



REQUEST FOR QUALIFICATIONS (RFQ)
FOR
Structural Plan Review & Inspection Services

Community Development Department
Building Services Division
City of East Palo Alto, California

Released on November 23, 2011

Proposals Due Date: December 14, 2011

12:00 P.M.

RE: RFQ for Civil Engineering & Inspection Services

Attn: Frank Rainone, Chief Building Official

Building Services Division

City of East Palo Alto

1960 Tate Street

East Palo Alto, CA 94303

Building Services Division
REQUEST FOR QUALIFICATIONS (“RFQ”)

1. BACKGROUND

The City of East Palo Alto Building Services Division anticipates several projects plans to be submitted for plan review and needs to retain consulting services from qualified consulting firms to provide structural plan review and inspection services for various types of projects as they relate to both commercial and residential construction.

The City is seeking to establish a pool of qualified firms to provide services with experience in the following disciplines:

Structural review

Review buildings structural design, review of specifications, calculations, soils investigation, geotechnical reports and related construction documents.

Inspection services

Provide inspections service of all phases of construction, as they relate to the following installations; structural, mechanical, electrical, plumbing, green building code requirements, Title 24, energy and accessibility.

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFQ	November 23, 2011
Deadline for Written Questions	November 30, 2011
Responses to Questions Posted on Web	December 1, 2011
RFQ Due Date	December 14, 2011
Selection of Qualified Firms	December 20, 2011

3. RESERVED RIGHTS

City reserves the right to:

1. Reject any and/or all proposals and to waive any and/or all technicalities and informalities received in response to this RFQ.
2. The building official, building inspections, and plan review agreement (contract) shall be a fixed fee for service agreement, to be negotiated in accordance with the regulations of the City and the law of the State of California.

4. SELECTION PROCESS

Statements of Qualifications (SOQ’s) will be reviewed by city staff. Staff will formulate a “short list”, and will interview the short-listed firms. A number of firms will be selected for recommendation to the City Council for the purpose of establishing a pool of qualified firms, to be renewed every other year or earlier as it may be needed.

The City Building Services staff anticipates selection of approximately five qualified consulting firms to provide structural plan review and inspection services; however the exact number will be determined depending on the quality, diversity and responsiveness of the proposals received.

The City may elect to contract with more than one consultant based upon their specific field of expertise and, or the needs of the project. The minimum requirement for your SOQ to be considered, your firm must satisfactorily respond to at least one of the four categories below:

Category I : Structural Plan Review Services

- 1) S1: Provide at least 2 mid rise and 2 high rise projects (commercial/residential) that your firm has provided for structural review services;
- 2) S2: Provide at least 2 remodels of commercial and residential buildings.

Category II: Inspection Services

- 1) I1: Provide at least 2 mid rise and 2 high rise projects (commercial/residential) that your firm has provided for inspection services;
- 2) I2: Provide at least 2 remodels of commercial and residential buildings.

The select pool of qualified firms shall provide consulting services on an “as-needed” basis for projects, as they come in for plan review or for inspection services.

5. SCOPE OF WORK

In general, the consultant shall perform structural plan review and inspection services on an “on call or as-needed” basis for various projects assigned by the City. As an illustration, the scope of work on each category may include but not be limited to the following:

Structural Plan Review

◆ Review and approval of all structural documents, as they relate to any construction project but not limited for the following installations and activities:

- Review preliminary designs for consistency with the codes
- Shoring and tie back design
- Dewatering systems and design
- Building foundation
- Building structural frame
- Attachment and anchorage of building components and equipment
- Soils reports, geotechnical and hydrological information and designs
- Review all request for information (addition fees may be required)
- Consultant shall be responsible for courier services to and from the city.
- Attend meeting as needed
- Review shop drawings
- Conduct site visits as needed

- Assist the building services staff with interpretation of the plans and specifications, analysis of changed conditions, development of corrective action, review of shop drawings and other submittals.

