



REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

Project Management Services Cooley Landing Park Project

Date of Issue: June 10, 2013

Due Date: June 20, 2013

PROJECT OVERVIEW

The City of East Palo Alto seeks qualifications and fee proposals for professional project management services for its Cooley Landing Park Project. Proposals will be accepted from qualified individuals or firms providing such services. The ideal Project Manager will have a minimum of ten years of responsible, professional-level public or private sector experience in complex project management with emphasis on more than one of the following disciplines: architecture, landscape architecture, or parks/open space development, with a minimum of a Bachelor's degree in architecture, landscape architecture, urban planning or construction management. In addition, it is preferable for the proposed Project Manager to have one of the following qualifications: Licensed Professional Architect; Licensed Landscape Architect; Certified Project Manager; or Certified Construction Manager.

The City of East Palo Alto has, for many years, planned to develop a public park with a nature and history education center at Cooley Landing. Cooley Landing was a San Mateo County burn dump from 1932 to 1957. In the 1960's, Carl Schoof, owner and operator of a small boat repair business, brought in 7 to 9 feet of contaminated fill to cover the burn waste. Site investigations by the USEPA found extensive contamination exceeding environmental screening levels. An extensive community process was completed in conjunction with design of Phase I, which resulted in the Cooley Landing Vision Plan, the guiding document for Phases II-V.

The first phase of the project was completed in 2012. The primary objective of Phase I was to remediate hazardous contamination at the site, to cover and cap fill soils that were previously placed on the site, and to open Cooley Landing to the public. The remediation project was performed under the regulatory oversight of the San Francisco Bay Regional Water Quality Control Board and the County of San Mateo. In addition to the grading and construction of the engineered cap, a multi-use trail system and visitor parking areas were constructed, the site was reseeded with native plants and grasses, and site furnishings, such as picnic tables and benches were installed. Cooley Landing was opened to the public in July of 2012, and is currently open daily from dawn to dusk.

The City expended over \$2 Million on Phase I of the project, funded primarily by various grants. In 2012, the City of East Palo Alto received a \$5 Million Proposition 84 grant from the State of California Department of Parks and Recreation, for the design and construction of Phases II-V of the Cooley Landing Park Project.

Phase II (to be built in the winter of 2013/14), includes the remainder of the internal access road, utilities and additional planting, is currently in design and is budgeted at \$1.4 million including soft costs (design and project administration). Phase III (2014/15) will focus on the design and construction of a new building to house an Education Center with an expected cost of \$2.7 million. Phase IV (2015/16) will focus on site work around the Education Center, including an outdoor classroom and restoration of the boat launch structure, and is expected to cost \$600,000. Phase V includes design and installation of interpretive exhibits for the Education Center and is anticipated to cost \$300,000. (A proposed Phase VI, for a potential sculpture, water access and a cantilevered outlook, is not yet funded.) All deliverables for the Cooley Landing Park Project must be completed by 2018 to comply with the grant requirements.

Construction activity at Cooley Landing is limited to the months of September through January due to the presence of the California Clapper Rail in the wetlands immediately to the north and south of Cooley Landing. As a result, construction must be phased through successive winters. As such, project management and site management is critical to a successful and timely built project.

The selected project manager will be responsible for managing all project activities for Cooley Landing Park, Phases II through V, including managing the selection process for design and engineering consultants; coordinating with the City and multiple partners with interests in the Park, such as Midpeninsula Regional Open Space District; coordinating with multiple regulatory agencies and permitting authorities; managing the outreach process to City residents and other stakeholders; administering the grant and reporting to the State; bidding and award of multiple construction contracts associated with the various phases; and providing construction management services so that each project phase is completed efficiently and within the established restrictions. The project manager is also responsible for managing project budget(s), schedule(s) of performance, and scope(s) of work, and coordination with City staff for the efficient delivery of the approved project, and for assuring the quality and details of the project as defined in the Proposition 84 Grant Agreement and by the East Palo Alto City Council, are adhered to.

