Request for Proposals
(RFP)

Professional Consulting Services for:
Transportation Management Association

Proposals Due:
Friday, May 17, 2019 5:00 p.m.

Attn: Nicholas Yee, TDM Coordinator
Public Works Department
701 Laurel St.
Menlo Park, CA 94025
ngyee@menlopark.org
STATEMENT OF PURPOSE

The City of Menlo Park (hereinafter called “City”) is seeking written proposals from qualified public policy, program analysis and/or transportation consulting professionals and firms (hereinafter called “Consultant”) to provide an options analysis for establishing a Transportation Management Association (“TMA”) as described herein. This will also serve as a joint call, where the Consultant will also conduct a TMA options analysis for the City of Foster City.

BACKGROUND INFORMATION

The City of Menlo Park is located in the San Francisco Bay Area, at the confluence of many destinations and transportation networks. Menlo Park is located approximately halfway between the major economic centers of San Francisco and San Jose (also referred to as “Silicon Valley”). Additionally, the City is home to major employers such as Facebook, and is also located close to Stanford University and the base of the Dumbarton Bridge. The robust economy and Menlo Park’s location has led the City to become more congested than ever, stemming from both additional regional traffic and those ending their journey here.

Similarly, the City of Foster City is located on the Peninsula at the base of the San Mateo-Hayward Bridge. Major employers include Gilead, Visa, and IBM. These employers are major draws to Foster City, but there is also major cut-through traffic for those trying to get to other major employers in San Mateo and the rest of the Peninsula. These employment draws, cut-through traffic, and limited transit options present challenges and congestion in Foster City.

The goal of a TMA is to reduce congestion with transportation demand management ("TDM"). TDM includes promoting the use of non-single occupant vehicle trips, including but not limited to transit, transit benefits, shuttles, carpools, vanpools, bicycling, and incentives/rewards. TDM exists at many companies already in various forms, however a TMA could expand the available programs by coordinating and leveraging partnerships between government and employers/organizations (both large and small). This will not be a new concept, as TMAs already exist in the region in Emeryville, San Francisco, and more locally Mountain View and Palo Alto.

Therefore, the City seeks a Consultant that will undertake an options analysis to determine a preferred approach to create a TMA in Menlo Park, along with potentially identifying TMA options for the City of Foster City.

SCOPE OF WORK: CITY OF MENLO PARK

The City of Menlo Park is requesting an exploration of options for a TMA, which include but not are limited to the following options:

- Status Quo
- Subregional TMA
- Large Employer/Organization TMA
- Small Employer/Organization TMA
- Citywide TMA

The City requests a scope and itemized fee estimate for each task from any proposer who is qualified and has the resources available to complete the tasks. Additionally, the City requests that this RFP serve as a joint call for specific professional services for the City of Foster City. The City requests that a fee estimate is created for each city, itemized by task and with total cost estimates. A brief timeline for completion of tasks and major milestones are listed below.
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**Phase 1: Gather Commute Habit Data**

The selected consultant will reach out to employers/organizations to collect and summarize background information for commute habit data to understand travel patterns. Additional analysis of data will come through collecting survey data administered to employers/organizations along with analyzing Bluetooth and geospatial data if necessary. This data will be key to developing a TMA structure and/or services offered to best mitigate congestion and increase mobility.

**Task 1: Outreach to Menlo Park Employers/Organizations**

Perform outreach to interview key decision makers at employers/organizations to understand and collect commute habit pattern data. Ideally, outreach will be conducted with a TDM Coordinator-type position, Human Resources, or any one with adequate knowledge of transportation for the organization. This Consultant-created questionnaire and outreach will ideally yield:

- Basic data, such as typical mode split, reasons for mode choice, and commute benefits offered.
- Identify organization’s existing or future TDM measures, and how they match with City/County goals.
- Interest of the employer/organization to participate in a Task Force that will shape recommendations for a TMA. The Consultant will convene a Task Force with quarterly meetings to gather public input in the recommendation process.
- Working with staff to administer questionnaire to employees, laid out below in Task 2.

**Task 2: Collect Survey Data from Menlo Park Employers/Organizations, Analyze Existing Data**

Collect and analyze quantitative and qualitative data to understand travel patterns and commute habits for Menlo Park. The following table includes, but is not limited to, potential data sources and goals and metrics from data analysis. The City already has some traffic data (Attachments 2 and 3), while other data may need to be acquired – through companies that offer Bluetooth and geospatial data – to complement survey data.

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Consultant shall work with the City of Menlo Park Housing and Economic Development Division to identify local employers/organizations. Consultant will use that information to coordinate with employers/organizations to administer of the survey with the expectation that a large enough sample of responses (at least 30%-50%) is indicative of the commute patterns for Menlo Park.

Employers/organizations to be surveyed can be broken down as follows:
- Medium-sized: 100-499 people.
- Large-sized: 500+ people.

**Phase 2: Detailed Analysis of TMA Options**

This phase shall be dedicated to the options analysis report. The City of Menlo Park will select criteria to identify the preferred option. At the end of Phase 2, Consultant shall recommend the best option(s) for the City to pursue based on cost-benefit analyses and City-defined criteria. The Consultant shall then proceed with developing a framework for TMA implementation in Phase 3.

**Task 1: TMA Background Research for the City of Menlo Park**

Consultant shall identify and analyze relevant local, regional, and national TMA models in order to gather enough provide background information that will support developing various options report for the City.

**Task 2: Specific TMA Model Analyses for the City of Menlo Park**

Consultant will develop up to five for possible TMA structures in Menlo Park. By identifying various options, the City will work with the Consultant to identify the best option that serves the demographics of the City along with being the most sustainable and cost-efficient. Each option will include but not limited to the following:

- Benefits, risks.
- Costs to employers/organizations, City of Menlo Park.
- Funding sources, fees required for operational costs.
- Participation of key stakeholders necessary for TMA success and likelihood of participation.
- City resources needed (staff and costs) and for how long to support the TMA.
- Effectiveness of reducing congestion and GHG emissions.
- Governance structure.
- Relation and support of other City programs, such as the Transportation Master Plan and Safe Routes to School.

Additionally, the Consultant will identify staffing requirements to coordinating each of the following potential TMA options, including implementation and continued operation.

- **Option 1: Status Quo**
  - This option entails the City not implementing a TMA and having the continuation of the City and employers/organizations having independent TDM measures. Additionally, status quo may include the City waiting for a regional entity to coordinate a regional-type TMA and offering membership to Menlo Park.

- **Option 2: Subregional TMA/Alliance**
  - A subregional TMA or alliance of cities/TMAs would be a collaborative effort in the region. For example, an alliance with Palo Alto, Mountain View, and Redwood City would offer Mid-Peninsula collaboration across county lines.
  - Key takeaways are finding the optimal member base, both in numbers and location. This model may include but are not limited to the following cities or stakeholders: Redwood City, Menlo Park, East Palo Alto, Palo Alto, Stanford University, Mountain View, Union City, Newark, and Fremont.
  - Joint Venture Silicon Valley is also investigating the feasibility of a subregional TMA through its Manzanita Talks, which may include overlap with a subregional model for Menlo Park.

- **Option 3: Large Employer/Organization TMA**
  - This option is a TMA that focuses on members that are larger and may already have TDM programs. Large employers/organizations are generally located in the Bayfront, Downtown, and Sand Hill areas of Menlo Park. While this option focuses mostly on larger employers/organizations, it does not preclude smaller ones in the area from also joining.
• Key takeaways will be identifying which potential participating members are crucial to ensuring the success of a TMA.
  - Option 4: Small Employer/Organization TMA
    o This TMA focuses on members that are smaller, mostly those similar in nature to those in the downtown area. These types of employers/organizations do not typically offer TDM programs and could benefit from an alliance to gain buying power.
    o Key takeaways will be identifying if employee count or gross revenue define a small employer/organization, surveying employees directly in lieu of a manager, and identifying transportation options to help retain and attract employees.
  - Option 5: Citywide TMA
    o The Citywide TMA would include both small and large employers/organizations. This would offer the greatest partnership and buying power, although it also presents issues such as fairness based on contributions and representation.
    o This type of TMA may be in the form of one TMA for the entirety of Menlo Park, or an alliance of multiple TMAs that exist within Menlo Park.
    o Key takeaways include identifying if a Citywide TMA includes only employers/organizations or also neighborhoods and/or homeowner associations.

Phase 3: Implementation Plan for Transportation Management Association
This phase shall lay out the framework for implementing a TMA that the City of Menlo Park will choose from recommendations conducted in Phase 2.

Task 1: TMA Cost-Benefit and Services Analysis for City of Menlo Park
City shall narrow Consultant-recommended TMA options from Phase 2, of which Consultant shall then analyze TMA options based on cost-benefit analyses and City-defined criteria. The criteria shall be defined from feedback in the employer survey, by internal City staff, and any City Council/Commission guidance. These criteria include, but are not limited to: employers/organizations participation, cost, funding sources, marketing/branding, mobility options, metrics, and key-performance indicators. Consultant shall also identify what services the preferred TMA(s) should offer, ranging from very basic services to a comprehensive Mobility-as-a-Service (“MaaS”). These services may include but are not limited to parking cash outs, incentives, transit benefits, bicycling amenities, rideshare, shuttles, microtransit, and commute software/apps.

Task 2: TMA Framework Recommendation for the City of Menlo Park
Create a framework for a basic board structure and elections system, along with identifying self-funding mechanisms. While these may change by the time a TMA is established, it will lay the foundation for understanding how a Menlo Park TMA can minimize dependency on City resources as the TMA matures.

Task 3: Define City of Menlo Park’s Long-Term Role in TMA
Consultant shall identify City’s long-term role and participation in the TMA. This includes identifying if the City should have a direct or advisory role with the TMA, along with its financial obligation to ensure the TMA’s solvency. The long-term goal is that the TMA is independent and needs minimal City intervention and participation.

SCOPE OF WORK: CITY OF FOSTER CITY

In addition to the City of Menlo Park, the City of Foster City is also requesting an exploration of options for a TMA:

• Small to Medium-Sized Employer/Organization TMA
• Citywide TMA

The City requests a scope and itemized fee estimate for each task from any proposer who is qualified and has the resources available to complete the tasks. Additionally, the City requests that this RFP serve as a
joint call for specific professional services for the City of Foster City. The City requests that a fee estimate is created for each city, itemized by task and with total cost estimates. A brief timeline for completion of tasks and major milestones are listed below.

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Perform outreach to interview key decision makers at employers/organizations to understand and collect commute habit pattern data. Ideally, outreach will be conducted with a TDM Coordinator-type position, Human Resources, or any one with adequate knowledge of transportation for the organization. This Consultant-created questionnaire and outreach will ideally yield:

- Basic data, such as typical mode split, reasons for mode choice, and commute benefits offered.
- Identify organization’s existing or future TDM measures, and how they match with City/County goals.
- Interest of the employer/organization to participate in a Task Force that will shape recommendations for a TMA. The Consultant will convene a Task Force with quarterly meetings to gather public input in the recommendation process.
- Working with staff to administer questionnaire to employees, laid out below in Task 2.

**Task 2: Collect Survey Data from Foster City Employers/Organizations, Analyze Existing Data**
Collect and analyze quantitative and qualitative data to understand travel patterns and commute habits for Foster City. The following table includes, but is not limited to, potential data sources and goals and metrics from data analysis. The City of Foster City may have some traffic data, while other data may need to be acquired – through companies that offer Bluetooth and geospatial data – to complement survey data.

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Consultant will work with the City of Foster City to reach out to and coordinate with employers/organizations to administer the survey with the expectation that a large enough sample of responses (at least 30%-50%) is indicative of the commute patterns for Foster City. The main focus will be the businesses at the Metro Center, Lincoln Center, and other sites around Foster City:
Phase 2: Detailed Analysis of TMA Options
This phase shall be dedicated to the options analysis report. The City of Foster City will select criteria to identify the preferred option. At the end of Phase 2, Consultant shall recommend the best option(s) for the Cities to pursue based on cost-benefit analyses and City-defined criteria. The Consultant shall then proceed with developing a framework for TMA implementation in Phase 3.

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Consultant will develop two possible TMA structures in Foster City. By identifying various options, the City of Foster City will be able to work with the Consultant to identify the best option that serves the demographics of Foster City along with being the most sustainable and cost-efficient. Each option will include but not limited to the following:

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- Option 1: Small to Medium-Sized Employer/Organization TMA
  - This TMA focuses on members that are small to medium in size (up to approximately 1,000 employees). These types of employers/organizations may offer little to no TDM programs and could benefit from an alliance to gain buying power.
  - Key takeaways will be identifying if employee count or gross revenue define a small employer/organization, surveying employees directly in lieu of a manager, and identifying transportation options to help retain and attract employees.

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PROPOSAL PREPARATION AND SUBMITTAL

Submittals shall be prepared on standard size paper with removable binding on the left hand side. The proposal shall be double sided, not to exceed 25 pages. Qualifications and work samples may be included as an appendix, and will not count against the page limit. The submittal shall include, but not limited to:

1. **Project Overview** – The proposal must contain a project overview which describes the relative roles of its staff, as well as the proposer’s approach to completing the overall scope of the service.
2. **Description of Qualifications** – Applicable bidder qualifications must be presented in this section covering the proposer’s experience on similar or related including experience. The bidder shall include identification of up to 3 similar projects and provide at least one work sample, which shall not count towards page limits if included in the appendix.
3. **Staffing** – This section must contain resumes and references identifying all key staff, including the project manager.
4. **Scope of Work and Schedule** - Bidder shall include scope of work outlining each task to be performed. Bidder shall also include proposed schedule.
5. **Fee Estimate** – In a separate, sealed envelope, bidder shall provide a fee estimate for the areas of service as proposed in the scope of work. Fees shall be itemized for each phase and subtasks (where itemization is appropriate).
6. **Table of Exceptions** – The summary must state whether the proposal does or does not fully comply with the requirements as defined in this RFP and shall provide a detailed list of disclosures to the scope of services or other RFP requirements including all exhibits.
7. **References** – Each proposal shall also include a list of up to three (3) references for which you have recently provided similar services. Include contact names, phone numbers and email addresses for each reference.
Submit an electronic pdf file (email to ngyee@menlopark.org, or USB drive preferred) and three (3) bound copies of the full proposal no later than **Friday, May 17, 2019 at 5:00 p.m.** to:

Attn: Nicholas Yee, TDM Coordinator  
Public Works Department  
701 Laurel St.  
Menlo Park, CA 94025

City staff will review the proposals and select the most qualified firm based on the following criteria:

1. Ability to perform the specific tasks  
2. Qualifications of the specific individuals who will work on the project  
3. The specific method or techniques to be used  
4. Reasonableness of the schedule to complete each task element  
5. Overall cost of the proposal

After reviewing each proposal, the City will notify each Consultant in writing. The City reserves the right to complete the selection process without proceeding to an interview phase, and the City may choose to select a consultant based upon information supplied in the proposal.

The City will check the references of the top ranked consultant(s) for items such as record in accomplishing work in a timely manner for similar projects within budget, quality of work completed for public agencies, and ability to work with City staff and the public.

## PROCESS SCHEDULE

The following is a tentative schedule of milestones. The consultant shall state in the proposal a commitment to the project schedule outlined below, including project staff resources.

Written questions about this RFP should be submitted by email on or before **Wednesday, May 1, 2019 by 5:00 p.m.** Responses to questions will be posted on the City website at [www.menlopark.org/bids](http://www.menlopark.org/bids) by **Monday, May 6, 2019 by 5:00 p.m.**

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<td>Interviews (if needed)</td>
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<tr>
<td>Consultant Selection/Approval by City Council</td>
<td>By June 18, 2019</td>
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<tr>
<td>Notice to Proceed</td>
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POINT OF CONTACT FOR FUTURE CORRESPONDENCE

Requests for information regarding this project should be directed to:

Nicholas Yee, TDM Coordinator  
Public Works Department  
701 Laurel St.  
Menlo Park, CA 94025  
ngyee@menlopark.org  
650-330-6754

Dante Hall, Assistant City Manager  
City Manager Department  
610 Foster City Blvd.  
Foster City, CA 94404  
dhall@fostercity.org  
650-286-3214

TERM OF CONTRACT

The City intends to execute a contract with the most qualified contractor(s) for one year, with extensions to the contract as needed. The Contract(s) will be awarded at the discretion of the Menlo Park City Council. The City of Menlo Park reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified source, or to cancel in part or in its entirety this RFP. Proposals and materials submitted will become the property of the City and will not be deemed confidential or proprietary and are subject to public record and may be released upon request.

CONTRACTUAL TERMS AND CONDITIONS

The Consultant will be required to sign the City of Menlo Park’s Standard Agreement for Services and City of Foster City’s Professional Services Agreement (Attachment 1).

Section continues on the next page.
PROFESSIONAL SERVICES AGREEMENT

Agreement #: 

AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND FIRST PARTY

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 FIRST PARTY, hereinafter referred to as “FIRST 
PARTY.”

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in 
connection with that certain project called: click here to enter text 

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby 
undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND 
CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY 
agrees to perform all the services as set forth in Exhibit "A," Scope of Services.

2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be 
as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by 
written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold 
the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, 
accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The 
"Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, 
except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY 
all project related files, records, and materials within one month after completion of all of FIRST PARTY’s 
activities required under this agreement.

3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will 
complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," 
Scope of Services).
4. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed $enter amount as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

B. FIRST PARTY’s fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY’s relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY’s agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.
7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

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

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.
<table>
<thead>
<tr>
<th>17. INSPECTION OF WORK</th>
</tr>
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<tbody>
<tr>
<td>It is FIRST PARTY’s obligation to make the work product available for CITY’s inspections and periodic reviews upon request by CITY.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>18. COMPLIANCE WITH LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>19. BREACH OF AGREEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>20. SEVERABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>21. CAPTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
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<tr>
<th>22. LITIGATION OR ARBITRATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 &quot;B,&quot; 'Dispute Resolution' attached hereto and by this reference incorporated herein.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>23. RETENTION OF RECORDS</th>
</tr>
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<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>24. TERM OF AGREEMENT</th>
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<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>
25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

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

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

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

FOR FIRST PARTY:

Signature

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.
PROFESSIONAL SERVICES AGREEMENT
FOR
[ENTER PROJECT TITLE]

This Agreement is made and entered into as of the _____ day of ____________, 2019 by and between the City of Foster City hereinafter called "CITY" and ________________ hereinafter called "CONSULTANT".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

A. That CITY desires to engage CONSULTANT to provide professional services in the CITY;

B. That CONSULTANT is qualified to provide such services to the CITY and;

C. That the CITY has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth.

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

   Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

   Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. (b) Notwithstanding the provisions of (a) above, either party may terminate this Agreement without cause by giving written notice not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, CITY shall compensate CONSULTANT for services rendered, and reimburse CONTRACTOR for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of CITY to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to CITY hereunder.
3. **Compensation; Expenses; Payment.** CITY shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT’s hourly rates during the time of the performance of said services. A copy of CONSULTANT’s hourly rates for which services hereunder shall be performed are set forth in CONSULTANT’s fee schedule marked Exhibit “B” hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum of $________________ unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by the City Manager (for contracts less than $50,000) or City Council (for contracts $50,000 or more) evidenced by motion duly made and carried.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. **Additional Services.** In the event CITY desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by the City Manager (for contracts less than $50,000) or City Council (for contracts $50,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.

5. **Records.** CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to CITY for review and copying during regular business hours at CONSULTANT’s place of business or as otherwise agreed upon by the parties.

6. **Authorization.** This Agreement becomes effective when endorsed by both parties in the space provided below.

7. **Reliance on Professional Skill of CONSULTANT.** CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services
hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

8. **Documents.** All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.

9. **Relationship of Parties.** It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.

10. **Schedule.** CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT’s work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT’s officers or employees.

CONSULTANT acknowledges the importance to CITY of CITY’s Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. **Indemnity.** To the fullest extent allowed by law, CONSULTANT hereby agrees to defend, indemnify, and save harmless CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, City of Foster City or Estero Municipal Improvement District, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of CONSULTANT, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of CONSULTANT to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONSULTANT to indemnify City of Foster City and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

CONSULTANT’s responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.
The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

12. **Insurance.** CONSULTANT shall acquire and maintain Workers’ Compensation, employer’s liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance coverage relating to CONSULTANT’s services to be performed hereunder covering CITY’s risks in form subject to the approval of the City Attorney and/or CITY’s Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<table>
<thead>
<tr>
<th>Insurance Category</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers’ Compensation</td>
<td>statutory minimum</td>
</tr>
<tr>
<td>Employer’s Liability</td>
<td>$1,000,000 per accident for bodily injury or disease</td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, personal injury and property damage</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CONSULTANT’s vehicle usage in performing services hereunder)</td>
</tr>
<tr>
<td>¹Professional Liability</td>
<td>$1,000,000 per claim and aggregate</td>
</tr>
</tbody>
</table>

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the CITY as an Additional Insured. Furthermore, the requirements for coverage and limits shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

CONSULTANT agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement.

