



Request for Qualifications  
(RFQ)

Professional Consulting Services for:  
**Nealon Park, Burgess Park and Willow Oaks Park  
Playground Improvement Project**

Proposals Due:  
Thursday, May 10, 2018 at 2:00 p.m.

Qualifications must be received by due date and time, envelope should be clearly labeled.

City of Menlo Park  
Qualification Proposals for Nealon Park, Burgess Park and Willow Oaks Park  
Playground Improvement Project  
Maintenance Division  
333 Burgess Drive  
Menlo Park, CA 94025

## STATEMENT OF PURPOSE

The City of Menlo Park is requesting qualification proposals for NEALON PARK, BURGESS PARK, AND WILLOW OAKS PARK PLAYGROUND IMPROVEMENTS per the enclosed project requirements and scope. Your qualifications proposal must be submitted as described herein and may include any additional documentation to supplement the minimally required information. Please review the entire package before submitting your qualifications proposal. Incomplete submissions may be rejected as non-responsive. The City's goal is to have a new playground design and equipment installed at Nealon Park by December 1, 2018 (equipment purchase and installation is budgeted for the current fiscal year), and have planning and design for Burgess Park (installation is planned for FY 2019-20) and Willow Oaks Park (Installation is planned for FY 2020-21) completed by September 1, 2018.

## PREPROPOSAL MEETING INFORMATION

The City will host a pre-proposal meeting at 11:00 a.m. on Thursday, April 12, 2018 at Nealon Park, 800 Middle Avenue, Menlo Park, CA 94025. The pre-proposal meeting is not mandatory, but all contractors planning to submit proposals are encouraged to attend.

## SELECTION PROCESS

The award shall be based on a multiple phase evaluation: **Phase 1** will evaluate cost, experience with inclusive park design and fabrication/installation, ability to provide service, previous performance and references, quality of service, quality of equipment, responsiveness to specifications, and unspecified value-added offerings by the team/Contractor. The top three qualified proposing team/Contractors shall advance to **Phase 2**, which will consist of in-person presentations to Staff and the Parks & Recreation Commission where teams will be asked to present a detailed approach to delivering Inclusive play areas at each of the 3 park sites. Evaluation and selection of the qualified team/Contractor(s) will be solely determined by the City with input from the Parks and Recreation Commission. The City's determination and selection shall be final, and the City reserves the right to enter into agreement with multiple Contractors to complete this multi-phase project.

The selected Contractor is expected to sign a contract. A sample contract can be found in Appendix A. Contractors must consider the terms and conditions in the sample contract to be part of your proposal. Please read the insurance requirements and general provisions carefully. Please do not execute the contract at this time.

The City reserves the right to reject any or all proposals or any part of the proposal, to waive minor defects or technicalities, or to solicit new proposals.

## ADDENDA/CLARIFICATIONS

If discrepancies or omissions are identified in this RFQ, or if clarification is required, please submit said questions or comments in writing via email to David Mooney, Parks Supervisor [damooney@menlopark.org](mailto:damooney@menlopark.org). All questions and comments must be received no later than 4:00 P.M. PST, Thursday, May 3, 2018.

Responses from the City will be communicated in writing to all recipients of this RFQ. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFQ and shall be acknowledged on the Proposer's Form.

## LIST OF SUBMITTALS

The following items must be submitted with your qualifications proposal. Omissions may be cause to consider your proposal non-responsive in the City's sole discretion.