It is anticipated that the project manager will regularly visit the site, attend meetings, and serve as "de facto" City-designated project supervisor. The Project Manager may not be directly or indirectly partnered with, or be part of, the design or construction teams ultimately contracted to complete the project to eliminate potential conflicts of interest.

I. CONSULTANT'S QUALIFICATIONS

1. The consultant for this project will be selected on the basis of professional qualifications, experience and demonstrated competence. The ideal Project Manager will have a minimum of ten years of responsible, professional-level public or private sector experience in complex project management with emphasis on more than one of the following disciplines: architecture, landscape architecture, or parks/open space development, with a minimum of a Bachelor's degree in architecture, landscape architecture, urban planning or construction management. In addition, it would be preferable for the proposed Project Manager to have one of the following qualifications: Licensed Professional Architect; Licensed Landscape Architect; Certified Project Manager; or Certified Construction Manager. The selection criteria are described further in Section V.
2. Previous primary project management experience by staff designated for this project will be considered as key criteria for the selection. Consideration will be given only to those applicants who can clearly demonstrate successful past experience on similar projects.
3. Ability to communicate effectively, meet schedules, coordinate activities with multiple parties, and work within budget limitations.
4. Proficiency in the utilization of project management software.

II. ELIGIBILITY

This request is being sent to individuals and consulting firms that are believed to possess relevant experience.

III. SCOPE OF SERVICES

1. The project manager will handle the day-to-day coordination and communications between the project construction team and city staff responsible for inspection and plan approval.
2. The project manager will manage and monitor the progress on the project and compare the progress with the master project schedule, and ensure that the project completes on schedule.
3. The project manager will also be responsible for assisting the City with review and processing of progress payments, including any documentation requirements.
4. Requests for Information, Requests for Proposal or Price Quotation, Force Accounts, and Change Orders will also be administered by the project manager. The project manager will assist the City in negotiations with the consultant team(s) and contractor(s), and maintain files of all project documentation.
5. Project submittals are to be coordinated by the project manager with contractor(s) and any required City staff. This coordination includes work related to submittal logs and ensuring the timeliness and completeness of the submittal.
6. Project manager will hold coordination and construction meetings, as needed.

7. Project manager will assure that all consultants, including design professionals and the construction contractor(s), maintain appropriate project schedules and provide such scheduling using Critical Path Management software.
8. Other project-related duties as assigned by the Community Development Director, or necessitated by the project.

IV. SUBMITTAL REQUIREMENTS

All proposals must be received no later than 5:00 p.m. on June 20, 2013.

Late submittals will not be considered.

Firms wishing to respond to this request must supply the information requested in this RFP by the date and time required. All submittals shall be in an 8 ½" x 11" format.

Proposals shall be typed and shall not exceed ten pages of written material including the cover letter. Typeface must be Arial - 12 point. Submittals failing to comply with the page limitation will not be considered.

The ten page limitation includes any written, photographic or graphic material contained in the body of the statement and any appendices. The limitation *does not include*:

- the cover (although narrative on the reverse side of the front cover or front of the back cover will be counted);
- a title page;
- a table of contents and/or index, and
- blank tab pages.

Two copies and one electronic copy of all proposals shall be submitted, packaged in one envelope or container marked:

**PROJECT MANAGEMENT SERVICES
COOLEY LANDING PARK PROJECT**

Responses must be organized as follows.

Executive Summary

Provide a concise summary of the significant information contained in your qualifications statement and proposal. Executive summary paragraphs must correspond to the numbered sections below.

1. Identification of the Firm/Sole Proprietor
Provide the legal name of the firm, the firm's address, telephone number and facsimile number. Include a brief description of the organization, its constituent parts and size variation in the past five (5) years. Name the person (with title and project responsibility) to whom correspondence and other communications should be directed.
2. Project Manager Resume

Identify the individual proposed as the Project Manager. The City of East Palo Alto will heavily weight the qualifications of the proposed Project Manager in the overall evaluation of proposals. Use an easily comprehensible resume format.

