin, accept, or similarly relate to Seller's Work.
15. **Penalties and Backcharges** – No backcharges, penalties, liquidated damages or other deductions against the price set forth herein may be withheld from Seller unless (1) Buyer notifies Seller in writing of the basis for such charge no later than thirty (30) days after the cause for such charge is established; (2) Buyer is first provided sufficient opportunity to cure or correct any claimed defect or default in its Work; and (3) in no event will Seller be charged after payment would otherwise be due Seller per paragraph 13 hereof. Buyer's failure to strictly comply with these conditions shall constitute a waiver by Buyer of any such charge against Seller.
16. **Extra Work** – Prior to making any change in the Work, including the time for storage, delivery, or installation thereof, Buyer will provide Seller with a written change order. Unless expressly agreed otherwise, Seller will be paid for any change in the Work on the basis of its actual costs, including taxes and insurance, plus 15% overhead and 10% profit thereon. Seller is not obligated to perform any changes to the Work until it receives a written change order or written directive from the Seller agreeing to the price for and/or any time extension required by the change.
17. **Bonds** – Unless specifically included, the cost of any required surety bonds shall be paid for by Buyer.
18. **Escalation** – Seller's price is based on completion of the Work in accordance with the project schedule provided to Seller prior to this Agreement or as otherwise described herein. In the event commencement of the project or the Work is delayed through no fault of the Seller, prices for the Work shall be equitably adjusted by any actual cost increases incurred by and not reasonably avoidable by Seller.
19. **Contract and Credit Acceptance** – All agreements are subject to approval by Seller's authorized employee(s). Acceptance of this Agreement by Seller and continued performance of Work shall at all times be subject to Buyer's creditworthiness, and Seller reserves the right to require full or partial payment in advance if Buyer's financial condition creates a reasonable concern that Buyer can not meet its financial obligations to Seller.
20. **Material Approval** – Samples or other submittals furnished by Seller, when reviewed without any noted objection or exception by Buyer, Buyer's customer, or any agent, architect, or engineer thereof, shall be deemed the correct interpretation of the Work to be furnished.
21. **Inspection and Acceptance** – Upon completion, Buyer shall promptly inspect Seller's Work and notify Seller in writing of the basis for any rejection, default, or deficiency. Buyer's failure to timely inspect or reject Seller's Work within ten (10) days after completion of Seller's Work, shall constitute Buyer's complete and final acceptance of the Work.
22. **Labor Rates and Working Conditions** – Seller's price is based on working full-time and continuously without interruption on normal work days at straight time hourly rates prevailing in the area where the Work is to be performed. If Buyer requests overtime, off-hours Work, or multiple mobilizations, the price shall be equitably adjusted to cover Seller's additional costs, including any increase in wages, taxes, insurance, set-up, or travel costs, plus overhead at 15% and profit at 10% thereon.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD, 9821 BUSINESS PARK DRIVE, SACRAMENTO, CALIFORNIA 95827 OR 222.csib.ca.gov.



Inclusions:

- 1) Standard design and construction of Porter Athletic Equipment Materials.
- 2) Color Submittal for confirmation will be included. SHOP DRAWINGS ARE WAIVED AND WILL NOT BE INCLUDED.

Exclusions:

- 1) Shop Drawings.
- 2) Engineering review of any support
- 3) Design-Build Insurance.
- 4) Framing, backing, caulking, sealants, ceiling/soffit, flooring, base, and drywall work.
- 5) Any demolition or removal of existing construction materials.
- 6) Permits and bonds.
- 7) OCIP/CCIP Insurance.
- 8) BIM/Revit modeling and coordination.
- 9) Discounts for early payment.
- 10) Fees for Textura or any other billing services, unless otherwise noted.
- 11) Restrictions to standard normal working hours.
- 12) Excludes SLBE/Local/First Source Hiring, LBE, DVBE, WBE, SBE, and MBE (Certified Installers required for Manufacturer's Warranty).

Erection Notes:

- 1) Erection estimate is based on a normal eight (8) hour day Monday through Friday and upon erection of the entire project by the B.T. Mancini construction forces on a continuous operation. NO OVERTIME.
- 2) Installation of proposed material will require free and clear rolling access to the area of installation for workmen and rolling equipment.
- 3) The General Contractor is to provide an area for safe storage of materials and equipment onsite, and in close proximity to the final work area.

Qualifications:

- 1) **Indemnification:**
 - a) B.T. Mancini Co., Inc. shall defend, indemnify, and hold harmless the Contractor and Owner from any damages only to the extent such damages were caused by any negligent act or omission of the B.T. Mancini Co., Inc. B.T. Mancini Co., Inc. will not defend, indemnify, or hold harmless any other person or entity. This provision supersedes any other indemnity provision.
- 2) **Engineering:**
 - a) Please note: B.T. MANCINI CO., INC. IS NOT PROVIDING DESIGN/BUILD SERVICES FOR THIS PROJECT. All attachment methods will be matching existing.

Quote:

- 1) This proposal is good for 30 days from the date of this proposal. This quote and the price contained herein are specifically condition within this time period.
- 2) If background checks, drug tests, training, orientation, badging, and/or other qualifications are required for us to perform work, other than those administered by B.T. Mancini internally, additional costs will apply.
- 3) This proposal shall be attached to and become part of the contract. In the event of any inconsistency between such contract and this proposal, the terms of the proposal shall prevail.

Option 1 Total (Including tax): ----- \$5,345.00*

Option 2 Total (Including tax): ----- \$478.00*

***NO FREIGHT HAS BEEN APPLIED. FREIGHT AMOUNT TO BE DETERMINED AFTER CONFIRMING WHICH OPTIONS ARE ACCEPTED BY THE CUSTOMER.**

Option 3 Total (Including tax):

Time and Materials Rates:

- 1) Labor Rates:
 - \$153.00/Hour (Straight-Time)
 - \$200.00/Hour (Over-Time)
 - \$247.00/Hour (Double-Time)
- 2) Materials: Invoice plus 20%
- 3) Equipment: Invoice plus 20%

Sandoval, Sarah E

From: Harden, Jarrod W
Sent: Monday, July 08, 2019 4:42 PM
To: Sandoval, Sarah E
Subject: FW: signed agreement
Attachments: Arrillaga Family Gym_Wall Pad QUOTE PROPOSAL_7-8-19.pdf

From: David Fan [mailto:david.fan@btmancini.com]
Sent: Monday, July 08, 2019 4:37 PM
To: Harden, Jarrod W <jwharden@menlopark.org>
Subject: Re: signed agreement

Jarrold,

Re did this Proposal for you.
Option 2 is now for the Frame Pads only. Does NOT include the Judge's Stand Pads.

Freight is approximately \$550.00.

Attached is revised Quote.
I'll be on the lookout for PO.

Let me know if you have any questions.

Thanks!
David

***** Please note, I will be on vacation starting July 15th - July 24th. Any processing during this time will be delayed. Sorry for any inconvenience. *****



David Fan
Sales Manager - Architectural Products Division
e: david.fan@btmancini.com
p: (408) 942-7900 x.1143
c: (510) 552-3536
w: btmancini.com

On Mon, Jul 8, 2019 at 2:05 PM Harden, Jarrod W <jwharden@menlopark.org> wrote:

David,

The agreement is attached. I would like to do all three options: