Summary Title: Approval of Contract with Integrated Design 360

Title: Approval of an Exemption From Competitive Solicitation and Approval of Contract Number C19175498 With Integrated Design 360 for Development and Support of; Sustainability Implementation Plan, Green Building Program, Deconstruction and Source Separation Program, Dewatering Monitoring Program, and Utilities On-call Services Through June 30, 2020 for a Total Not-to-Exceed Amount of $576,000

From: City Manager

Lead Department: Development Services Department

Recommendation
Staff recommends that the City Council approve an exemption from competitive solicitation and authorize the City Manager or designee to approve Contract C19175498 with Integrated Design 360 for professional services within the Development Services, Utilities, and Public Works departments focusing on programs related to the City’s overall sustainability efforts such as Green Building, De-Watering, Deconstruction and Source Separation, Energy Savings, Electrification, Rebates and Incentives, and Enhanced Building Commissioning initiatives as they relate to the City’s Sustainability Implementation Plan and Utilities Strategic Plan through June 30, 2020 for a Total Not-to-Exceed Amount of $576,000, of which $150,200 is earmarked as optional work.

Background
The City, through the Development Services Department, has contracted with Integrated Design 360 since September 2014 for development and technical assistance for City programs. These programs include local amendments to the California Green Building Code, California Energy Code, and the California Model Water Efficient Landscape Ordinance. The initial City Council approved contract (C15154454) was amended in January 2016, April 2016, and August 2017 for a combined total of $1,255,005. On June 18, 2018, the City Council approved a one-year contract (C18172547) through June 30, 2019 for a Total Not-to-Exceed Amount of $606,291; which also provided support to Public Works and Utilities for the aforementioned activities related to the City’s Sustainability Implementation Plan. For further background please see City Council Staff Report #9354 (link).
Discussion
Staff is requesting City Council approval of a new contract (C19175498) with Integrated Design 360 for Fiscal Year 2020 to support Development Services with the creation of the City’s local amendments to the 2019 California Green Building and Energy Codes, provide technical assistance for the Green Building Program, and act as technical advisor on sustainability policies; support Public Works with implementing new programs such as Deconstruction, Source Separation, and Dewatering Monitoring; and continue to provide Utilities with on-call services for activities related to the Sustainability Implementation Plan and the Utilities Strategic Plan. Specifics about these activities can be found in Attachment A – Exhibit A.

Similar to last year, staff requests that the City Council find this one-year contract exempt from the City’s competitive solicitation requirements. While it is rare for such a request to be made for a second year, external circumstances have caused project work performed by this firm originally scheduled to have been completed last fiscal year to extend into the coming fiscal year. Specifically, proposed revisions to the Green Building and Energy Reach Codes were postponed due to the formation of a statewide study on electrification, and the work of the associated community advisory group has been extended into a new fiscal year. For background information on the Green Building and Energy Reach Codes projects, please see staff report #10208 (link). Integrated Design 360 has managed and facilitated all stakeholder engagement on that initiative and provides considerable technical and policy expertise on Green Building and Energy Reach Code issues. Given Integrated Design 360’s history with the City, the firm has unique insight into the various program policies, procedures, codes, and operations as well as the perspectives of our community. The firm is the best positioned to continue to develop and support these programs and initiatives, particularly the development of the City’s Green Building and Energy Reach Code update. It would cause substantial loss of efficiency with city operations if this contract is not approved. Furthermore, due to the seasonal nature of construction, projects are underway. For example, this firm is currently providing customer service to residents and builders about green building requirements; implementing education, outreach and enforcement of the deconstruction and source separation program; and monitoring dewatering at construction sites. Disruption to services could cause economic loss and delay projects.

At this time, given an exceptional number of vacancies due to retirements and the imminent merger and reorganization of the Planning and Community Environment and Development Services departments, staff does not believe it is the appropriate time to evaluate a new service provider for the programs supported by Integrated Design 360. Staff seeks to maintain continuity by utilizing the expertise of Integrated Design 360 and to provide the new department director and his management team – including several positions currently under recruitment -- time to review and evaluate service delivery models of the new department with the commitment to perform an RFP for these services in the coming fiscal year and plan, in coordination with the Public Works and Utilities departments, for the possible transition to a different firm for any/all of the above services as appropriate.
Resource Impact
Fiscal Year 2020 department budgets in the General Fund for Development Services ($327,000), Refuse Fund and Stormwater Management Fund for Public Works ($218,900) and in the Electric and Electric Supply Funds for Utilities ($30,000) are anticipated to have sufficient funding for this contract, as the Fiscal Year 2020 Proposed Budget is still subject to adoption by the City Council, which is scheduled for June 17. A cost per task per department per fiscal year is outlined in Exhibit C-1 of the attached contract.

Attachments:

- Attachment A: Contract C19175498 with Integrated Design 360
CITY OF PALO ALTO CONTRACT NO. C19175498
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
INTEGRATED DESIGN 360, LLC. FOR PROFESSIONAL SERVICES

This Agreement is entered into on this 10th day of June, 2019, ("Agreement") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and INTEGRATED DESIGN 360, LLC. a California limited liability company, located at 727 Industrial Road, Suite 128, San Carlos, California, 94070, Telephone (415) 866-6744 ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to obtain assistance to manage programs related to the CITY’s overall sustainability efforts ("Project") and desires to engage a consultant to provide services in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described at Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.
The term of this Agreement shall be from the date of its full execution through June 30, 2020 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the
CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A” (“Basic Services”), and reimbursable expenses, shall not exceed Five Hundred Seventy Six Thousand Dollars ($576,000.00). CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. The applicable rates and schedule of payment are set out at Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE,” which is attached to and made a part of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to
perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT’s errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of CITY’s stated construction budget, CONSULTANT shall make recommendations to CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Melanie Jacobson to have supervisory responsibility for the performance, progress, and execution of the Services and to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY’s project manager. CONSULTANT, at CITY’s request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a
threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

CITY’s project manager is Khashayar Alaee, Development Center 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone: (650)329-2230. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests originally developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of original work product pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work. The parties acknowledge that in performing the Services, CONSULTANT may utilize and leverage intellectual property created by CONSULTANT prior to this Agreement (“Pre-Existing IP”). CONSULTANT retains all propriety rights with respect to Pre-Existing IP but grants CITY an irrevocable, royalty-free, perpetual and non-exclusive license to use, copy, distribute, sublicense and make derivative works of such Pre-Existing IP to the extent it is incorporated into the Services.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT’s records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.
16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY’s Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days’ prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days’ notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT’s receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT’s liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.
19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT’s services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk  
City of Palo Alto  
Post Office Box 10250  
Palo Alto, CA  94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director  
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently
has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person’s race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies which are available at CITY’s Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY’s Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONSULTANT shall comply with the following zero waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY’s Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division’s office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not
being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.
CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 25. NON-APPROPRIATION
25.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS
26.1 This Project is not subject to prevailing wages. CONSULTANT is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7 if the contract is not a public works contract, if the contract does not include a public works construction project of more than $25,000, or if the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, ‘improvement’) project of more than $15,000.

SECTION 27. MISCELLANEOUS PROVISIONS.
27.1. This Agreement will be governed by the laws of the State of California.
27.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.
27.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.
27.4. This document represents the entire and integrated agreement between the
parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

27.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

27.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

27.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

27.8 In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT’s proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT’s proposal, the exhibits shall control.

27.9 If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident (‘‘Personal Information’’), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City’s express written consent.

27.10 All unchecked boxes do not apply to this Agreement.

27.11 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

27.12 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.
CONTRACT No. C19175498 SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

CONSULTANT

(Approved as to form)

Attachments:

EXHIBIT “A”: SCOPE OF SERVICES
EXHIBIT “B”: SCHEDULE OF PERFORMANCE
EXHIBIT “C”: COMPENSATION
EXHIBIT “C-1”: SCHEDULE OF RATES
EXHIBIT “D”: INSURANCE REQUIREMENTS
EXHIBIT “A”
SCOPE OF SERVICES

CONSULTANT shall provide professional services for CITY’s Development Services, Utilities, and Public Works departments focusing on programs related to the CITY’s overall sustainability efforts. Programs include but not limited to Green Building, De-Watering, Deconstruction and Source Separation, Energy Savings, Electrification, Rebates and Incentives, and Commissioning. The CONSULTANT shall manage these programs within the policy framework set forth by the CITY and act with independent judgement to ensure deliverables are met in accordance to the terms of this exhibit.

Development Services Department Tasks:
- Task 1 - Green Building Program Management, Customer Services, and Implementation Assistance
- Task 2 - Metrics Management and Reporting
- Task 3 - Green Building Training (Optional)
- Task 4 - Policy Review and Creation
- Task 5 - Sustainability Implementation Plan Support to Development Services (Optional)
- Task 6 - Commercial Green Building Special Inspector Program Design & Implementation (Optional)

Public Works Department Tasks:
- Task 7 - Deconstruction and Source Separation Program Development
- Task 8 - Deconstruction and Source Separation Program Implementation
- Task 9 - Dewatering Monitoring Program Development & Implementation
- Task 10 - PCBs Program Development, Education & Outreach Implementation
- Task 11 - Storm water Program Design, Education & Outreach Implementation

Utilities Department Tasks:
- Task 12 - On-Call Support Services

Development Services Department Tasks

Task 1 –Green Building Program Management and Implementation
Provide program implementation for the existing green and energy reach building program and applicable municipal code. Examples of these tasks may include the items listed below:
- Green Building Technical Assistance - Provide green building technical coordination assistance to staff and project applicants. Consultant may specify hours during which technical assistance is available and may elect to provide assistance by phone, email, or over-the-counter.
- Technical assistance focuses on the CITY’s Green Building and Energy Reach Program and applicable municipal code, local green building and energy policies, compliance processes, forms, handouts, and green building requirements associated with planning, plan check, inspection, and green building special inspection. Focus subject areas include the statewide California Green Building Code, the California Energy Code, and reference standards within
the associated municipal codes.

- Program Efficiency Improvement – Provide suggestions to senior staff for process improvements related to Accela permitting software and green building approvals for planning, plan check, and inspection staff.
- Program Development, Goals, Updates, Implementation – Adjust technical assistance and outreach content based on state and local changes to codes, policies, staff processes, and senior management goals.
- Perform quality control reviews of existing processes and suggest best practices for tasks identified at various stages of the development process within the Planning and Building Departments, including:
  - Planner Quality Control – Perform an annual update to the standard Green Building Conditions of Approval template documents.
  - Project Coordinator Quality Control – Provide an annual quality control review of technical challenges related to the Green Building and Energy Reach code impacting the Project Coordinator staff at the front counter.
  - Plan Checker Quality Control – Perform a monthly quality control review of five percent of permit applications that trigger the green building and energy reach code requirements in the local municipal code.
  - Inspector Quality Control – Provide recommended updates to the Green Building Inspection Checklist on an annual basis. Attend a monthly technical analysis meeting to review progress and challenges related to green building inspection.
- Develop Green Building Program Process Guides: Develop clearly defined paths that are user friendly that guide the applicant through the process from start to finish. These paths will be readily accessible either through access to CITY’s Green Building web page and/or handouts that are available for distribution from CITY’s Development Center. Develop content for tutorial-based videos explaining the Green Building process including, requirements, forms, timelines, inspections, etc. Provide voice recording of training material. Video production will be performed by a separate City vendor.

Task 2 - Metrics Management and Reporting
Provide detailed quantitative analysis that measure how effective the CITY’s Green Building and Energy Reach program and applicable municipal code is per the following:

- Building Performance Database - Data entry and management for statistics and annual report. Compile Green Building and Energy Reach metrics from building permit applications.