Provide a complete listing of all related projects undertaken or completed in the past ten (10) years. The format for these listings must include:

- a. Project name, location and description (describe relevance to this project);
- b. Project participants, including the names and telephone numbers of the owner, general contractor and subconsultants (any or all of these may be contacted during the selection process);
- c. Role of the project manager in the project; and,
- d. Cost and schedule information including project cost at the planning phase and at completion as well as the originally scheduled and actual completion dates (explain any significant variance from the original budget or schedule).

3. Cost and Schedule Control

Discuss demonstrated success in controlling project costs and schedules.

4. Project Approach

Provide a thorough explanation of the approach planned for this project including:

- a. How to manage the project, including any internal organizational support;
- b. The latest information on different administrative and management techniques for handling several simultaneous construction projects;
- c. Project document controls, including proper coordination and checking of bid documents;
- d. Quality control methods;
- e. Estimation of project manager time allocation through project duration;
- f. How your firm manages schedule and budget;
- g. Your approach to construction administration; public relations; contractor relations, etc.

5. Client References

List a minimum of three relevant client references for the proposed project manager, including:

- client representative(s);
- client telephone number(s);
- project location and street address;
- project type; and
- project budget.

6. Insurance
Provide evidence of insurability and liability limits.
7. Form of Contract
Confirm receipt and review of the City's standard form contract attached.

The City reserves the right to reject any and all proposals received as a result of this request.

Please submit your three copies of proposals by 5:00 P.M. on June 20, 2013 to:

**John Doughty
City of East Palo Alto
Community Development Director
1960 Tate Street
East Palo Alto, CA 94303**

V. SELECTION CRITERIA

The successful consulting firm/sole proprietor will be selected on the basis of professional qualifications and demonstrated competence. Particular attention will be paid to:

1. Experience, qualifications, performance, and availability of project manager;
2. Ability to identify and resolve construction and design related situations;
3. Ability to communicate effectively with the contractor, City and the public;
4. Solid management practices.
5. Familiarity with the East Palo Alto community.

VI. SELECTION PROCEDURE

All responses to this RFP that meet the submittal requirements will be evaluated by the Community Development Director. A panel interview may be scheduled with a short list of candidates.

Subsequent to selection by the Director, a final fee and scope of work will be prepared and presented to the City Council for approval.

VII. SCHEDULE

Release RFP	June 10, 2013
Proposal Due	June 20, 2013 – 5 p.m.
Interview Panel, if scheduled.....	Week of June 24, 2013
Contract Approval by City Council	July 2 or 16, 2013

VIII. PROPOSAL FORMAT

Proposal Format is attached.

PROPOSAL FORMAT

CITY OF EAST PALO ALTO

PROJECT MANAGEMENT SERVICES COOLEY LANDING PARK PROJECT

Provide a list of firm's personnel and billable hourly rates.

Propose a flat fee, with estimated hours, for the following:

- Phase II Access Road and Planting: Coordination of design completion (currently approximately 65% complete; Coordination of Hazardous Materials Remediation; Permitting; Bidding and Construction Management. It is anticipated that the Phase II construction project will be completed by March 2014.
- Phase III Education Center Design: Coordination of Request for Qualifications and Proposals and Selection of Professional Architecture and Design Services; Coordination of Stakeholder Outreach; Management of the Design Process. It is anticipated that selection of an Architect will be completed by August 2013. It is anticipated that the design process will be complete by June 2014.
- Phases IV and V: Provide an estimate; however these phases will be negotiated at a later date.



AGREEMENT BETWEEN THE CITY OF EAST PALO ALTO AND

This Agreement is entered into _____, 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 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, 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 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.

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 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 nonharassment 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.

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: _____,
2415 University Avenue
East Palo Alto, CA 94303
Tel . No. (650) 853-_____
Fax No. (650) 853-_____
_____@cityofepa.org

To Contractor: _____

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 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 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:

Agreement between the City of East Palo Alto and

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CITY OF EAST PALO ALTO

CONTRACTOR

Ronald Davis, Interim City Manager

FEDERAL I.D.# _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Kathleen A. Kane, City Attorney

Date: _____

EXHIBIT A:

SCOPE OF SERVICES

COOLEY LANDING PARK PROJECT
DRAFT EXHIBIT A

PROJECT MANAGEMENT CONSULTING SERVICES SCOPE OF WORK

Below is the Draft Scope of Work for Project Management Consulting Services. Subsequent to selection, a final fee and scope of work will be prepared and presented to the City Council for approval.

The contractor shall provide project management services for the City of East Palo Alto (CITY), Cooley Landing Park Project. Services shall be charged at ~~XXXX~~ per hour, to a maximum of ~~XXXX~~, and include:

A DEVELOP BUDGET AND SCHEDULE

- 1 Coordinate with CITY to establish budget and schedule for all project phases.

B ADMINISTER STATE OF CALIFORNIA GRANT AND OTHER GRANTS

- 1 Assist CITY in preparation of required documents for OGALS.

C MANAGE SELECTION OF ARCHITECT, DESIGN AND ENGINEERING CONSULTANT(S)

- 1 Assist CITY with determination of what consultant(s) are necessary and develop appropriate scope(s) of work.
- 2 Prepare and distribute Request for Qualifications and Proposals (RFQ/P) with CITY.
- 3 Assist CITY in selection of a short list of consultant(s), and review and selection of consultant(s), including a public participation/outreach process, if any.
- 4 Assist CITY in negotiating and finalizing consultant agreement(s).
- 5 Manage consultant(s).
- 6 Assist CITY in selecting design preference(s) for each Phase of the Project.

D MANAGE STAKEHOLDER INPUT TO ARCHITECT

- 1 Prepare a program for the Architect's design with input from stakeholders.
- 2 Provide written weekly comments on Architect's progress to CITY.
- 3 Respond to Architect's questions by email.
- 4 Assist CITY in arranging periodic public review meetings.
- 5 Review Architect's progress documents and provide written comments.
- 6 Collect, reconcile, collate and deliver CITY and community comments.
- 7 Ensure that Architect incorporates review comments into documents.
- 8 Distribute approved Preliminary Design to permitting agencies.
- 9 Review Architect's request for payment at end of each phase.

E MANAGE MULTIPLE DESIGN AND CONSTRUCTION PHASES (II-V)

- 1 Prepare and bid contract documents.
- 2 Assist CITY with public bidding.
- 3 Assist City with recommendations to the City Council for award of contract(s).

F PROVIDE PUBLIC OUTREACH

- 1 Establish contact and provide update on project status to stakeholders.
- 2 Provide monthly illustrated updates for CITY to install on website.
- 3 Distribute monthly updates by email to stakeholders.

G CONSTRUCTION MANAGEMENT

- 1 Manage construction contractor(s).
- 2 Interface with various regulatory agencies and permitting authorities.
- 3 Administer Requests for Information, Requests for Proposal or Price Quotation, Force Accounts and Change Orders.
- 4 Assist CITY in negotiations with the consultant team(s) and contractor(s) and maintain files of project documentation.
- 5 Assist CITY with contract close-out, including obtaining as-built drawings, and other documentation.

H PROVIDE OTHER SERVICES

- 1 As directed by the Community Development Director or as necessitated by the project.