1. **Proposal Summary:** Include a summary of distinguishing points of the proposal, describing why the proposed team will provide exceptional service on the planning, design, manufacturing and installation of the playground equipment, surfacing and accessories. Include a summary of the team's experience and philosophy of "Inclusive Play" and how the proposed equipment manufacturer has excelled in creating playgrounds that invite children of all abilities to participate and thrive.
2. **Team Composition:** Include summary of key team members (individuals or sub-contractors) that will play key roles in each phase of the project (planning, design, manufacturing, construction, etc.)
3. **Statement of Experience:** The statement of experience must include, at minimum, the following:
  - a. Experience designing and building playgrounds that ensure all abilities and skill levels have exceptional recreational opportunities. Inclusive designs offer options for use by a range of ages of children, as well as accessible by parents, grandparents and other caregivers.
  - b. Experience integrating enduring educational themes into playground sites that connect the play experience to the surrounding ecology, history and/or greater community assets.
  - c. Provide project summary, location and overall design strategy for five (5) recently completed (in the last 5 years) playground projects that were designed and manufactured by members of the proposed team. A minimum of one (1) of these projects must be within 90 miles of Menlo Park, CA, and at least two (2) of the projects must be "Inclusive" playgrounds. Provide reference contact information for each of these parks.
  - d. Provide locations of at least two (2) playground projects within 90 miles of Menlo Park (if possible) that utilize the equipment manufacturer's equipment that were installed prior to 2006.
  - e. Experience designing and installing resilient rubber surfacing that ties to the theme of the playground design.
4. **Scope of Work/Work Plan:** Provide a scope of work that outlines how the proposed team will execute the project, from initial site review through ribbon cutting. The scope of work must include, at minimum, the following:
  - a. Initial site investigation and evaluation of existing conditions. Topographical survey of each playground location should be included.
  - b. At least two (2) concept themes developed for each of the three park locations and presented to City Staff and Parks and Recreation Commission for direction.
  - c. Detailed design for Nealon Park, consisting of equipment and surfacing layout, structural design, and additional landscape enhancements (if applicable). City staff shall have at least two review/comment periods through the design phase.
  - d. Schematic design for Burgess Park and Willow Oaks Park, consisting of equipment and surfacing layout and any proposed additional landscape enhancements. City staff shall have at least one review/comment period through the schematic design phase.
  - e. All building permits and associated review for Nealon Park, as required by the Menlo Park Planning/Building department.
  - f. Planned construction cost estimates for each of the three park locations at each phase of the review process.
  - g. Detailed schedule for design, review, fabrication and installation for Nealon Park, and schedule for design and review for Burgess Park and Willow Oaks Park.
  - h. Opportunities for community input, including at minimum one community/neighborhood meeting for each park location in the initial planning phase.

5. Contractor's Proposed Cost of Services: Provide a proposed cost of services for the planning/designing each of the three specified park locations, as detailed herein. The initial contract awarded will be for the planning/design phase only. Provide estimated construction costs for Nealon Park, broken out into equipment, resilient surfacing, and landscape features, at minimum (prevailing wage). Provide an executed copy of the signature page, enclosed herein.
6. Key Personnel Licenses: Provide information for key team members' licenses; including at minimum: Professional Landscape Architect, Professional Engineer and appropriate Contractor's Licenses (C27 at minimum).
7. Unspecified Value-Added Offerings: Include any additional value-added offerings, if any that would be of value to the City.
8. General Statement of Compliance: Provide a statement of compliance, confirming that the Contractor submitting this qualifications submittal will comply with all contracting requirements of the City, including Insurance, Department of Industrial Relations submittal information, Prevailing Wage requirements, background checks and all other requirements herein.
9. Insurance Compliance: Requirements are provided in the Sample Agreement.

#### **CONTRACTOR'S PROPOSED COST OF SERVICE**

If the City accepts the Contractor's Proposal, it is expected the Contractor would begin work immediately following execution of the contract.

The undersigned declares he/she has carefully examined the locations of the work, read the Request for Qualifications, examined all requirements, meets all requirements and hereby proposes to furnish all planning and design services for all three playground locations and proposes to coordinate, fabricate and install (including all labor, materials, equipment transportation and services required to perform the work) the final accepted playground improvements at Nealon Park, complete in place, in accordance with the City of Menlo Park requirements.

Price(s) given above are guaranteed for 150 calendar days after date of proposal opening and through the duration of the contract, if awarded.

Addendum(a) No(s). \_\_\_\_\_ has/have been received and is/are included in this proposal.

The Undersigned has checked carefully all of the above figures and understands that the City will not be responsible for any error or omission on the part of the Undersigned in preparing this proposal.

The Undersigned agrees that in case of default in executing the required City Contract with the necessary insurance policies within twenty (20) calendar days from the date of award of agreement by the City, the City may at its option and without providing further notice to the apparent best value Contractor administratively authorize the award of the contract to the Best Value Contractors in descending rank.

**Company** \_\_\_\_\_ **Auth. Signature** \_\_\_\_\_  
**Address** \_\_\_\_\_ **Print Name** \_\_\_\_\_  
**City, State, Zip** \_\_\_\_\_ **Title** \_\_\_\_\_ **Date** \_\_\_\_\_  
**Phone Number** \_\_\_\_\_ **Fax Number** \_\_\_\_\_  
**Email** \_\_\_\_\_

## CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REQUIREMENTS

This Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, pursuant to Labor Code section 1771.4. Under California Labor Code section 1771.1, as amended by SB 854, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for a public work unless the contractor and its subcontractors are registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code. The Bidder and its Subcontractors must be registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code, subject to limited legal exceptions under Labor Code 1771.1.

