



# City of Palo Alto

## City Council Staff Report

(ID # 5760)

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**Report Type: Consent Calendar**

**Meeting Date: 5/18/2015**

**Summary Title: Consultant Contract for Baylands Interpretive Center Design Services**

**Title: Approval of Contract No. C1515321 with FOG Studio in the Amount of \$97,900 for Design Services for the Baylands Interpretive Center Improvements Project PE-15029**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that Council approve and authorize the City Manager or his designee to execute Contract No. C15153291 with FOG Studio (Attachment A) in a not-to-exceed amount of \$97,900 for design services, including \$89,000 for basic services and \$8,900 for additional services for the Baylands Nature Interpretive Center Facility Improvements project (PE-15029).

### **Background**

The Lucy Evans Baylands Nature Interpretive Center is located within the City's Baylands Nature Preserve. Built on piles above the salt marsh in 1967, the center was the first educational center within this unique Bay Area ecosystem. The scope of this CIP project includes replacement of the decking, railings, structural framing members as needed, exterior wood siding, flooring, cabinetry and doors. Funding for the estimated \$405,000 construction phase is planned for FY 2016, but does not include code upgrades or improvements to the restroom likely needed to comply with the Americans with Disabilities Act (ADA). These potential needs were identified during a preproposal walk-through of the facility that was part of the solicitation process. Staff will request additional construction funding in the future if it is determined to be needed for these items.

### **Discussion**

The proposed contract with FOG Studio includes a structural assessment and report, a building code analysis and an ADA compliance assessment. The consultant will provide a design development package for repairs and/or improvements to exterior siding, decking, railings, interior floor refinishing and cabinetry, including a development level project schedule incorporating time for required permits. The design development package will not include changes to the existing architecture of the building. The consultant will also provide construction documents, including architectural, structural, and building systems drawings, materials lists and specifications. The consultant will provide a preliminary cost estimate at the end of the design development phase and a final cost estimate to accompany the construction documents. The consultant will coordinate, prepare and submit all necessary documents and plans needed for construction and permitting as part of the project. Design of potential restroom upgrades to comply with ADA and any code-mandated improvements to the electrical and mechanical systems not previously anticipated in the project scope are also included in this contract. Should the consultant identify the need for significant structural improvements, additional design services funding may be needed.

This contract provides design services through the design phase but does not include construction administration services. Upon completion of the design phase, staff will return to Council with a contract amendment to provide construction administration services during the project's construction phase. Construction administration services include responding to contractor questions and participating in project management meetings with City staff and contractor representatives.

#### Project Coordination and Outreach

There are three separate but related CIP projects involving the Lucy Evans Baylands Interpretive Center. These include: Baylands Boardwalk Improvements (PE-14018), Baylands Nature Interpretive Center Exhibit Improvements (AC-14001), and Baylands Nature Interpretive Center Facility Improvements (PE-15029). All three projects will be managed by Public Works and Community Services to ensure design decisions are coordinated and discussed with the public. The City anticipates reviewing structural repair options for the boardwalk and the center's improvements with the public this fall. The interpretive signage design will also begin in FY 2016, and will be informed by the findings of the Boardwalk

Feasibility Study and Interpretive Center schematic design. Public input on the improvements, schedule and coordination of these projects will be necessary to minimize the impacts of construction activities at the center.

**Summary of Solicitation Process**

<b>Proposal Description/157772</b>	<b>Name/Number of Proposal here</b>	
Proposed Length of Project	22 months	
Number of Consultants Emailed	7	
Total Days to Respond to Proposal	26 days	
Pre-proposal Meeting Date	January 26, 2015	
Number of Company Attendees at Pre-proposal Meeting	4	
Number of Proposals Received:	3	
<b>Company Name</b>	<b>Location (City, State)</b>	<b>Selected for oral interview?</b>
<b>FOG Studio</b>	El Cerrito, CA	Yes
Grossmann Design Group Architecture Planning Research	San Francisco, CA	No
Vigen Inc, Architecture & Planning	Fresno, CA	No

<b>Range of Proposal Amounts Submitted excluding additional services</b>	\$91,589 - \$94,500
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On January 15, 2015, the City released a Request for Proposals (RFP) No. 157772) for Professional Services. Three proposals were received in response to the RFP. Public Works Engineering and Community Services staff carefully reviewed each firm's qualifications and submittal in response to the criteria identified in the RFP. Staff's recommendation to award the contract to FOG Studio is based on their experience with the City of East Palo Alto's Cooley Landing Education Center, understanding of the project scope outlined in the RFP and subsequent suggestions to improve the project as a whole.

**Resource Impact**

Funding for the design phase is available in Capital Improvement Program project PE-15029, Lucy Evans Baylands Nature Interpretive Center Improvements. As mentioned above, additional construction funding may be required to address ADA improvements to the restroom and other building code requirements that will be assessed during the design phase.

**Policy Implications**

Approval of the contract is consistent with City policies.

**Environmental Review**

It is anticipated that this project will be categorically exempt from the California Environmental Quality Act (CEQA) under section 15301(c), which addresses minor alterations and repairs to existing facilities. The potential need for regulatory agency review and permitting for construction work due to the sensitivity of the Interpretive Center's endangered species habitat area will be evaluated during the design process.

**Next Steps**

Staff anticipates applying for any necessary permits in spring 2016, shortly before completing the 22-month contract. Construction is tentatively planned for fall 2016.

**Attachments:**

- A - Contract (PDF)

- FOG Studio Contract Page 14: Task 5 corrected to read Task 4 (PDF)

**CITY OF PALO ALTO CONTRACT NO. C15157772**

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND FOG STUDIO  
FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this 1<sup>st</sup> day of May, 2015, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and **FOG STUDIO**, a California General Partnership, located at 8106 Terrace Drive, El Cerrito, CA 94530 (“CONSULTANT”).

**RECITALS**

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide improvements to the Baylands Interpretive Center (“Project”) and desires to engage a consultant to provide design 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 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.

Optional On-Call Provision (This provision only applies if checked and only applies to on-call agreements.)

Services will be authorized by the City, as needed, with a Task Order assigned and approved by the City’s Project Manager. Each Task Order shall be in substantially the same form as Exhibit A-1. Each Task Order shall designate a City Project Manager and shall contain a specific scope of work, a specific schedule of performance and a specific compensation amount. The total price of all Task Orders issued under this Agreement shall not exceed the amount of Compensation set forth in Section 4 of this Agreement. CONSULTANT shall only be compensated for work performed under an authorized Task Order and the City may elect, but is not required, to authorize work up to the maximum compensation amount set forth in Section 4.

**SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit “B” 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 Eighty Nine Thousand Dollars (\$89,000.00). In the event Additional Services are authorized, the total compensation for Services, Additional Services and reimbursable expenses shall not exceed Ninety Seven Thousand Nine Hundred Dollars (\$97,900.00). The applicable rates and schedule of payment are set out in Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE,” 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 “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 in 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 shall correct, at no cost to CITY, 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 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. 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 the Schematic Design cost estimate, CONSULTANT shall make recommendations to the 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 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.**

**Option A: No Subcontractor:** 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.

**Option B: Subcontracts Authorized:** 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. Holmes Culley – Structural Engineering
2. ACG Engineers, Inc. – Electrical Engineering
3. Mack 5 – Cost Estimation
4. MHC Engineers – Mechanical/Plumbing Engineering

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 Tiffany Redding as the Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and Brandon Marshall as the project Architect 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 Elizabeth Ames, Public Works Department, Engineering Division, 250 Hamilton Ave, Palo Alto, CA 94301, Telephone:650-329-2502. 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.** Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests 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 the work 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.**

[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 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 the CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 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, in whole or in part 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 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 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 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.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the City's Environmentally Preferred Purchasing policies which are available at the 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 the 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:

- 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 the 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.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the 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 Office.
- Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the 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. NON-APPROPRIATION**

24.1. 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 25. MISCELLANEOUS PROVISIONS.**

25.1. This Agreement will be governed by the laws of the State of California.

25.2. 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.

25.3. 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.

25.4. 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.

25.5. 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.

25.6. 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.

25.7. 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.

25.8 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.

25.9 All unchecked boxes do not apply to this agreement.

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25.10 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.

25.11 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement

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 (Required on contracts over \$85,000)

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Asst. City Attorney  
(Required on Contracts over \$25,000)

**FOG STUDIO**

DocuSigned by:  
**Tiffany Redding**  
By: \_\_\_\_\_  
C1E7CC437D9B469...  
Name: Tiffany Redding

Title: Owner / Partner, FOG Studio

Attachments:

- EXHIBIT "A": SCOPE OF WORK
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "C-1": HOURLY RATE SCHEDULE
- EXHIBIT "D": INSURANCE REQUIREMENTS

## **EXHIBIT "A"** **SCOPE OF SERVICES**

### **1. INTRODUCTION**

This contract is for a Design Consultant to provide design improvements to the building and its amenities; present the design improvements to Palo Alto's Architectural Review Board and Parks & Recreation Commission; acquire permitting from various agencies as needed (Fish and Game, Fish and Wildlife, Army Corp, BCDC, etc.) for construction; and provide construction administration services. Improvements include replacement of the decking, railing, structure framing members (as needed), exterior wood siding, flooring, cabinetry, and doors. The project is expected to be categorically exempt under the California Environmental Quality Act.

### **2. SCOPE OF SERVICES**

#### **General Requirements**

FOG Studio (hereinafter "Consultant") shall provide the following design services:

1. Building structural system\*
  - a. Structural assessment and report
  - b. Structural engineering of new members or repaired/replaced existing members
2. Design and detailing of new exterior railing to meet building code and ADA
3. Design of replacement siding to match or complement existing siding
4. Design and electrical engineering of exterior lighting to meet building code and enhance visitors experience and safety
5. Engineering of electrical panel, control system and power distribution system upgrades
6. Design of replacement decking to match or complement existing siding
7. Design and documentation of ADA-compliant restrooms, including new partitions, doors, lighting, plumbing, exhaust, and finishes
7. Title 24 energy and lighting compliance calculations
8. CalGreen compliance forms
9. Evaluation and recommendations for existing interior flooring

#### **\*The Basic Structural Scope of Services will include the following:**

- 1.1 Project start-up & programming
  - a. Review as-built drawings to be provided by City
  - b. Structural survey above & below deck (wader access)
- 1.2 Schematic Design
  - a. Structural evaluation report
  - b. Prepare typical repair details (appendix to report)

#### **Exclusions to Basic Structural Scope of Services:**

- a. Exploratory demolition and destructive investigation
- b. Material testing
- c. Access to view underside of deck, other than via waders at low tide
- d. Geotechnical investigation and report
- e. Investigation of pest or fungal infestation
- f. Special Inspections during construction



- g. Obtaining or producing as-built structural drawings
- h. Demolition documentation
- i. Design of temporary shoring, formwork and underpinning
- j. Construction Administration

**If problems are discovered during the Basic Structural Services phase, the Consultant shall provide the following services on a not-to-exceed fee basis as an additional services:**

- 2.1 Design of repair for substructure (i.e. piles), if damage found
- 2.2 Preparation of drafted structural documents and details
- 2.3 Preparation of calculations for permit submittal
- 2.4 Construction Documents
- 2.5 Additional Services (new item from latest proposal)
  - a. As agreed during Contract Negotiations, if significant deterioration is found that causes extensive Structural Engineering work, the proposed \$2500 fees for each phase (Design Development/Construction Documents) will be augmented as needed via an Additional Service.
  - b. Additional Services may include, but are not limited to: finding that the building has “Substantial Structural Damage” as defined by the California Building Code which could include major deficiencies in the as-built state due to deterioration or construction defects; deficiencies or lack of gravity or lateral load path in the structure; additional site visits to further investigate existing deficient conditions; production of drawing submittal requiring more than 1 plan sheet and 1 detail sheet; and/or review of architectural details not including railing design, exterior deck repairs, and partition detailing.

**Task 1. Schematic Design**

- 1.1 Project start-up and Programming
  - a. Consultant and Design Team shall meet with City and Community Services Department representatives
  - b. Consultant shall review as-builts to be provided by City
  - c. Consultant shall coordinate with City and Community Services Department representatives to gather information and comments for the schematic design
- 1.2 Prepare schematic design for the improvements to the Baylands Interpretive Center.
  - a. Consultant shall conduct code analysis and ADA assessment
  - b. Consultant shall coordinate design with City and Community Services Department representatives
  - c. Consultant shall meet with City and Community Services Department representatives (1 meeting @ 4 hours)
  - d. Consultant shall prepare outline specifications and schedule for project
  - e. Consultant shall submit a digital file in PDF format of the schematic design package to City for review which shall be comprised of the site (plan), architectural (architectural plans, elevations, and sections), structural (basic structural systems), and any relevant supporting materials
- 1.2.1 Consultant shall provide a description of the regulatory permits that are expected to be necessary for construction of the improvements, including the process and expected timeline for each individual permit and the overall expected timeline for all permits.
- 1.3 Present schematic design to City
  - a. Consultant shall prepare presentation materials (architectural plans, elevations, and sections as appropriate)

- b. Consultant may be required to present the schematic design to City Boards and Commissions (2 meetings @ 4 hours each with ARB and PRC). If meetings are required, the Consultant shall be compensated via “Additional Services” at a lump sum of \$1,000 per meeting.
- 1.4 Consultant shall coordinate with project team (includes meetings)

**Task 2. Design Development**

- 2.1 Prepare design development package for improvements to the Baylands Interpretive Center
- a. Consultant shall refine and update schematic design drawings in response to comments from Commissions, Community Services Department and City representatives
  - b. Consultant shall develop building and site details
  - c. Consultant shall prepare in-progress specifications for projects
  - d. Consultant shall develop interior/exterior design
  - e. Consultant shall prepare interior/exterior product/finish boards
- 2.2 Consultant shall submit a digital file in PDF format of the design development package to City for review which shall include the architectural, structural, and building systems drawings, and any relevant drawings, and materials
- 2.3 Consultant shall coordinate with project team (includes meetings)
- 2.4 Upon completion of design development, Consultant shall provide a cost estimate and design development level project schedule including time for permits required for the Project
- 2.5 Present design development package to City
- a. Prepare presentation materials
  - b. Consultant may be required to present the schematic design to City Boards and Commissions (2 meetings @ 4 hours each with ARB and PRC). If meetings are required, the Consultant shall be compensated via “Additional Services” at a lump sum of \$1,000 per meeting.

**Task 3. Construction Documents**

- 3.1 Consultant shall prepare construction documents for Baylands Interpretive Center Improvements
- a. Consultant shall refine and update design development drawings
  - b. Consultant shall prepare technical specifications for project in CSI format
  - c. Consultant shall refine interior design
  - d. Consultant shall develop final interior product/finish/furnishing boards
  - e. Consultant shall coordinate with City
- 3.2 Consultant shall submit soft copy in pdf format of the 65% and 95% construction documents package to City for review which shall include the architectural, structural, and building systems drawings, and any relevant drawings, and materials and specifications. Anticipated plan sheets for submittal to the City shall include the following:
- 1. Title Sheet
  - 2. Stage Construction Plan and Notes
  - 3. Architectural Exterior and Interior Plans and Elevations
  - 4. Structural Plans and Details
  - 5. Typical Cross Sections

## 6. Cabinetry, Doors and Miscellaneous details

- 3.3 Consultant shall update project schedules at 65% & 95%
- 3.4 Upon completion of construction documents, Consultant shall provide a final construction cost estimate for the Project
- 3.5 Consultant shall deliver final 100% construction documents and cost estimate to City (digital copy in PDF format)

### **Task 4. Permits**

This project may require permitting from various regulatory agencies (Fish and Game, Fish and Wildlife, Army Corps of Engineers, BCDC, etc.). The Consultant shall coordinate, prepare applications, and submit all necessary documents, permits and/or plans that are required by the agencies needed for construction as part of the project. Permit fees shall be the responsibility of the City.

**EXHIBIT “B”  
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

Milestones	Completion Weeks from NTP
1. Task 1 – Schematic Design	12
2. Task 2 – Design Development	23
3. Task 3 – Construction Documents	46
4. Task 4 – Agencies Permits	46

**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 attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed \$89,000.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation for Services, Additional services and reimbursable expenses shall not exceed \$97,900.00. 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.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. 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 \$89,000.00 and the total compensation for Additional Services, Services and reimbursable expenses does not exceed \$97,900.00.

<b>BUDGET SCHEDULE</b>	<b>NOT TO EXCEED AMOUNT</b>
Task 1 (Schematic Design)	\$29,150.00
Task 2 (Design Development)	\$28,150.00
Task 3 (Construction Documents)	\$29,700.00
Task 5 (Permits)	\$0
<b>Sub-total Basic Services</b>	<b>\$87,000.00</b>
<b>Reimbursable Expenses</b>	<b>\$2,000.00</b>
<b>Total Basic Services and Reimbursable expenses</b>	<b>\$89,000.00</b>
<b>Additional Services (Not to Exceed)</b>	<b>\$8,900.00</b>

Maximum Total Compensation

\$97,900.00

**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:

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

C. Presentation boards and mounting.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$500.00 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"**  
**HOURLY RATE SCHEDULE**

<b>Team Member</b>	<b>Rate (\$) 2015</b>
1. Principal in charge	\$150/hr
2. Project Architect	\$125/hr
3. Administration	\$60/hr

## 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:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES		\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> 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 SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED 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. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

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 INSURED.

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 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, 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 ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE EMAILED TO:**

**EMAIL: [InsuranceCerts@CityofPaloAlto.org](mailto:InsuranceCerts@CityofPaloAlto.org)**

**PURCHASING AND CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**

**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 attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed \$129,660.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$142,626.00. 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.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. 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 \$129,660.00 and the total compensation for Additional Services does not exceed \$142,626.00.

<b>BUDGET SCHEDULE</b>	<b>NOT TO EXCEED AMOUNT</b>
Task 1 (Schematic Design)	\$29,150.00
Task 2 (Design Development)	\$28,150.00
Task 3 (Construction Documents)	\$29,700.00
Task 4 (Permits)	\$0
<b>Sub-total Basic Services</b>	<b>\$87,000.00</b>
<b>Reimbursable Expenses</b>	<b>\$2,000.00</b>
<b>Total Basic Services and Reimbursable expenses</b>	<b>\$89,000.00</b>
<b>Additional Services (Not to Exceed)</b>	<b>\$8,900.00</b>