AGREEMENT FOR PROFESSIONAL SERVICES

CITY OF PALO ALTO CONTRACT NO. S09126967

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
SAN MATEO COUNTY CONVENTION & VISITORS BUREAU

FOR PROFESSIONAL SERVICES
(DESTINATION PALO ALTO)

This AGREEMENT is entered into October 6, 2008 by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and, SAN MATEO COUNTY CONVENTION & VISITORS BUREAU, a California Corporation, located at 111 Anza Blvd., Burlingame, California ("CONSULTANT").

RECATALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to hire a consultant for Visitor Promotion ("Project") and desires to engage a consultant to assist 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, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in 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 will commence on October 20, 2008 and shall continue for a period not to exceed one year terminating on October 19, 2009. The City has the right to extend the term of this Agreement for one additional one year period, based upon the same conditions of the initial term. The City shall notify CONSULTANT in writing of its exercise of its option for an additional one year term not less than thirty days prior to the end of the then current term. The obligation of CONTRACTOR to perform the Services will commence in accordance with the time schedule set forth in Exhibit “A” 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”, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Fifty Five Thousand Dollars ($455,000). The applicable rates and schedule of payment are set out in Exhibit “B”, entitled “SCHEDULE OF PERFORMANCE/COMPENSATION,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “B”. 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 in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit invoices to the CITY consistent with the deliverables and schedule of events as delineated in Exhibit ‘B’ describing the services performed and the applicable charges. 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 shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. [Intentionally Deleted.]

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 the 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. Notwithstanding Section 11 above, CITY agrees that subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are:

1. Palo Alto Chamber of Commerce
CONSULTANT shall be responsible for directing the work of its 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 Anne LeClair as the project director 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.

The City’s project manager is Susan Barnes, Economic Development Manager, Palo Alto, CA 94303, Telephone:(650)-329-2604. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. All work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests created in the performance of the Services and intended to be delivered to the CITY under this Agreement (the Deliverables) 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 the Deliverables 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.

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") resulting from, arising out of or in any manner related to performance or nonperformance by 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, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Purchasing Manager 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 cause, by giving sixty (60) days prior written notice thereof to CONSULTANT. For purposes of this provision, cause to terminate shall consist of: (1) material breach of this Agreement or (2) commission of fraudulent practices. 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 Deliverables, 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. 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.

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
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 because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, 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, including completing the form furnished by CITY and set forth in Exhibit “E.”

SECTION 23. MISCELLANEOUS PROVISIONS.
23.1. This Agreement will be governed by the laws of the State of California.

23.2. 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.

23.3. 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.
23.4. 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.

23.5. 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.

23.6. 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.

23.7. 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.

23.8. 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 23.8 shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

23.9. 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.
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

________________________________________
City Manager

APPROVED AS TO FORM:

________________________________________
Senior Asst. City Attorney

APPROVED:

________________________________________
Director of Administrative Services

[CONSULTANT]

By: Anne H. LeClair

Name: Anne H. LeClair

Title: President & CEO

Attachments:

EXHIBIT “A”: SCOPE OF WORK
EXHIBIT “B”: SCHEDULE OF PERFORMANCE/COMPENSATION
EXHIBIT “C”: INSURANCE REQUIREMENTS
EXHIBIT “D”: CERTIFICATION OF NONDISCRIMINATION
Exhibit A

Destination Palo Alto
FY 2008-09 and FY 2009-10
Scope of Services

Milestones and Timeline:

Quarterly reports will be provided to the City of Palo Alto. These will include (but are not limited to):

- Number of leads identified, generated
- Total potential economic impact of leads generated
- Total number of room nights booked
- Targets reached for non-peak nights
- Events booked
- Packages created
- PACE Report with comparison to prior year
- Hotel occupancy comparison with TOT comparison (by month, year)
- Number of visitors, inquiries to Visitor Center
- Number of visitors to DPA website
- Report on average daily spending by overnight visitors to Palo Alto
- Number of fam* tours and fam tour attendees (including descriptions of size of potential accounts)
- Media updates (including list of articles/online pieces, broadcasts generated)
- International fam tour updates
- Advertising reports including publications of advertisements about Palo Alto that have been featured and audience size reached

Activities to achieve Milestones

Year One
Quarterly Reports will include a report on milestones and activities achieved each quarter.