## GENERAL SPECIFICATIONS

### 1.00 GENERAL REQUIREMENTS

- 1.01 Each Contractor, by the submission of a proposal, assents to each and every term and condition set forth within this specification and attached agreement and, upon award, agrees to be bound thereby.
- 1.02 Any proposal that is incomplete, conditional or obscure, or which contains irregularities of any kind, may be cause for rejection in the City's sole discretion.
- 1.03 It is the Contractor's responsibility to ensure that all addenda issued are incorporated in their submitted proposal. Failure to acknowledge and incorporate addenda may be cause for a City determination of Contractor's "non-responsiveness."
- 1.04 If a Contractor takes any exceptions to any part of these specifications as written, or as amended by any Addenda subsequently issued, they must do so in writing prior to the time of proposal submission. Failure to do so will be construed as acceptance of all provisions of the specifications.
- 1.05 The City of Menlo Park reserves the right to evaluate the competency and responsibility of all proposing service companies and to evaluate the ability of any proposing company to perform all conditions of the contract to assure the award of this contract to a firm able to produce the quality of service required and intended by these specifications.
- 1.06 The Contractor shall not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required with this specification, because of failure to investigate the conditions or the Contractor failure to become acquainted with all the information concerning the services to be performed.

1.07 Awards shall be made based on a best value evaluation. Criteria used for the evaluation will include: cost, ability to provide service, previous performance and references, quality of service, responsiveness to specifications, and unspecified value-added offerings by the Contractor. The City reserves the right to reject any or all proposals or to award only subtotals to multiple Contractors based upon best value evaluation. The awarding authority's determination and selection shall be final.

## 2.00 PLAYGROUND PLANNING AND DESIGN

2.01 The Planning and Design phase for the playground sites shall be broken into phases that allow for adequate review, comment and approval from City Staff and representatives of the community. Contractor shall provide a detailed scope of work/work plan for the projects in their qualifications proposal.

2.02 The initial phase of work shall include site investigation, topographic survey, planning, gathering community input (including at minimum one community/neighborhood meeting for each site), preparing theme/design options and gaining plan approval for the following playground locations:

### PLAYGROUND LOCATIONS

<b>PARK</b>	<b>LOCATION</b>	<b>TIMING</b>
<b>Nealon Park Playground</b>	800 Middle Ave. Approx. 15,200 sf total Playground Area Existing: Multi-age play structures and Fibar surface treatment.	Planning and Construction scheduled for completion by December 1, 2018.
<b>Burgess Park Playground</b>	Burgess Drive @ Laurel Street. Approx. 8,000 sf total Playground Area Existing: Multi-age play structures and Fibar surface treatment	Planning to be completed by September 1, 2018  Construction to be completed in Fiscal Year '19/'20
<b>Willow Oaks Park Playground</b>	490 Willow Road Approx. 9,500 sf total Playground Area Existing: Multi-age play structures and Fibar surface treatment	Planning to be completed by September 1, 2018  Construction to be completed in Fiscal Year '20/'21

2.03 The result of the planning phase shall include, at minimum, two (2) concept themes developed for each park location that focus on inclusive play and educational themes that leverage the existing/surrounding ecology, history and/or greater community assets. Each concept theme must include construction cost estimates.

2.04 Concept themes for each of the three parks shall be presented by Contractor to City Staff and a sub-committee from the Parks & Recreation Commission.

2.05 Following selection of design theme for each of the playgrounds, Contractor will commence with a Schematic Design phase for each of the three parks, consisting of equipment and surfacing layout and any other proposed additional landscape enhancements. Schematic Designs shall be

accompanied by detailed construction cost estimates. The Schematic Design for each playground shall be submitted to City Staff for review, comment and approval to move to detailed design phase.

- 2.06 Detailed Design phase for Nealon Park shall commence following approval of the Schematic Design. Playground design services shall include all documentation required to permit and install the designed playground equipment. This shall include, at minimum, equipment layout, structural and installation design; poured in place resilient surfacing layout and design; and all other landscape feature design that the Contractor and City deem appropriate for the benefit of the playground.
- 2.07 Detailed design for Burgess and Willow Oaks Parks will commence when funding has been appropriated in the subsequent fiscal years.
- 2.08 A California licensed Professional Landscape Architect (PLA) may be required to oversee the preparation of construction documents if site improvements include features that require PLA oversight and responsibility, beyond what a licensed landscape contractor (License C27) may perform, per the California Landscape Architects Practice Act in the Business and Professions Code (BPC Section 5615, et al).
- 2.09 The initial contract awarded shall be for the playground planning and design phase only. A separate construction contract will be entered into based on the final, approved playground design.