All reviews shall be conducted and approved based on the current local and state codes adopted by the City of East Palo Alto. Plan review schedules shall conform to: first check 21 working days and all re-checks 14 working days, both from the day of plan receipt. The construction documents approved shall bear the stamp and signature of the responsible person(s) and shall indicate what was reviewed and approved. Said stamp shall list the current codes adopted by the city of East Palo Alto.

Inspection Services:

◆ All inspections shall be conducted based on the current local and state codes adopted by the City of East Palo Alto and the city approved plans.

All inspections will be conducted on behalf of the Building Services Division of the Community Development Department of the City of East Palo Alto.

All inspectors shall be certified by International Code Council for the intended discipline of the inspection. The name, certificates and a resume of the intended inspector(s) shall be provided to Building Services for review and approval.

The following written information will be provided for each inspection.

- a) Site Address
 - b) Permit Number
 - c) Type of inspection
 - d) Pass or fail (If failed a written correction notice)
 - e) Corrections or comments (Correction lists shall be scanned into the cities permit tracking system (CRW)).
- 1) The inspection consultant shall keep records and an accounting of all inspection requested failed, partial inspections and passed inspections. The job card shall be signed after an inspection has been completed indicating that the inspected project complies with the current codes or approved plans.
 - 2) All code interpretations shall be approved by the Chief Building Official prior to rendering and official interpretation.
 - 3) Building Services Division and other City divisions and departments shall be conducting a final inspection based on signed inspection records and direct input from the inspection consultant.

6. CITY'S RESPONSIBILITIES

- ◆ Furnish scope of work request for each project assigned.
- ◆ Furnish all construction documents and all calculations as submitted by the applicant.
- ◆ Furnish the permit application showing the construction valuation and plan review cost.

7. SOQ FORMAT AND GUIDELINES

Include all material in one Submittal envelope. The Submittal envelope should contain 10 copies of your SOQ and one envelope containing one copy of your proposed Fee Schedule. All material should be on 8 1/2"x 11" paper. Proposal should be typed and should contain no more than 10 typed pages using a 12-point font size, including cover letter, and resumes of key people.

The fee schedule limit is two pages, which do not count towards the 10 page SOQ page limit.

In addition to the required material above, you can also submit via email an electronic SOQ which should be all one file only.

The minimum qualification is 3 years of experience providing at least one of the four categories of services in the RFQ.

Each SOQ should contain the following sections:

1. Introduction Letter;
2. Qualifications (Individual);
3. Qualifications/Experience of Support Team (Firm); and,
4. Project Experience (Individual);
5. Capability of the Consultant (Firm).
 - Number of Permanent Employees and current FTE availability
6. Fee Schedule: Principal, Associate, Expenses, Reimbursable, etc.
7. References:
 - Cities currently under contract
 - Provide organization name, contact name, and telephone numbers for cities who have used your services.

Introduction Letter

The introductory letter will include the following:

- A. Include a **contact person and information** (name, title, office phone, address, email address, cell phone) in case our Pool Selection Team has questions about the submittal.
- B. Include the Categories for which the SOQ is submitted:
 - The options are a minimum of one or any combination of, S1, S2, I1 and I2
- C. The letter must be no longer than **one-page** in length.
- D. Indicate the address and telephone number of the consultant's office located nearest to the City of East Palo Alto, California and the office from which the project will be managed.
- E. Your response to the Request for Qualification must indicate if you are unwilling or unable to execute the City standard sample agreement as drafted as well as providing the insurance requirements. The City will consider this in determining responsiveness to the Request for Qualification

An individual authorized to bind the consultant must sign the letter.

Qualifications:

- Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform. Include a resume and a list of current certifications/licenses for each designated individual and team organization including an organization chart.
- List pertinent support team experience, and variety of firm's qualifications, affiliations, awards and recognitions.
- A summary of your firm's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.
- Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

Experience

- List individual experience reviewing and approving complex structural projects and/or providing inspection services
- List firm's experience reviewing complex structural projects and/or providing inspection services.
- Provide a table including
 - ◆ Client Name
 - ◆ Project Description
 - ◆ Project start and end dates
 - ◆ Client project manager name, telephone number, and e-mail address
 - ◆ Consultant's Project Manager

Capability

Describe the size of your firm, amount of current work, and staff's availability to provide the requested services at this time.

Fee Schedule

Include in your one proposal envelope, one envelope including one copy of your proposed fee schedule. Include the firm's schedule of hourly rates, including the rates for all sub consultants. The percentage mark up of reimbursable expenses, if any, shall also be specified. Include mileage travel, copying costs, etc. The schedule should be valid until the end of 2012.

References

Provide name of cities and current projects you are working on. Provide at least four Northern California references that received similar services from your firm.

8. PROCESS FOR SUBMITTING PROPOSALS

Content of Proposal

The proposal must be submitted using the format as indicated in the proposal format guidelines.

Preparation of Proposal

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

Number of Proposal Copies

Submit five (10) copies of your proposal in sufficient detail to allow for thorough evaluation and comparative analysis.

◆ Submission of Proposals

Complete written proposals (required) and emailed proposals (emailed proposals are optional, not required) must be submitted no later than 12:00 p.m. (P.S.T) on December 14, 2011. Proposals will not be accepted after this deadline.

Building Services Division
Attn: Frank Rainone, Chief Building Official
City of East Palo Alto
1960 Tate Street
East Palo Alto, CA 94303
RE: RFQ for Structural Plan Review & Inspection Services

◆ Inquiries

Questions about this RFQ must be directed in writing, via e-mail to:

Frank Rainone
Chief Building Official
frainone@cityofepa.org
650-853-3189

From the date that this RFQ is issued until the firms are selected and the selection is announced, firms are not allowed to communicate for any reason with any City employee other than the contracting officer listed above regarding this RFQ. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

◆ Conditions for Proposal Acceptance

This RFQ does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFQ, to negotiate with any qualified source, or to cancel this RFQ in part or in its entirety. All proposals will become the property of the

City of East Palo Alto, CA. If any proprietary information is contained in the proposal, it should be clearly identified.

9. EVALUATION CRITERIA

The City's consultant evaluation and selection process is based upon "Qualifications Based Selection" (QBS) for professional services. The following criteria will be used in evaluating the proposals using a point value system (100 points) based upon the weight factors indicated below:

- 1) Meets minimum Prequalification standard to be considered
- 2) Compliance with format and quality of written presentation submitted (10 points).
- 3) Qualification of the firm and individuals. (30 points).
- 4) Experience of the firm and individuals, project manager and other key individuals that are assigned to this project. (35 points).
- 5) Clarity of presentation of experience and qualifications (10 points).
- 6) Results of reference checks (15 points). Reference checks will only be conducted for a short list of firms or the top rated firm.

The City may also contact and evaluate the structural review and inspection firms references; contact any city or county to clarify any response; contact any current users of a qualifiers services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make a recommendation to Council in the best interest of the City.

After written proposals have been reviewed, discussions with prospective firms may or may not be required. If scheduled, the oral interview will be a question/answer format for the purpose of clarifying any portions of the proposal and to see samples of previous work products.

10. STANDARD TERMS AND CONDITIONS

◆ Amendments

The City reserves the right to amend this RFQ prior to the proposal due date. All amendments and additional information will be posted on the City of East Palo Alto's Official City Web Site at www.cityofepa.org, Bidders should check this web page daily for new information.

◆ Cost for Preparing Proposal

The cost for developing the proposal is the sole responsibility of the bidder. All proposals submitted become the property of the City.

◆ Contracting

Before execution of a specific project contract, the City may elect to solicit proposals from all consultants. The list of qualified firms will be updated every year. The City will issue task orders for each project based upon the scope of services, work schedule, and fee proposal submitted to the City for its review and approval.

◆ **Contract Discussions**

Once a pool of qualified firms has been established and when the need for professional services arises, City staff will contact a qualified firm to define the scope of work for the a project, and to enter into a contractual agreement. These discussions are to be finalized and all exceptions resolved within one (1) week from notification. If no resolution is reached, the proposal may be rejected and discussions will be initiated with another qualified firm.

◆ **Confidentiality Requirements**

The staff members assigned to this project may be required to sign a departmental nondisclosure statement. Proposals are subject to the California Public Records Act. The City cannot protect proprietary data submitted in proposals.

◆ **Insurance Requirements**

The City of East Palo Alto requires that licensees, lessees, and vendors have a current Certificate of Insurance (not a declaration or policy) on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful bidder must furnish the City with the Certificates of Insurance proving coverage as specified in Appendix B.

◆ **Business License Requirements**

The City of East Palo Alto requires that licensees, lessees, and vendors have a current City business license on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful bidder must furnish the City with a copy of a current City business license.

Please carefully review the Sample Agreement and Insurance Requirements before responding to the Request for Qualification enclosed herein. The terms of the agreement, including insurance requirements have been mandated by City Council. Your response to the Request for Qualification must indicate if you are unwilling or unable to execute the agreement as drafted as well as providing the insurance requirements. The City will consider this in determining responsiveness to the Request for Qualification.

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INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICE CONTRACTORS PLEASE GIVE TO YOUR INSURANCE AGENT

- A. There shall be a contractual liability endorsement extending the GRANTEE'S coverage to include the contractual liability assumed by the GRANTEE 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 2415 University Avenue, East Palo Alto, CA 94303, of any pending cancellation of the policy. GRANTEE shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Worker's Compensation and Employer's Liability Insurance: GRANTEE shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, GRANTEE 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 Worker's 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".
 2. Liability Insurance:
 - a. Commercial General Liability Insurance: GRANTEE 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 GRANTEE'S operations under this Agreement, whether such operations be by GRANTEE 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. GRANTEE shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions.

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b. Automobile Liability Insurance: GRANTEE shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than One Million Dollars (\$1,000,000) for each occurrence 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 (If Applicable): GRANTEE shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of GRANTEE pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) combined single limit. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

B. **The City of East Palo Alto, its Councilmembers, subsidiary agencies, directors, officers, agents, employees, and servants shall be named as additional insured** on any such policies of comprehensive general and automobile liability insurance, except professional liability and worker's 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.

C. 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.

D. Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

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AGREEMENT FOR SERVICES SAMPLE

**AGREEMENT BETWEEN THE CITY OF EAST PALO ALTO AND
_____ FOR [INSERT TYPE OF SERVICES]
_____ SERVICES**

This Agreement is entered into _____, 2011, by and between the CITY OF EAST PALO ALTO ("CITY" herein), a Municipal Corporation, and _____, a corporation (hereinafter "CONTRACTOR").

RECITALS

A. The CITY has determined it is necessary to _____, hereinafter referred to as the "PROJECT".

B. The requirements of devising the PROJECT are more efficiently satisfied by the CITY'S retention of a contractor.

C. The CITY has determined that the CONTRACTOR possesses such specialized professional skill and ability, and the CITY has approved the selection of the CONTRACTOR.

D. The CITY will pay all costs associated with the _____, in an amount not to exceed _____ Dollars (\$_____).

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **SCOPE OF ENGAGEMENT:** CONTRACTOR shall perform in a professional manner the services as detailed in EXHIBIT A and incorporated herein by reference as if fully set forth as part of this Agreement.
2. **CONTRACT PERIOD:** This Agreement shall be in full force and effect until completion of the project, unless terminated according to Section 17 of this Agreement.
3. **SCHEDULE OF PERFORMANCE:** CONTRACTOR acknowledges that time is an important element in this Agreement, and CONTRACTOR agrees to complete the PROJECT prior to _____. If CONTRACTOR is unable to procure

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necessary information from the CITY in order to meet the schedule, CONTRACTOR shall immediately notify the CITY, and the CITY and CONTRACTOR shall agree to a new deadline for the completion of CONTRACTOR'S work.

4. COMPENSATION AND PAYMENT: The agreement between CONTRACTOR and the CITY shall not exceed \$_____. Payments to CONTRACTOR by the CITY shall be made within sixty (60) days after receipt by the CITY of CONTRACTOR'S itemized invoice.

As each payment is due, CONTRACTOR shall submit an itemized invoice to CITY describing the services performed. This invoice shall include, at a minimum, 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.

CONTRACTOR'S fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, reimbursable expenses and supplies, materials, and equipment, and services incurred by CONTRACTOR and used in carrying out or completing the work.

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 CONTRACTOR'S relevant records pertaining to the charges.

5. INDEPENDENT CONTRACTOR: The parties intend that CONTRACTOR, in performing the services hereinafter specified, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. It is understood and agreed that this agreement is not a contract of employment in the sense that the relationship of master and servant exists between the CITY and undersigned. At all times, CONTRACTOR shall be deemed to be an independent contractor and CONTRACTOR is not authorized to bind the CITY to any contracts or other obligations in executing the Agreement. CONTRACTOR is not to be considered an agent or employee of the CITY, and is not entitled to participate in a pension plan, insurance, bonus or similar benefits the City of East Palo Alto provides. CONTRACTOR will determine the method, details and means of performing the services described in EXHIBIT A.
6. ASSIGNMENT/DELEGATION: The parties agree that the expertise and experience of CONTRACTOR and any subcontractors are material considerations for this Agreement. CONTRACTOR shall not assign or transfer any rights, duties, obligations or interest in this Agreement nor the performance of any of CONTRACTOR'S obligations hereunder,

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without the prior written consent of the City Manager, and any attempt by CONTRACTOR to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect and a breach of this Agreement. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

7. FAMILIARITY WITH WORK. By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONTRACTOR discover any conditions materially differing from those inherent in the work or as represented by the CITY, it shall immediately inform CITY and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from the CITY.
8. OBLIGATION TO DISCLOSE MATERIAL INFORMATION: If the PROJECT is a public project requiring CONTRACTOR'S services as a design professional and/or project manager, CONTRACTOR shall provide the typical information found in public work bid sets that meets the industry standard of care. The indemnification provisions and the insurance requirements set forth in Sections 10 and 11, and Exhibit C, shall apply if the CITY receives a contractor claim for increased cost of performance due to CONTRACTOR'S failure to disclose material information.
9. PROPRIETARY OR CONFIDENTIAL INFORMATION: CONTRACTOR understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, CONTRACTOR may have access to private or confidential information which may be owned or controlled by the CITY and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the CITY. CONTRACTOR agrees that all information disclosed by the CITY to CONTRACTOR shall be held in confidence and used only in performance of this Agreement. CONTRACTOR shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential data.

10. INDEMNIFICATION

- 10.1 [**Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.**] To the fullest extent permitted by law, CONTRACTOR shall protect, defend (with counsel acceptable to CITY), indemnify and hold harmless CITY, its councilmembers, officers, employees and agents (each an "Indemnified Party") from and against any and all actions, causes of actions, demands, claims, losses, expenses (including attorneys fees, experts fees, court costs and disbursements) or liability (collectively called "Actions") of any nature, including

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death or injury to any person, property damage or any other loss, arising out of, pertaining to, or relating to the negligence, recklessness or willful misconduct of the CONTRACTOR, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. The acceptance of CONTRACTOR'S services by the CITY shall not operate as a waiver of such right of indemnification.

- 10.1 **Option B applies to any contractor who does not qualify as a design professional as defined in Civil Code Section 2782.8.]** To the fullest extent permitted by law, CONTRACTOR shall protect, defend (with counsel acceptable to CITY), indemnify and hold harmless CITY, its councilmembers, officers, employees and agents (each an "Indemnified Party") from and against any and all actions, causes of actions, demands, claims, losses, expenses (including attorneys fees, experts fees, court costs and disbursements) or liability (collectively called "Actions") of any nature, including death or injury to any person, property damage or any other loss, resulting from, arising out of or in any manner related to performance or nonperformance by CONTRACTOR, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. The acceptance of CONTRACTOR'S services by the CITY shall not operate as a waiver of such right of indemnification.
- 10.2 CONTRACTOR acknowledges and agrees that it has an immediate and independent obligation to defend CITY, its councilmembers, officers, employees and agents from any claim or Action which potentially falls within this indemnification provision, which obligation shall arise at the time such claim is tendered to CONTRACTOR by CITY and continues at all times thereafter.
- 10.3 All of CONTRACTOR'S obligations under this section are intended to apply to the fullest extent permitted.

11. INSURANCE REQUIREMENTS: CONTRACTOR agrees to have and maintain the policies set forth in EXHIBIT B entitled "INSURANCE REQUIREMENTS," which is attached and incorporated in this Agreement as if set forth in full. All policies, endorsements, certificates and/or binders shall be subject to approval by the City Attorney. These requirements are subject to amendment or waiver only if so approved in writing by the City Attorney. CONTRACTOR shall not commence work until all insurance required hereunder has been submitted and approved. A lapse in any required amount or type of insurance coverage during this Agreement shall be a breach of this Agreement.

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12. INSPECTION AND OWNERSHIP OF WORK: CONTRACTOR shall maintain full and accurate records with respect to all matters covered under this Agreement for three (3) years from the date of final payment to CONTRACTOR pursuant to this Agreement. During such period, CITY shall have the right to examine and audit the records and to make transcripts therefrom. CITY shall provide thirty (30) days written notice of its intent to inspect or audit any such records. Copies of such documents shall be provided to the CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available for inspection or audit at CONTRACTOR'S address indicated for receipt of notices in this Agreement during CONTRACTOR'S normal business hours. Any CITY'S employee, contractor, subcontractor or agent who may have access to such records shall execute a non-disclosure agreement prior to being granted such access.

Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR'S business, or closure of the local office of CONTRACTOR'S business, the CITY may, by written request by the Counsel of the CITY require that custody of the records be given to the CITY and that the records and documents be maintained at City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

Work products of CONTRACTOR for this project, which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall become and remain the property of CITY without restriction or limitation upon their use. CONTRACTOR shall not release any materials or copies of any materials to any parties other than the City and City staff. The reuse of CONTRACTOR'S work products by CITY for purposes other than intended by this contract shall be at no risk to CONTRACTOR.

13. CONTRACTOR LIABILITY IF AUDITED: CONTRACTOR will assume all financial and statistical information provided to CONTRACTOR by CITY employees or representatives is accurate and complete. CONTRACTOR shall, upon notice of audit, make work papers and other records available to the auditors.

14. COPYRIGHT FOR CONTRACTOR'S PROPRIETARY SOFTWARE: To the extent that the service and/or deliverables provided by CONTRACTOR are generated by CONTRACTOR'S proprietary software, nothing contained herein is intended nor shall it be construed to require CONTRACTOR to provide such software to CITY. CITY agrees that all ownership, including copyright, patents or other intellectual property rights to that software, lie with CONTRACTOR. Nothing herein shall be construed to entitle CITY to any pre-existing CONTRACTOR materials.

15. CONFLICT OF INTEREST: CONTRACTOR shall at all times avoid conflicts of interest and take reasonable steps to avoid appearances of conflicts of interest in the

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performance of this Agreement. Without limiting the foregoing, CONTRACTOR, including its officers, employees and subcontractors, specifically covenants that it presently has no interest, and shall not acquire, any interest, direct or indirect, which would conflict in any manner or degree with the performance of its service hereunder. CONTRACTOR further covenants that no one who has or will have any financial interest under this agreement is an officer or employee of the CITY.

16. NON-DISCRIMINATION & NON-HARASSMENT: CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination and non harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap. CONTRACTOR agrees to abide by the CITY'S Policy Against Discrimination, Harassment and Retaliation as set out in attached EXHIBIT C and incorporated herein by reference as if fully set forth as part of this Agreement.

17. TERMINATION: At any time and without cause, the CITY shall have the right in its sole discretion, to terminate this agreement by giving written notice to the CONTRACTOR. In the event of such termination, the CITY shall pay CONTRACTOR for services rendered to the termination date, but no other form of compensation shall be owed. It is equally understood that CONTRACTOR shall reimburse the CITY for services yet to be rendered. In the event of termination, CONTRACTOR shall deliver to the CITY copies of all reports, documents, computer disks and other work ("Materials") prepared by CONTRACTOR under this Agreement, if any, and upon receipt thereof, the CITY shall pay CONTRACTOR for services performed by CONTRACTOR to the date of termination. If CONTRACTOR'S written work is contained on a hard computer disk drive, in the event of termination, CONTRACTOR shall, in addition to providing a written copy of the information, immediately transfer any and all versions of written work from the hard computer disk drive to a compact disk or digital video disk and deliver the computer-readable materials to the CITY.

18. DIRECTION OF WORK: CONTRACTOR'S analysis and work product shall be performed and completed under the direction of the City Manager and her/his designee.

19. GOVERNING LAW: The law governing this Agreement shall be that of the State of California.

20. COMPLIANCE WITH LAWS: CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

21. WAIVER: Waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this Agreement.

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22. **NOTICES**: All notices and other communications required or permitted to be given under this Agreement shall be given in writing by personal delivery, by facsimile transmission with verification of receipt or by U.S. mail, postage prepaid and return receipt requested, addressed to the respective parties as follows

To City: City of East Palo Alto
 Attn: _____, [INSERT TITLE]
 2415 University Avenue
 East Palo Alto, CA 94303
 Tel . No. (650) 853-_____
 Fax No. (650) 853-_____
 _____@cityofepa.org

To Contractor: _____
 _____ [INSERT TITLE]

 Tel. No. (____) _____
 Fax No. (____) _____
 _____@_____

Notice shall be deemed communicated on the earlier of actual receipt or forty-eight (48) hours after deposit in the U.S. mail, the date of delivery shown on deliverer's receipt, or by acknowledgment of facsimile transmission.

23. **MERGER AND MODIFICATION**: This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms of the agreement, pursuant to California Code of Civil Procedure Section 1856 and as a

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complete and exclusive statement of the terms of the agreement. No modification to this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

24. SEVERABILITY: Each provision of this Agreement is intended to be severable. If any term of any provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever; such provision shall be severed from this agreement and shall not affect the validity of the remainder of the agreement.
25. DISPUTE RESOLUTION: Any dispute or claim in law or equity between the CITY and CONTRACTOR arising out of this agreement, if not resolved by informal negotiation between the parties, shall be submitted to alternate dispute resolution, with each party bearing its own costs and legal fees. Should litigation result, the court shall determine who bears legal fees and costs.
26. CHANGE ORDERS: In no event shall CONTRACTOR 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 prior to the commencement of the work.

In addition to services described in EXHIBIT A, the parties may from time to time agree in writing that CONTRACTOR, 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 CONTRACTOR shall agree in writing to any changes in compensation and/or changes in CONTRACTOR'S services prior to the commencement of any work. If CONTRACTOR deems work he/she has been directed to perform is beyond the scope of this Agreement and constitutes extra work, CONTRACTOR 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 CONTRACTOR in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and CONTRACTOR. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the CONTRACTOR. Such

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supplemental agreement shall be executed by the CONTRACTOR and the City Manager upon recommendation of the City Engineer.

THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE HEREBY ACKNOWLEDGED AND AGREED TO:

CITY OF EAST PALO ALTO

CONTRACTOR

ML Gordon, CITY MANAGER

[NAME], [TITLE]
[NAME OF COMPANY]

Date: _____

Date: _____

APPROVED AS TO FORM:

Valerie J. Armento, INTERIM CITY ATTORNEY

Date: _____