



# REQUEST FOR PROPOSAL

## Project Title

Operational and Administrative Review of Public Works and  
Community Development Departments

**Issued:** May 23, 2018

**Proposals Due:** Monday, June 18, 2018 5:00 pm

**Tentative Finalist Interviews:** Week of June 25<sup>th</sup>

Michael S. Frank, Senior Project Manager  
City Manager's Office  
701 Laurel Street, Menlo Park, CA 94025  
(650) 330-6613  
[msfrank@menlopark.org](mailto:msfrank@menlopark.org)

## Background

The City of Menlo Park was incorporated in 1927 and operates under a council-manager form of government. The City is located in San Mateo County, providing services to more than 35,000 residents over a 19-square mile area. The City's resources include a staff of 278 benefitted positions, 150 temporary employees, and an operating budget of \$84 million. Menlo Park has earned a reputation as a stable, well run City.

Menlo Park residents reflect a wide range of backgrounds and interests and tend to be well-educated and engaged in community life. Menlo Park's many young families are served by excellent public and private schools. Residents of all ages enjoy the City's 13 parks and numerous recreational facilities. The City's close proximity to Stanford University and Menlo College provide a multitude of academic, cultural and athletic opportunities.

The Menlo Park Public Works and Community Development Departments are vital to the community's high quality of life.

## Purpose of Departmental Review

The City of Menlo Park is seeking an experienced consulting firm to conduct a departmental organizational review of the Public Works and Community Development Departments as well as a review of the development process that spans both departments and any recommendations regarding the integration of the Economic Development/Housing functions into the Community Development Department. The purpose of this study is for Menlo Park to be the most efficient, effective, and responsive it can be. The consultant will need to evaluate the Departments' organization, operations, and service delivery and identify areas to implement best practices from other well-run departments. The consultant will need to have the capability to evaluate policies, practices and process in the relevant service areas of each department.

## Department Overviews

### Public Works Department

The Public Works Department is responsible for building and maintaining the City's infrastructure and facilities, and for providing street, sidewalk, water, stormwater, parks, trees and transportation services. The Department protects the City's investments in infrastructure and public facilities to ensure the health and safety of the community in an efficient, sustainable and cost-effective manner. The Public Works Department consists of three Divisions: Engineering, Maintenance and Transportation.

Engineering has three sections: Capital Improvement Plan (CIP), Utilities and Development Services. The CIP Section manages the design and construction of City infrastructure and facilities. The Utilities Section manages Menlo Park Municipal Water, the City's storm drain system and the leachate and gas collection systems at Bedwell Bayfront Park a former landfill. A Water System Master Plan, including a staffing analysis was recently completed (<https://www.menlopark.org/DocumentCenter/View/17167/MPMW-Water-System-Master-Plan-2018>) As part of the stormwater management effort, the Utilities Section assesses flood risk and storm preparedness, plans for flood protection and infrastructure needs, handles

sea level rise and hazard mitigation, implements pollution prevention policies ensuring compliance with the National Pollution Discharge Elimination System permits, meets regulatory requirements protecting creek and bayland habitats and coordinates with regional entities on stormwater management.

The Maintenance Division provides many of the basic services affecting the daily lives of everyone living, working, visiting and commuting within the City. This Division supports all other departments through facilities, parks, fleet, trees and streets. The Facilities Section provides operations, maintenance and repair services for the 26 City-owned facilities, totaling over 250,000 square feet. The Facilities Section is managed by staff and supported by contractors to manage commercial kitchens, elevators, burglar alarms, fire alarms, interior and exterior surfaces, heating, ventilation, air conditioning, pest control, electrical power, lighting and more. Facilities staff also manage minor remodel and repair projects.

The Fleet Section acquires and disposes of vehicles and equipment, provides preventive maintenance and repairs on vehicles and equipment, and purchases parts and accessories. Currently, the Section maintains 200 vehicles and large pieces of equipment, 50 small pieces of equipment and four emergency generators. The program also maintains the underground fuel storage tank system and sells fuel to four outside agencies via shared service agreements. Currently, the Section also maintains 30 vehicles and pieces of equipment for the West Bay Sanitary District.

The Parks Section maintains and renovates 13 parks and 2 open spaces, 14 playgrounds, 2 dog parks, 9 sports fields, 14 tennis courts, facility grounds, 8 parking plazas and medians through City staff and private contractors, totaling over 250 acres.

The Streets Section ensures City's streets are clean and safe by properly maintaining sidewalks, pathways, bicycle bridges and parking lots. City staff and private contractors perform street sweeping, street light and traffic signal maintenance, street striping and storm drain cleaning. The Section is responsible for approximately 97 miles of streets, 4,000 traffic/street signs, graffiti abatement and public sidewalk hazard reduction.

Management of the urban forest falls under the Tree Section, which promotes a pleasing natural environment with related social, economic and environmental benefits. The Section oversees the heritage tree ordinance, requiring pruning and removing heritage trees on public and private property. In addition, the program maintains 20,000 public trees located in streets, parks and city facilities.

The Development Services Section ensures that private development and activities within the public right-of-way meet the required standards and conditions set by the City. The Section manages encroachment permits for private developers, utility companies, property owners and contractors working within the City's public right-of-way ensuring that the infrastructure constructed both on private property and in the public right-of-way meets the appropriate engineering standards and regulatory requirements for grading, drainage, Federal Emergency Management Agency compliance and stormwater management. Development Services provides timely comprehensive plan review and inspection. Given the number of large projects currently in development (Facebook, , Station 1300 (1300 El Camino Real), 1400 El Camino Real hotel project, Middle Plaza (500 El Camino Real) mixed-use development, Alma Station (1010 Alma Street), 133 Encinal Avenue residential project, Menlo Gateway,

etc.) and the overall increase in private development, the Section also depends on consultants for plan checking and contract inspectors.

The Transportation Division strives to efficiently moves people and goods throughout Menlo Park by providing a transportation network through engineering, planning and education. The Division reduces traffic congestion by promoting ride-sharing, bicycling, walking and commute options such as bicycle education and safety programs, Bike to Work Day promotions and bicycle and pedestrian infrastructure improvement grants. The City's shuttle program offers local employers free connections between the Caltrain station and key destinations around the City. The Division, with assistance from contractors and consultants, maintains 40 traffic signals, over 2,200 streetlights and all signs and roadway markings throughout the City.

### Community Development Department

The Community Development Department is responsible for ensuring a sustainable and vibrant community that supports economic well-being and a high quality of life for residents, businesses and visitors. This Department is presently comprised of the Planning and Building Divisions. Core services performed by the Department include Long Range Planning, Current Planning, and Building Permitting & Inspection Services. As of July 1, 2018 the Economic Development and Housing functions will be moved to this Department.

The Planning Division is responsible for coordinating the enforcement of the City's Zoning Ordinance and related policies concerning applications for residential, commercial, mixed-use and industrial development projects. The division also leads the development of long-range planning studies concerning future land uses.

The Building Division is responsible for coordinating the enforcement of the City's Building Code and related policies concerning the construction of residential, commercial, mixed-use or industrial projects. The Division provides this oversight through a plan check and inspection process that ensures that projects are designed and constructed according to the Building Code.

The Housing function has a Below Market Rate (BMR) program which funds the development of new affordable housing units, manages a portfolio of BMR ownership units and works with property owners to advertise available BMR rental units. Menlo Park services existing purchase assistance loan, emergency repair loan, community development block grant and rehabilitation loans that had been granted prior to 2012. Menlo Park's also manages, through an outside entity, BMR rental and ownership interest lists.

The Office of Economic Development is committed to helping local businesses compete and thrive. Services provided include business attraction/concierge, business retention, revenue research and analysis, strategic partnerships, and reporting on economic activity.

Additional information on both departments, including organization charts, workload indicators, and staffing can be found in the City's Budget at:

<https://www.menlopark.org/ArchiveCenter/ViewFile/Item/6273> on the City's website.

Over the last five years, the City has undergone reviews of the Administrative Services, Police, Community Services, and Library Departments to identify opportunities to optimize services and prepare for an efficient, 21st century operation and wishes to undergo a similar review of the Public Works and Community Development Departments.

## Scope of Work

Accomplishing the Purpose Statement cited previously will require engaging staff members and possibly Commissioners and developers, reviewing and analyzing documents, conducting appropriate benchmarking, and identifying applicable best practices.

## Kickoff Meeting

Meet with the City Manager, Senior Project Manager, and Public Works and Community Development Department Heads to ensure a clear understanding of the City's objectives for this review, logistics for working with the City and Departments, and timing. Review deliverables and responsibilities of project staff and finalize the project schedule. Final reports should be completed by December 31, 2018.

## City Project Team

The City will support the consultant by providing a primary point of contact and City Project Team. The consultant will work with the City to identify the appropriate team. The consultant will be expected to conduct periodic team meetings to update the progress on the project, seek direction on any appropriate issues and seek feedback on sections of the analysis or draft reports.

## Department Information Gathering

Develop a process for gathering the information needed to understand department operations, structure, staffing, services, and challenges. This may include reviewing flow charts and written documents (e.g. IT Master Plan) as well as, conducting interviews, surveys, and focus groups.

## Best Practices and Innovation

Identify best practices and innovations from other Public Works and Community Development Departments for areas such as, communication between different divisions and departments, business planning, program operations, risk management, customer service, staffing, professional standards (e.g. APWA Management Practices) and organizational structure. In addition, the development process should be evaluated for improved communication, timeliness, coordination, and outcomes. Best practices should be consistent with agencies of similar size and characteristics in cities with a similar population, economics, development, and service delivery profile.

The innovations considered should be similarly matched. When identifying best practices and innovations, special care should be given to focus on those that are relevant and practical for meeting similar community goals within reasonable existing budget constraints. Cost considerations and organizational capacity to implement should be examined as well as the potential to achieve measureable results.

## Gap Analysis

Identify areas of high performance and areas that present opportunities for improvement between current business practices, operations, best practices and innovations. Gaps or needs, if any, should be clearly identified and recommendations should be made as to program refinements, new strategies, department organizational charts and resource modifications that might be required to better achieve community objectives and improve fiscal responsibility.

Develop specific recommendations which may include changes to organization structure, staffing, and management practices to improve effectiveness; business practices or service delivery changes that will improve efficiency; and/or staff training and development changes to ensure a stable organization, and recommendations that will create a foundation for opportunities to further optimize services and prepare the Departments for an efficient, 21st century operation.

The consultant will work with the Project Team to refine recommendations and develop potential implementation strategies and costs. This will result in a final written report.

## Organizational Review Deliverables

The initial observations and findings will be presented in an informal report which makes preliminary findings. The report should also identify any issues outside the identified scope of work that may impact the departments and require further analysis or actions on the part of the City. The draft report will be reviewed with the City to ensure factual accuracy and provoke a discussion of the recommendations it presents before completing the final report. The Final Report is due no later than December 31, 2018.

In addition to the Final Report, an Implementation Plan should be submitted. The Plan should be a roadmap to get from existing conditions to the organization being recommended. It is also intended to assist the City and Department leadership in managing and tracking implementation.

## Consultant Qualifications

The City is seeking a consultant(s) with experience and expertise in the analysis of Public Works and Community Development operations and management and experience and expertise in program and process analysis in order to make specific recommendations. The consultant will need to have the capability to evaluate procedures, practices and performance in delivering the services outlined. The consultant should be able to demonstrate experience addressing these issues with other departments within the last three years. Experience and expertise in writing and presenting a report for local government officials is desired, including the development of findings, conclusions and recommendations.

## Proposal Submittal and Award

Alternative A: Submit a proposal for BOTH the Public Works Department and Community Development Departments' Review

Alternative B: Submit a proposal for EITHER the 1) Public Works Department Review or 2) Community Development Department Review including the development process spanning both departments.

Proposals should include three references along with links or hard copies of departmental review report examples.

In order to be considered, proposers should submit four hard copies and one electronic proposal to the address listed below by 5:00 pm on Monday, June 18, 2018. The submittal deadline may be extended if insufficient or non-responsive proposals are received.

Michael S. Frank, Senior Project Manager  
City Manager's Department  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA  
650.330.6613  
msfrank@menlopark.org

## Selection Process

Consultants may be interviewed. The consultant will be selected based on the proposal and its approach, interviews if needed, and experience. Fees will be a consideration in the evaluation process and should be included in the letter of interest detailing hourly rates and number of hours expected for each task as well as other anticipated expenses. Background information should be provided for staff that would be assigned to the project. Proposals should include an estimate of the time needed to complete the report.

## Conditions for Request for Proposal

The following conditions apply to the Request for Proposal process:

- (a) Nothing contained in this Request for Proposal shall create any contractual relationship between the respondent and the City of Menlo Park.
- (b) This Request for Proposal does not obligate the City of Menlo Park to establish a list of service providers qualified as prime contractors or award a contract to any respondent. The City of Menlo Park reserves the right to amend or cancel the Request for Proposal without prior notice, at any time, at its sole discretion.
- (c) The City of Menlo Park shall not be liable for any expenses incurred by any individual or organization in connection with the Request for Proposal.
- (d) No conversations or agreements with any officer, agent or employee of the City of Menlo Park shall affect or modify any terms of this Request for Proposal. Oral communications or any written/e-mail materials provided by any person other than the designated contact staff of the City of Menlo Park shall not be considered binding.
- (e) The City of Menlo Park reserves the right, in its sole discretion, to accept or reject any or all proposals without prior notice and to waive any minor irregularities of defects in a proposal. The City of Menlo Park reserves the right to seek clarification on a proposal with any source.

(f) The dates, times and sequence of events related to this Request for Proposal shall ultimately be determined by the City of Menlo Park. The schedule shown above is subject to change, at the sole discretion of the City of Menlo Park, although the City will attempt to follow it and, if it must be altered, will attempt to provide reasonable notice of the changes.

(g) Respondents shall not issue any news release pertaining to this Request for Proposal, or the City of Menlo Park without prior written approval of the City.

(h) All submitted proposals and information included herein or attached thereto, shall become public record upon delivery to the City of Menlo Park.

(i) The City of Menlo Park, at its sole discretion and for any reason whatsoever, withdraw this solicitation at any time.

## Standard Terms and Conditions

Prior to the award of any work hereunder, the City and the proposer shall enter into a written contract attached hereto, for services. Proposers responding to this Request for Proposal are strongly encouraged to review all the terms and conditions of the Contract attached. Any exceptions or requested exclusions to the contract terms should be stated as part of the proposal.

If you have any questions regarding this Request for Proposal, please email them to Michael Frank at [msfrank@menlopark.org](mailto:msfrank@menlopark.org).

# PROFESSIONAL SERVICES AGREEMENT

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



<b>Agreement #:</b>
<b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FIRST PARTY</b>
THIS AGREEMENT made and entered into at Menlo Park, California, this ____ day of _____, _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and <b>FIRST PARTY</b> , 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 **Select start date** through **Select 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:**

\_\_\_\_\_  
Judi A. Herren, City Clerk

\_\_\_\_\_  
Date

## EXHIBIT “A” – SCOPE OF SERVICES

### A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY’s **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 **Project Manager’s title**.

**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.