### **3.00 EQUIPMENT AND MATERIALS**

- 3.01 All playground equipment must be new, unused, of the latest design and technology and shall be in compliance with all Consumer Product Safety Commission (CPSC), ADA and ASTM Standards, as well as all other laws and requirements concerning playground equipment in the State of California.
- 3.02 All Equipment must be certified by the International Play Equipment Manufacturers Association (IPEMA). Provide IPEMA Certification in Qualifications Proposal.
- 3.02 All playground equipment must be installed by Manufacturer's Certified Installer and shall provide, at minimum, industry standard warranty periods for all pieces of equipment, installation and materials. Typical warranty periods shall be included in the qualifications proposal and warranty specifics shall be provided at the Schematic Design phase when City representatives will select equipment.
- 3.03 Playground protective surfacing shall be either Resilient, poured-in-place playground safety surfacing; Resilient, interlocking playground safety surfacing tiles; and/or Engineered Wood Fiber or combination thereof. Any protective surfacing shall be in compliance with ASTM standards and shall carry an industry standard warranty for materials and installation.

### **4.00 CONSTRUCTION**

- 4.01 The team shall include a Contractor with appropriate Contractor's License to install playground equipment and landscape features. The Contractor must be bonded and have a minimum of 5 years continuous experience installing playground equipment and resilient playground surfacing.
- 4.02 Contractor shall obtain all required building permits through the City of Menlo Park Building Department in order to begin construction. Contractor shall provide all structural calculations and drawings necessary to satisfy the permit process.
- 4.03 The City and the Contractor shall enter into a separate construction agreement following the planning and design phase.

- 4.04 Contractor shall comply with all requirements of the City, including Insurance, Department of Industrial Relations submittal information, Prevailing Wage requirements and Background checks.
- 4.05 The playground at Nealon Park shall be re-opened to the public and be accepted by the City by December 1, 2018. Failure to achieve this re-opening date shall result in liquidated damages of \$500 per calendar day.
- 5.00 GUARANTEE**
- 5.01 In addition to the playground equipment product warranties, the Contractor shall guarantee quality and workmanship for a minimum of twelve (12) months following final acceptance of the project.
- 5.02 Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the Specifications, due to any of the above causes, all within twelve (12) months after date on which said work of this CONTRACT is accepted by the CITY, or the CONTRACT termination, whichever is the later, the Contractor agrees to reimburse the CITY upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or upon demand by the CITY, to replace any such material and to repair said work completely without cost to the CITY so that said work will function successfully as originally contemplated.
- 5.03 The CITY shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the undersigned. In the event the CITY elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the CITY. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the CITY shall be entitled to all cost and expenses, including attorneys' fees, reasonably incurred by reason of the said failure or refusal.

Section start on the next page.

**Choose agreement type**

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



Appendix	Contract #:
<b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND <a href="#">click here to enter text</a></b>	
THIS AGREEMENT made and entered into at Menlo Park, California, this <a href="#">click here to enter text</a> day of <a href="#">click here to enter text</a> , <a href="#">click here to enter text</a> , by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and <a href="#">first party</a> , hereinafter referred to as "FIRST PARTY."	
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: <a href="#">click here to enter text</a></p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>	
<b>1. SCOPE OF WORK</b>	
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.	
<b>2. SCHEDULE FOR WORK</b>	
<p>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.</p> <p>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.</p>	
<b>3. PROSECUTION OF WORK</b>	
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 **enter amount** 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, 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:

**Department Head**  
**Department**  
 City of Menlo Park  
 701 Laurel St.  
 Menlo Park, CA 94025  
 650-330-xxxx  
**Email**

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

**Name**  
**Company**  
**Address**  
**City, State Zip**  
**Phone**  
**Email**

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.

**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.

**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**

- 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.
- 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.

**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 **Spell out start date** through **Spell out end date** 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 **Choose an item** 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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Tax ID#

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

\_\_\_\_\_  
**Signature Authority, Title**

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Clay J. Curtin, Interim City Clerk

\_\_\_\_\_  
Date



**EXHIBIT "A" – SCOPE OF SERVICES**

<p><b>A1. SCOPE OF WORK</b></p>
<p>FIRST PARTY agrees to provide consultant services for CITY's <b>Department</b>. 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:</p> <p>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.</p> <p>FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.</p>
<p><b>A2. COMPENSATION</b></p>
<p>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.</p> <p>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.</p>
<p><b>A3. SCHEDULE OF WORK</b></p>
<p>FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.</p>
<p><b>A4. CHANGES IN WORK -- EXTRA WORK</b></p>
<p>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:</p> <ul style="list-style-type: none"> <li>• Change in the services because of changes in scope of the work.</li> <li>• Additional tasks not specified herein as required by the CITY.</li> </ul> <p>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 <b>Project Manager's title</b></p>

**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.