Activities for Quarter One

- Begin dissemination of meeting leads to Palo Alto properties
- Go to all Palo Alto hotels and motels for “need dates” to be included in bimonthly planner blast
- Hold initial meeting of Destination Palo Alto Advisory Committee and begin building local visitor database for future email special and calendar updates. Determine information they would like to see collected in survey
- Set up a visitor center within the Palo Alto Chamber office, including signage, Destination Palo Alto phone line, personnel to staff, and signage
• Contract with Godbe Research, create formal research plan and surveys to get feel for Palo Alto visitors’ perception of the area, what will draw them there, etc. and begin research
• Secure buy-in of key Palo Alto properties willing to participate in Godbe Research surveying and begin formal research
• Initiate meetings with Stanford Public Affairs representatives to determine how best Destination PA may get the word out about events, drive room nights and drive other locals and area visitors to special events
• Initiate one-on-one meetings/discussions with Stanford Athletic Dept. heads to determine possible target events w/room nights, gather specs for individual fields and sports facilities at Stanford, and determine how Destination Palo Alto and SMCCVB may best promote upcoming sporting events, including packaging with hotel room nights
• Add all key Palo Alto players/groups to list solicited for upcoming events by SMCCVB and begin inclusion of PA events in published and online calendars

• Gather Palo Alto property information and incorporate all Palo Alto properties into meeting planner guide, visitor guide and include on SMCCVB website
• Issue press release to all major meeting planner publications, announcing coverage of Palo Alto, highlighting key selling points of area
• Contact all meeting planners in SMCCVB data base, orienting them to Palo Alto and invite them out for site visits
• Contact all meeting planners who have not considered the Bay Area due to airport area concerns and explain that we have a great non-airport area for them to see
• Conduct training for Palo Alto hotel sales managers on how best to work with SMCCVB-generated leads, etc. and instruct all Palo Alto hotels on how to participate in the broad, national “hot dates” program paid for by the CVB, in which they may go online themselves and add hot dates/rates to a site aimed at planners seeking last minute bookings;
• Make site visits (SMCCVB sales team) to all Palo Alto properties with meeting space to become familiar with group booking opportunities
• Complete site visits to all Palo Alto properties without meeting space (International/Tourism Development Director, Film Commissioner and Publications Manager/media outreach person) to become familiar, take photographs
• Contact all internal customers, local customers and key groups (e.g., Palo Alto Downtown, Stanford) notifying them of new Visitor Center
• Solicit Palo Alto properties’ input for key trade shows of interest to their markets
• Inform Palo Alto properties of upcoming shows for possible partnering; to determine level of interest in tour groups, particularly inbound international
• Label all outgoing correspondence to meeting planners to generate meeting planner inquiries on the Palo Alto and its properties
• Personally invite all past fam attendees back to see Palo Alto properties (Sales Team)
• Feature Palo Alto venues ranging from unique Stanford University spots to downtown buildings and squares in emails to producers and filming scouts by the SMCCVB’s film commissioner, touting them as fresh, undiscovered filming locations
• Find Palo Alto angle in all media lead responses (e.g. “romance packages”, green places to stay
• Update all existing editorial used for outreach to include Palo Alto angle
• Include Palo Alto special events and special hotel and motel promotions in SMCCVB’s monthly email update to database of thousands of prospective visitors interested in visiting the Bay Area
• Issue a special update to our CTTC/SFCVB representatives overseas, notifying them of the change and describing Palo Alto and its properties in detail. Likewise, CTTC will be informed that Palo Alto is a key new area of promotion
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement

Activities for Quarter Two
• Continue research through Godbe Research, collecting sufficient data to be used in “branding”/outreach of Palo Alto area to entice more visitors into the area
• Conduct Destination Palo Alto Advisory Committee meeting to update group, determine progress, next steps
• Feature Palo Alto properties in fam tour for incentive meeting planners and fam for Jet Airways’ top travel agents from India
• Add new activities to work plan
• Continue operation of visitor center, other activities initiated in prior quarter
• Convene meetings with Stanford Medical Department chairs, soliciting info on medical research underway, recent breakthroughs, prospective groups to recruit; availability of expert speakers in particular areas of expertise for use in recruiting conferences
• Restructure layout of SMCCVB/Silicon Valley visitor guide to break area into geographic sections and begin to address drivers of visits, as outlined in preliminary research results
• Meet with representatives of Stanford Alumni and Development offices to determine whether additional reunions/functions might be added with rooms assistance from SMCCVB
• Feature Palo Alto properties in fam tour for incentive meeting planners
• Meet with The Cribbs Group and representatives of Anthony Travel to discuss targeting of additional events by SMCCVB sales team
• Continue dissemination of meeting leads to Palo Alto properties
• Update PA area and properties in domestic and international meeting planner fam tours
• Continue promoting Palo Alto in all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement

Activities for Quarter Three

• Release results of phase one of formal research to City of Palo Alto and hold meeting of Destination Palo Alto Advisory Committee with Chamber to discuss how best to capitalize on research results, determine progress made, additional activities needed
• Add new activities to work plan
• Continue operation of visitor center, other activities initiated in prior quarters
• Bring travel media fam (national travel writer fly-ins) to Palo Alto
• Conduct at least one additional fam tour that incorporates key Palo Alto properties and Palo Alto area
• Provide special flyer/information to Stanford summer camp reps for distribution to parents of summer camp enrollees, promoting stays while the children are attending the camps
• Broaden photo contest to include Palo Alto shots
• Initiate meetings with Stanford academic department chairs to determine individual accomplishments, interests, events, possible conferences/symposia that could be targeted for the area and begin targeting those meetings
• Continue dissemination of meeting leads to Palo Alto properties
• Continue meeting planner site visits to Palo Alto properties
• Continue inclusion of PA area and properties in domestic meeting planner fam tours, fam tours for international travel agents, and all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Highlight Palo Alto at out of town reception for meeting planners (Midwest)
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement

Activities for Quarter Four
• Conduct additional research with Palo Alto Visitors (Godbe, second phase summer snapshot
• Hold meeting of Destination Palo Alto Advisory Committee to determine progress made, additional activities needed
• Add new activities to work plan
• Continue operation of visitor center, other activities initiated in prior quarters
• Feature and make Palo Alto hotel stops on fam tour for Sacramento, East Coast and Midwestern meeting planners
• Conduct informal surveying of Senior Games attendees to determine per diem spending while at the games
• Continue dissemination of meeting leads to Palo Alto properties
• Continue inclusion of PA area and properties in domestic and international travel agent meeting planner fam tours
• Continue promoting Palo Alto in all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Highlight Palo Alto at out of town reception for meeting planners (East Coast)
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement (this will include Quarterly and Annual Report with Milestones reported)

Year Two

Activities for First Quarter

• Release phase two results from Godbe Research to City of Palo Alto and Destination Palo Alto Committee
• Conduct meeting of Destination Palo Alto Advisory Committee and use Phase two information to finalize branding of Palo Alto for visitors, review Phase 2 research information, determine and initiate next steps, additional activities
• Add new activities to work plan
• Submit marketing plan and benchmarks for Year Two, Quarters two, three and four to City of Palo Alto.
• Continue operation of visitor center, other activities initiated in prior quarters
• Continue dissemination of meeting leads to Palo Alto properties
• Continue inclusion of PA area and properties in domestic and international travel agent and meeting planner fam tours
• Continue promoting Palo Alto in all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement

**Activities for Second Quarter**

• Continue dissemination of meeting leads to Palo Alto properties
• Continue inclusion of PA area and properties in domestic meeting planner fam tours
• Additional benchmarks to be reported on, based on marketing plan submitted Quarter One, Year Two
• Conduct meeting of Destination Palo Alto Advisory committee to ensure that all projects are on task
• Add new activities to work plan
• Continue operation of visitor center, other activities initiated in prior quarters
• Continue inclusion of PA properties on fam tours for international travel agents
• Continue promoting Palo Alto in new editorial content and in all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Modify SMCCVB and Destination Palo Alto website in keeping with the research
• Additional benchmarks to be reported on, based on marketing plan submitted Quarter One, Year Two
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement

**Activities for Third Quarter**

• Modify Destination Palo Alto website and calendars as needed, based upon final research
• Hold meeting of Destination Palo Alto Advisory committee to ensure that all projects are on task
• Conduct Destination Palo Alto Committee meeting to reflect on progress to date and next steps
• Add new activities to work plan
• Continue operation of visitor center, other activities initiated in prior quarters
• Continue dissemination of meeting leads to Palo Alto properties
• Continue inclusion of PA area and properties in domestic meeting planner fam tours
• Continue inclusion of PA properties on fam tours for international travel agents
• Continue promoting Palo Alto in all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement;