Task 3 - Green Building Training (Optional)
Perform two public trainings per year on the Green Building and Energy Reach Program and compliance requirements to be made available to the community and staff. Perform four staff trainings per year on the Green Building and Energy Reach Program and enforcement requirements. Perform an annual half-day training for Green Building Special Inspectors on local green building and energy reach requirements and enforcement procedures.
Task 4 - Policy Review and Creation
Collaborate with stakeholder groups in the review of existing and creation of new green building and energy reach policies and guidelines that forward the city’s vision to be a leader in sustainable development. CONSULTANT is expected to draw on best in class examples and latest advances in technology to promote this agenda. CONSULTANT shall use exceptional writing and communication skills to craft and articulate these policies and guidelines. Provide project management to develop the technical criteria for the local Green Building Ordinance and local Energy Reach Code ordinance for the 2019 Building Code.

Task 5 - Sustainability Implementation Plan Support (Optional)
Support staff in completing task items on the Sustainability Implementation Plan (SIP) in the areas of “Energy”, “Water”, and “EV”. Provide support to staff in completing specific tasks on the Sustainability Implementation Plan. Provide coordination and technical support to help staff plan for future endeavors regarding the Sustainability Implementation Plan “Key Actions”. The “Key Actions” assigned to Development Services within the “Sustainability Implementation Plan” not already addressed in this contract are as follows:

| | “ZNE Roadmap: Develop programs for implementation beyond 2020” |
| | “Develop building benchmarking requirements” |
| Electric Vehicles: | “Evaluate incentives, outreach, policies, and financing options to stimulate charging infrastructure and EV ownership/use”: Update policies and guidelines for existing homeowners to promote and expedite EVSE installations in existing buildings as part of routine maintenance. |
| | “Consider requiring EV Readiness and charger installation in existing buildings”: Work with internal and external stakeholders to revise building code language to support future proofing existing buildings for EV. |
| | “Develop a plan for expanding EV charging infrastructure in the public right-of-way and on publicly-owned property”: Review policies and develop a work plan. |
| | “Build public awareness of EV options through communications, outreach, and ride-and-drive events”: Support two annual EV ride-and-drive events, co-sponsored by Utilities and Development Services. |
| Water: | “Develop programs and ordinances to facilitate the use of non-traditional, non-potable water sources (e.g. graywater, storm water, black water, etc.”: Develop a list of potential ordinances and regulatory barriers to expand systems for black water systems. |
| | “Develop a Green Storm Water Infrastructure Plan to better capture and infiltrate storm water back into the hydrologic cycle” |

Task 6 – Commercial Special Inspector Program Development and Implementation (Optional)
Develop a Commercial Special Inspector Program for the green building regulations. Develop written strategies, attend coordination meetings, and develop program implementation documents. Develop education and outreach material and execute a campaign to support
community success of the policy implementation. Implement the new Commercial Special Inspector Program in accordance with adopted local green building regulations. Program implementation shall include, at a minimum: executing campaign to train new inspectors; education and outreach material provided to special inspectors during training; customer service support for inspector implementation; and biannual progress reports and associated metrics.

**Public Works Department Tasks**

Task 7 - Deconstruction & Source Separation Program Support
Develop and adopt increased rigor of the local deconstruction and source separation regulation. Perform technical policy research, develop written strategies, attend coordination meetings, and develop a program phasing schedule for policy implementation. Develop education and outreach material and execute a campaign to support community success of the policy implementation.

Task 8 - Deconstruction & Source Separation Program Implementation
Implement the new Deconstruction & Source Separation program in accordance with adopted local Deconstruction & Source Separation regulations. Program implementation shall include, at a minimum: inspections by ICC CALGreen Certified Inspectors; education and outreach material provided to contractors during site visits; and biannual progress reports and associated metrics. Provide Education & Outreach services to project applicants.

Task 9 - Dewatering Monitoring Program Development
Create and refine processes and organizational systems for construction site monitoring of local dewatering laws. Visit a limited number of construction sites with an active building permit and monitor dewatering activity as necessary to develop recommendations. Provide Education & Outreach services to project applicants.