END OF DRAFT SCOPE

EXHIBIT B: INSURANCE REQUIREMENTS
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

**EXHIBIT C: CITY OF EAST PALO ALTO'S POLICY AGAINST DISCRIMINATION,
HARASSMENT AND RETALIATION**

EFFECTIVE DATE: 12/21/2004

REVISED DATE: 1/12/07

ADOPTED BY CITY COUNCIL: 12/21/2004

I. PURPOSES

The purposes of this policy are to emphasize the City's commitment to keeping its workplace free of harassment, discrimination and retaliation, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted on City bulletin boards in all City facilities.

II. POLICY

All of the following are prohibited by this Policy:

- Discrimination or harassment in any aspect of City employment based on any legally protected characteristic or status, including sex, gender, sexual orientation, race, color, national origin, language, ancestry, religion, age, marital status, domestic partner, physical disability, mental disability, or medical condition.
- Retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment or discrimination.
- Aiding, abetting, inciting, compelling, or coercing or any such discrimination, harassment or retaliation, or attempting to do so.

The City will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrence. Any City employee, Council member, member of any advisory body, including any Commissioner, Committee member, or Board member found having engaged in any such misconduct will be subject to disciplinary action up to and including termination or censure or removal and will be deemed to have acted outside the course and scope of his or her employment.

This policy applies to all City employees, volunteers, interns, vendors, and contractors as well as to all applicants for City positions.

The policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable State or Federal law or regulation, or increase the legal liability of the City.

III. DESCRIPTION AND EXAMPLES OF PROHIBITED HARASSMENT

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- An individual's submission to such conduct is made explicitly or implicitly, a term or condition of that individual's employment; or,
- An individual's submission to or rejection of such conducts is used as the basis for an employment decision affecting that individual; or,
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility towards the victim's gender, or towards the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may either be the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it if he or she witnesses it.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, threatening, or intimidating comments, epithets, slurs or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.
- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.
- Physical harassment may consist of assault, battery, or unwelcome, unnecessary and offensive touching (kissing, hugging, patting, rubbing, pinching, brushing against), stating, leering, gesturing, whistling or making noises, impeding or blocking movement, or physical interfering with normal work or movement.

In addition to prohibiting harassment based on sex or gender, this policy also prohibits harassment based on sexual orientation, or upon any other legal protected characteristic or status, such as race, religion, creed, color, national origin, language, ancestry, physical disability, mental disability, medical condition, marital status, domestic partner, or age.

Harassment on the basis of such factors is subject to the principles applicable to sexual harassment, as stated above.

IV. REPORTING DISCRIMINATION, HARASSMENT OR RETALIATION

Any City employee, volunteer, intern, vendor, contractor, or applicant who becomes aware of any discrimination, harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, or higher ranking supervisor, or the Assistant City Manager. Under no circumstances shall such a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported.

Reports may be made orally or in writing, free of requirements as to form.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

V. INVESTIGATION AND RESOLUTION

The City of East Palo Alto will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and contractors, members of the City Council, or members of a City advisory body shall cooperate with any such investigation.

Any supervisor, manager department head, member of the City Council, or member of a City advisory body who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the Personnel Officer. Upon receiving the report, the Personnel Officer shall direct any report that accuses a City Council member or appointee to the City Council for investigation and resolution. The City Council shall delegate the responsibility to conduct a prompt, full, and fair investigation to the qualified private investigator. Upon receiving a report regarding a non-City Council member or appointee, the Personnel Officer shall conduct a prompt, full, and fair investigation, or delegate that responsibility to a qualified City employee or private investigator. The person performing the investigation shall:

- Interview the complainant, the accused, and any other person the investigator believe to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

VI. OUTSIDE ADMINISTRATIVE AGENCIES

In addition to the remedies described in this Policy, the U.S. Equal Employment Commission and the California Department of Fair Employment and Housing provide administrative complaint and investigation processes as to harassment, discrimination or retaliation on the basis of a protected status. The toll free telephone number for such office is listed below:

California Department of Fair Employment and Housing 1.800.233.3212

U.S. Equal Employment Opportunity Commission 1.800.669.4000