Activities for Fourth Quarter

• Conduct Destination Palo Alto Committee meeting to reflect on progress to date and next steps
• Assist in crafting recommendations for ongoing Destination Palo Alto operations
• Add new activities to work plan
• Continue operation of visitor center, other activities initiated in prior quarters
• Continue dissemination of meeting leads to Palo Alto properties
• Continue inclusion of PA area and properties in domestic meeting planner fam tours
• Continue inclusion of PA properties on fam tours for international travel agents
• Continue promoting Palo Alto in all appropriate editorial outreach and responses
• Continue promoting individual Palo Alto locations to production companies and filming scouts
• Prepare and submit report of Destination PA/SMCCVB activities to City of Palo Alto as specified in agreement (this will include Quarterly and Annual Report with Milestones reported)
• Prepare final report with recommendations for Destination Palo Alto efforts going forward including information from DPA committee, stakeholders and others
### Exhibit B
Destination Palo Alto
Payment Schedule
FY 2008-2010

Payments will be made according to the following schedule:

<table>
<thead>
<tr>
<th>Payment</th>
<th>Amount</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment 1</td>
<td>$30,000</td>
<td>Within 30 days of contract signing</td>
</tr>
<tr>
<td>Payment 2</td>
<td>$50,000</td>
<td>Completion of First quarter Following submission/approval of quarterly report</td>
</tr>
<tr>
<td>Payment 3</td>
<td>$45,000</td>
<td>Completion of Second quarter Following submission/approval of quarterly report</td>
</tr>
<tr>
<td>Payment 4</td>
<td>$45,000</td>
<td>Completion of Third quarter Following submission/approval of quarterly report</td>
</tr>
<tr>
<td>Payment 5</td>
<td>$45,000</td>
<td>Completion of Fourth quarter Following submission/approval of quarterly report and acceptance of annual report on milestones</td>
</tr>
</tbody>
</table>

| Total Payments To SMCCVB | $215,000 | Year One | FY 2008-09 |

| Payment 1 | $60,000 | Completion of First quarter Following submission/approval of quarterly report |
| Payment 2 | $60,000 | Completion of Second quarter Following submission/approval of quarterly report |
| Payment 3 | $60,000 | Completion of Third quarter Following submission/approval of quarterly report |
| Payment 4 | $60,000 | Completion of Fourth quarter Following submission/approval of quarterly report and acceptance of annual report on milestones including recommendations for Destination Palo Alto |

| Total Payments | $240,000 | Year Two | FY 2009-10 |
EXHIBIT C

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 A 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:

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<th>TYPE OF COVERAGE</th>
<th>REQUIREMENT</th>
<th>MINIMUM LIMITS</th>
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<tr>
<td>YES</td>
<td>WORKER’S COMPENSATION AUTOMOBILE LIABILITY</td>
<td>STATUTORY</td>
<td></td>
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<tr>
<td>YES</td>
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<td>STAYTORY</td>
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<td>YES</td>
<td>COMPREHENSIVE GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY</td>
<td>BODILY INJURY</td>
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<td>PROPERTY DAMAGE</td>
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<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED.</td>
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<td>$1,000,000</td>
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<td>ALL DAMAGES</td>
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</table>

THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: PROPOSER, 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 PROPOSER AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREES CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.

I. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY 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 – SEE SAMPLE AGREEMENT FOR SERVICES.

II. SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE, OR COMPLETE THIS SECTION AND IV THROUGH V, BELOW.

A. NAME AND ADDRESS OF COMPANY AFFORDING COVERAGE (NOT AGENT OR BROKER):

B. NAME, ADDRESS, AND PHONE NUMBER OF YOUR INSURANCE AGENT/BROKER:
C. POLICY NUMBER(S):

D. DEDUCTIBLE AMOUNT(S) (DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY’S PRIOR APPROVAL):

III. AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AND PROPOSER’S SUBMITTAL OF CERTIFICATES OF INSURANCE EVIDENCING COMPLIANCE WITH THE REQUIREMENTS SPECIFIED HEREIN.

IV. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSURES”

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 INSURES.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURES 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 ISSUING COMPANY 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 ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

V. PROPOSER CERTIFIES THAT PROPOSER’S INSURANCE COVERAGE MEETS THE ABOVE REQUIREMENTS:

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW. SIGNATURE(S) MUST BE SAME SIGNATURE(S) AS APPEAR(S) ON SECTION II, ATTACHMENT A, PROPOSER’S INFORMATION FORM.

Firm:

________________________

Signature:

________________________

Name: ______________________ (Print or type name)

Signature:

________________________

Name: ______________________ (Print or type name)

NOTICES SHALL BE MAILED TO:
A. Workers Compensation: Employers Compensation Insurance Co.
    255 California Street, Suite 300
    San Francisco, CA  94111-4904

    Property, General Liability, Auto: Great American Insurance Group
    580 Walnut Street
    Cincinnati, OH  45202

B. Johndrow, Leveroni, Vreeburg
    845 Marshall Street
    Redwood City, CA  94063
    (650) 369-2921

C. Workers Compensation: FN 0322324 05
    Property, General Liability, Auto: PAC 346-00-86

D. No deductibles on anything but property which has a deductible of $500.
EXHIBIT D

Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Proposer is INDIVIDUAL, sign here:

Date:____________________

________________________
Proposer's Signature

________________________
Proposer's typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

_________________________________________________________
Partnership or Joint Venture Name (type or print)

Date:____________________

_________________________________________________________
Member of the Partnership or Joint Venture signature

Date:____________________

_________________________________________________________
Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

__________________ and ____________________
President/CEO

__________________
Vice President/COO

Title
Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

San Mateo County Convention & Visitors Bureau

Corporation Name (type or print)

By: Anne H. LeClair Anne LeClair Date:
09-29-08

Title: President & CEO

By: Gune Allhands Jane Doe Date:
9/29/08

Title: Vice President & COO
LeClair presented the benefits to the entire county and Palo Alto of including Palo Alto in the San Mateo County BID. Following her presentation, Lewin noted that it was a good idea and made a motion to move forward with the action steps presented; seconded by Moore and approved by all.

The Executive Committee recommends that we proceed by offering the services to all properties in Palo Alto. Motion by Carlton to move forward with the Executive Committee recommendation, second by Lewin, approved by all.
AGREEMENT FOR PROFESSIONAL SERVICES

CITY OF PALO ALTO CONTRACT NO. S09129386

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND EMBARCADERO PUBLISHING COMPANY

FOR PROFESSIONAL SERVICES
(DESTINATION PALO ALTO)

This AGREEMENT is entered into October 6, 2008 by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and, EMBARCADERO PUBLISHING COMPANY, a California Corporation, 703 High Street, Palo Alto, California ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to hire a consultant for Visitor Promotion ("Project") and desires to engage a consultant to assist 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, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in 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 will commence on October 20, 2008 and shall continue for a period not to exceed one year terminating on October 19, 2009.
SECTION 2. TERM. The term of this Agreement will commence on October 20, 2008 and shall continue for a period not to exceed one year terminating on October 19, 2009. The City has the right to extend the term of this Agreement for one additional one year period, based upon the same conditions of the initial term. The City shall notify CONSULTANT in writing of its exercise of its option for an additional one year term not less than thirty days prior to the end of the then current term. The obligation of CONTRACTOR to perform the Services will commence in accordance with the time schedule set forth in Exhibit “A” 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 “A”, 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”, including both payment for professional services and reimbursable expenses, shall not exceed Twenty-Five Thousand Dollars ($25,000). The applicable rates and schedule of payment are set out in Exhibit “A”, which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “A”. 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 in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit invoices to the CITY consistent with the deliverables and schedule of events as delineated in Exhibit “A” describing the services performed and the applicable charges. 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 shall correct, at no cost to
CITY, any and all errors, omissions, or ambiguities in the work product submitted to
CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared
plans and specifications or other design documents to construct the Project,
CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities
discovered prior to and during the course of construction of the Project. This obligation
shall survive termination of the Agreement.

SECTION 9. [Intentionally Deleted.]

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 the 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. Notwithstanding Section 11 above, CITY
agrees that subconsultants may be used to complete the Services. The subconsultants
authorized by CITY to perform work on this Project are:

1. Palo Alto Chamber of Commerce

CONSULTANT shall be responsible for directing the work of its 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 Bill Johnson as the project director 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.

The City’s project manager is Susan Barnes, Economic Development Manager, Palo Alto, CA 94303, Telephone:(650)-329-2604. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. Intentionally deleted

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”) resulting from, arising out of or in any manner related to performance or nonperformance by 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, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Purchasing Manager 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 cause, by giving sixty (60) days prior written notice thereof to CONSULTANT. For purposes of this provision, cause to terminate shall consist of: (1) material breach of this Agreement or (2) commission of fraudulent practices. 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 Deliverables, 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. 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.

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 because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, 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, including completing the form furnished by CITY and set forth in Exhibit “E.”

SECTION 23. MISCELLANEOUS PROVISIONS.
23.1. This Agreement will be governed by the laws of the State of California.

23.2. 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.

23.3. 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.

23.4. 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.

23.5. 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.

23.6. 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.
23.7. 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.

23.8. 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 23.8 shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

23.9. 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.
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

______________________________
City Manager

APPROVED AS TO FORM:

______________________________
Senior Asst. City Attorney

APPROVED:

______________________________
Director of Administrative Services

[CONSULTANT]

By: ____________________________

Name: William S. Johnson

Title: Pres, Embassade Rocking Co

Attachments:

EXHIBIT “A”: SCOPE OF WORK/COMPENSATION
EXHIBIT “B”: INTENTIONALLY OMITTED
EXHIBIT “C”: INSURANCE REQUIREMENTS
EXHIBIT “D”: CERTIFICATION OF NONDISCRIMINATION
Exhibit A

Destination Palo Alto
FY 2008-09 and FY 2009-10
Scope of Services: Embarcadero Publishing Co.
(Palo Alto Weekly & Palo Alto Online)

Coordinate and collaborate with the other Destination Palo Alto partners
(San Mateo Convention & Visitors Bureau and Palo Alto Chamber of
Commerce) to develop information resources in print and online aimed
at visitors to the Palo Alto area, including:

- Redesign, update and maintain the Destination Palo Alto Web site
  (http://www.destinationpaloalto.com) and enhance its local event
  information offerings  (First quarter of contract)
- Develop and produce an updated “rack” brochure promoting the City
  of Palo Alto and containing map(s) to the retail centers of the city
  (Second quarter of contract)
- Publish Visitors Guide twice a year and enhance its effectiveness
  through newly developed content and upgraded printing quality
  (Third quarter of contract)

Payment schedule:

$15,000 upon completion of website changes
$ 5,000 upon completion of updated rack brochure
$ 5,000 upon completion of Visitors Guide
EXHIBIT C

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 A BEST'S KEY RATING OF A-: VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

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<td>- EACH OCCURRENCE</td>
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<td>PROPERTY DAMAGE</td>
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<td>BODILY INJURY AND PROPERTY DAMAGE</td>
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<tr>
<td>YES/NO</td>
<td>PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS,</td>
<td>ALL DAMAGES</td>
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<td>TBD</td>
<td>MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE</td>
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THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: PROPOSER, 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 PROPOSER AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURES CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.

I. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY 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 - SEE SECTION TBD, SAMPLE AGREEMENT FOR SERVICES.

II. SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE, OR COMPLETE THIS SECTION AND IV THROUGH V, BELOW.

A. NAME AND ADDRESS OF COMPANY AFFORDING COVERAGE (NOT AGENT OR BROKER):

B. NAME, ADDRESS, AND PHONE NUMBER OF YOUR INSURANCE AGENT/BROKER:
C. POLICY NUMBER(S):  

D. DEDUCTIBLE AMOUNT(S) (DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY'S PRIOR APPROVAL):  

III. AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AND PROPOSER'S SUBMITTAL OF CERTIFICATES OF INSURANCE EVIDENCING COMPLIANCE WITH THE REQUIREMENTS SPECIFIED HEREIN.

IV. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURES"

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 INSURES.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURES 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 INSURED, 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 ISSUING COMPANY 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 ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

V. PROPOSER CERTIFIES THAT PROPOSER'S INSURANCE COVERAGE MEETS THE ABOVE REQUIREMENTS:

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW. SIGNATURE(S) MUST BE SAME SIGNATURE(S) AS APPEAR(S) ON SECTION II, ATTACHMENT A, PROPOSER'S INFORMATION FORM.

Firm: Embraer Publishing Co.

Signature:  

Name: W. H. Johnson  
(Print or type name)

Signature:  

Name:  
(Print or type name)

NOTICES SHALL BE MAILED TO:
PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.
EXHIBIT D

Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Proposer is INDIVIDUAL, sign here:

Date:__________________

Proposer’s Signature

Proposer’s typed name and title

2. If Proposer is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date:__________________

Member of the Partnership or Joint Venture signature

Date:__________________

Member of the Partnership or Joint Venture signature

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

____________________ and

Title
Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By: ____________________________
Date: __________________________
Title: ___________________________

By: ____________________________
Date: __________________________
Title: ___________________________

By: ____________________________
Date: __________________________
Title: ___________________________