Task 10 - PCBs Program Development, Education & Outreach Implementation
Create and refine processes and organizational systems for permitted project scoping monitoring of local Polychlorinated biphenyls (PCBs) laws. Provide Education & Outreach services to project applicants.

Task 11 – Storm water Compliance Program Development & Implementation
Create and refine processes and organizational systems for compliance with the local stormwater laws. Provide Education & Outreach services to project applicants.

**Utilities Department Tasks**

Task 12 - On-Call Support Services
Provide on-call technical support and coordination tasks related the Sustainability Implementation Plan (SIP) and the Utilities Strategic Plan. These tasks may be related to the following subject areas: energy efficiency savings associated with permitted projects; electrification related support tasks related to electric vehicle chargers permits, checklists, rebates, and incentives; and development of preliminary criteria for an Enhanced Building Commissioning Program. On call support and coordination shall be limited term, project-based services specified in a professional services task order (Exhibit D).
EXHIBIT “B”
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each task as specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of CONSULTANT and CITY so long as all work is completed within the term of the Agreement.

**Development Services Department Tasks:**

<table>
<thead>
<tr>
<th>Task</th>
<th>Task Description</th>
<th>Due Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Green Building Program Management, Customer Services, and Implementation Assistance</td>
<td>Ongoing</td>
</tr>
<tr>
<td>2</td>
<td>Metric Management and Reporting</td>
<td>Report Dates</td>
</tr>
<tr>
<td>3</td>
<td>Green Building Training (Optional)</td>
<td>December 31, 2019, June 30, 2020</td>
</tr>
<tr>
<td>4</td>
<td>Policy Review and Creation</td>
<td>January 1, 2020</td>
</tr>
<tr>
<td>5</td>
<td>Sustainability Implementation Plan Support (Optional)</td>
<td>TBD</td>
</tr>
<tr>
<td>6</td>
<td>Commercial Special Inspector Program Development and Implementation (Optional)</td>
<td>December 31, 2019</td>
</tr>
</tbody>
</table>

**Public Work Department Tasks:**

<table>
<thead>
<tr>
<th>Task</th>
<th>Task Description</th>
<th>Due Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Deconstruction &amp; Source Separation Program Development Support</td>
<td>December 31, 2019</td>
</tr>
<tr>
<td>8</td>
<td>Deconstruction &amp; Source Separation Program Implementation</td>
<td>TBD</td>
</tr>
<tr>
<td>9</td>
<td>Dewatering Monitoring Program Development &amp; Implementation</td>
<td>Ongoing</td>
</tr>
<tr>
<td>10</td>
<td>PCBs Program Design &amp; Implementation</td>
<td>Ongoing</td>
</tr>
<tr>
<td>11</td>
<td>Storm water Compliance Program Design &amp; Implementation</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

**Utilities Department Tasks:**

<table>
<thead>
<tr>
<th>Task</th>
<th>Task Description</th>
<th>Due Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>On-Call Support Services</td>
<td>TBD</td>
</tr>
</tbody>
</table>
EXHIBIT “C”
COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed $576,000. CONSULTANT agrees to complete all services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

The CITY’s Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed $576,000.

**BUDGET SCHEDULE**

<table>
<thead>
<tr>
<th>Task</th>
<th>NOT TO EXCEED AMOUNT</th>
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<tbody>
<tr>
<td>Task 1</td>
<td>$148,000</td>
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<tr>
<td></td>
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<tr>
<td>Task 2</td>
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<td>(Green Building Training – Optional)</td>
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<td>Task 4</td>
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<tr>
<td></td>
<td>(Policy Review and Creation)</td>
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<tr>
<td>Task 5</td>
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<td>(Sustainability Implementation Plan Support to Development Services - Optional)</td>
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<tr>
<td>Task 6</td>
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<tr>
<td></td>
<td>(Commercial Green Building Special Inspector Program Design &amp; Implementation - Optional)</td>
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<tr>
<td>Task 7</td>
<td>$52,200</td>
</tr>
<tr>
<td></td>
<td>(Deconstruction and Source Separation Program Development)</td>
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<tr>
<td>Task 8</td>
<td>$66,200</td>
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<tr>
<td></td>
<td>(Deconstruction and Source Separation Program Implementation)</td>
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<tr>
<td>Task 9</td>
<td>$70,500</td>
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<tr>
<td></td>
<td>(Dewatering Monitoring Program Development &amp; Implementation)</td>
</tr>
</tbody>
</table>
Task 10  $20,000  
(PCBs Program Development, Education & Outreach Implementation)