¹ Note: Professional liability insurance coverage is not required if the CONSULTANT is not providing a service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional engineers, doctors, certified public accountants, lawyers, etc.) Please check and initial the following if professional liability is **NOT** required for this agreement. □ Recommended ________ [Project Manager] □ Approved ________ [Risk Manager]

Updated 2/28/2019
including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor’s work. Subcontractors hired by CONSULTANT shall agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under this Agreement and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. CONSULTANT shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to the CITY prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, CONSULTANT shall, on the Insurance Coverage form provided in Exhibit C, furnish CITY with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

(a) Precluding cancellation or reduction in per occurrence limits before the expiration of thirty (30) days (10 days for nonpayment) after CITY shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;

(b) Naming the City of Foster City and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and

(c) Providing that CONSULTANT’s insurance coverage shall be primary insurance with respect to City of Foster City and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by CITY for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of CONSULTANT’s insurance and not contributory with it. CONSULTANT and its insurer may not seek contribution from CITY’s insurance or self-insurance.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY, to the extent required by this Agreement, before the CITY’s insurance or self-insurance may be called upon to protect CITY as a named insured.

All self-insured retentions (SIR) must be disclosed to CITY for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR
may be satisfied by either the named CONSULTANT/Named Insured or CITY.

CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under this Agreement. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor’s work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

CONSULTANT shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event CONSULTANT fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

13. WORKERS’ COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. **Notice.** All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

   CITY: City of Foster City  
   610 Foster City Boulevard  
   Foster City, CA 94404-2299  
   Attention: [ ]  

   CONSULTANT: [ ]  
   (Fill in CONSULTANT Name, Address, Phone Number, Project Manager and Email Address for CONSULTANT)  

16. **Non-Assignment.** This Agreement is not assignable either in whole or in part.  

17. **Amendments.** This Agreement may be amended or modified only by written agreement signed by both parties.  

18. **Validity.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.  

19. **Governing Law.** This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney’s fees and expenses of litigation of the successful party.  

20. **Mediation.** Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.  

21. **Conflict of Interest.** CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.  

22. **Entire Agreement.** This Agreement, including Exhibits A, B C, and D, comprises the entire Agreement.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: ________________

Jeff Moneda, City Manager
(for contracts less than $50,000)
[REMOVE signature line if $50,000 or more]

Dated: ________________

Sam Hindi, Mayor
(for contracts $50,000 or more)
[REMOVE signature line if less than $50,000]

ATTEST:

Dated: ________________

Priscilla Tam, City Clerk

APPROVED AS TO FORM

Dated: ________________

Jean Savaree, City Attorney

CONSULTANT

Dated: ________________

Type Name & Title of CONSULTANT Authorized to Sign
EXHIBIT A

SCOPE OF WORK AND SCHEDULE FOR

[ENTER PROJECT TITLE]
EXHIBIT C

INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original
Endorsement affecting the coverages specified in Section 12 - INSURANCE of the
Agreement on the attached form. No substitute form will be accepted.

ATTACHED

1. Insurance Coverage Form
EXHIBIT D
This INSURANCE COVERAGE FORM modifies or documents insurance provided under the following:

Named Insured: ___________________________ Effective Work Date(s): ___________________________

Description of Work/Locations/Vehicles: ___________________________

ADDITIONAL INSURED: City of Foster City/Estero Municipal Improvement District (CITY)
610 Foster City Boulevard, Foster City, CA 94404
Attention: ___________________________

Contract Administrator

Endorsement and Certificates of Insurance Required
The Additional Insured, its elected or appointed officers, officials, employees and volunteers
are included as insureds with regard to damages and defense of claims arising from: (Check
all that apply)

☐ General Liability: (a) activities performed by or on behalf of the Named
Insured, (b) products and completed operations of the Named Insured, (c)
premises owned, leased occupied or used by the Named Insured, and/or (d)
permits issued for operations performed by the Named Insured. (Note:
MEETS OR EXCEEDS ISO Form # CG 20 10 11 85)

☐ Auto Liability: the ownership, operation, maintenance, use, loading or
unloading of any auto owned, leased, hired or borrowed by the Named
Insured, regardless of whether liability is attributable to the Named Insured
or a combination of the Named Insured and the Additional Insured, its elected
or appointed officers, officials, employees or volunteers.

☐ Other:

Certificates of Insurance Required (no endorsement needed) (Check all that
apply)

☐ Workers Compensation: work performed by employees of the Named
Insured while those employees are engaged in work under the simultaneous
directions and control of the Named Insured and the Additional Insured.

☐ Professional Liability:

Insurer | Policy No.
---------|------------------

PRIMARY/NON-CONTRIBUTORY: This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

SEVERABILITY OF INTEREST: The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer’s limit of liability.

PROVISIONS REGARDING THE INSURED’S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, ___________________________(print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: ___________________________ TITLE: ___________________________

ADDRESS: ___________________________

TELEPHONE: ( ) ___________________________ DATE ISSUED: ___________________________