Task 11  $10,000  
(Stormwater Program Design, Education & Outreach Implementation)

Task 12  $30,000  
(On-Call Support Services)

Sub-total Basic Services  $576,000  
Reimbursable Expenses  $0.00 (None)

**Maximum Total Compensation**  $576,000

**REIMBURSABLE EXPENSES**

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: **None**

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense shall be approved in advance by the CITY’s project manager.

**ADDITIONAL SERVICES**

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY’s project manager’s request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT’s proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY’s Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.
EXHIBIT “C-1”
SCHEDULE OF RATES

<table>
<thead>
<tr>
<th>Development Services Tasks</th>
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<th>Total</th>
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<tbody>
<tr>
<td>Task 1 - Customer Services, Program Management &amp; Implementation</td>
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<td>Task 2 - Metrics Management and Reporting</td>
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<td>Task 4 - Policy Review and Creation</td>
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<td>Task 5 - Sustainability Implementation Plan Support (Optional)</td>
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<td>Task 6 - Commercial Special Inspector Program Development &amp; Implementation (Optional)</td>
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<tr>
<td>Task 7 - Deconstruction &amp; Source Separation Program Development Support</td>
<td>$52,200</td>
<td>$52,200</td>
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<tr>
<td>Task 8 - Deconstruction &amp; Source Separation Program Implementation</td>
<td>$66,200</td>
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<tr>
<td>Task 9 - Dewatering Monitoring Program Development &amp; Implementation</td>
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<td>Task 10 - PCBs Program Design &amp; Implementation</td>
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<tbody>
<tr>
<td>Task 12 - On-Call Support Services (Optional)</td>
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<table>
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<tr>
<th>Total Fee</th>
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<tbody>
<tr>
<td>Total</td>
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<td>$576,000</td>
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</table>

HOURLY RATE SCHEDULE

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<th>Labor Category</th>
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<tbody>
<tr>
<td>Principal</td>
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<tr>
<td>Senior Program Manager</td>
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<tr>
<td>Program Manager</td>
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<tr>
<td>Project Manager II</td>
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<tr>
<td>Project Manager I</td>
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<tr>
<td>On-Site Technician</td>
<td>$97.85</td>
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<tr>
<td>Associate</td>
<td>$82.40</td>
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</table>
EXHIBIT “D”
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, AFFORDED BY COMPANIES WITH AM BEST’S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

<table>
<thead>
<tr>
<th>REQUIRED</th>
<th>TYPE OF COVERAGE</th>
<th>REQUIREMENT</th>
<th>MINIMUM LIMITS</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td>EACH OCCURRENCE</td>
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<tr>
<td>YES</td>
<td>WORKER’S COMPENSATION</td>
<td>STATUTORY</td>
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</tr>
<tr>
<td>YES</td>
<td>EMPLOYER’S LIABILITY</td>
<td>STATUTORY</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
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<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
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<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED</td>
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<tr>
<td>YES</td>
<td>AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED</td>
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<td>- EACH OCCURRENCE</td>
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<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY AND PROPERTY DAMAGE, COMBINED</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE</td>
<td>ALL DAMAGES</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.

I. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND

B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.

C. DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY’S PRIOR APPROVAL.

II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: https://www.planetbids.com/portal/portal.cfm?CompanyID=25569.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSUREDS”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.
B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDs, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP