



# City of Palo Alto

## City Council Staff Report

(ID # 7164)

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**Report Type: Consent Calendar**

**Meeting Date: 11/14/2016**

**Summary Title: Utilities Department Marketing Contract**

**Title: Approval and Authorization for the City Manager to Execute a Professional Services Agreement With Essense Partners in the Amount of \$870,000 for Utilities Marketing, Communication and Graphic Design Services for a Term of up to Three Years**

**From: City Manager**

**Lead Department: Utilities**

### **Recommendation**

Staff recommends that the City Council approve and authorize the City Manager, or his designee, to execute the attached professional services agreement with Essense Partners, for Utilities marketing, communications and graphic design services for a total not to exceed amount of \$870,000 for a three-year term.

### **Executive Summary**

The City of Palo Alto Utilities (CPAU) Department administers a broad portfolio of marketing, communication and outreach activities for the City's utility customers and other stakeholders. CPAU communication channels include the Utilities website, utility bill inserts, print ads in local publications, digital advertisements, email newsletters, news releases, messaging on bills and envelopes, videos, social media, customer workshops, participation in community outreach events and meetings. Graphic design and outreach materials are developed by both staff and third-party vendors.

This agreement will provide CPAU with professional services for the creation and development of graphic design, marketing and communication materials. The outreach services target residential and non-residential customers for the purposes of continuing education about programs to help the City meet its resource efficiency, sustainability and climate protection goals, as well as support mandatory regulatory communication requirements. It also enables CPAU to educate customers about general Utilities initiatives, infrastructure upgrades, and safety measures, including crisis preparedness and emergency response.

The current CPAU contract for marketing and graphic design services expires on December 31, 2016 (Tandem Creative, Inc.). In order to continue actively marketing and communicating to

CPAU customers, staff issued a Request for Proposals (RFP) in August 2016. Three potential vendors responded to the RFP. After analyzing all responses, staff recommends executing a contract with Essence Partners, to provide market research, strategic campaign planning, graphic design, marketing evaluation and analytics, and website content support. If fully implemented, this contract will cost \$290,000 annually, for a total not to exceed amount of \$870,000 for up to three years.

**Discussion**

CPAU’s marketing and communication topics cover energy and water efficiency, renewable energy, sustainability and climate protection, operations, capital improvement, infrastructure and safety. CPAU is involved in marketing a variety of programs, including energy and water efficiency audits, rebates, renewable energy programs, Utilities billing and metering, customer support services, safety awareness, emergency preparedness and general utilities education. The communication activities target residents, businesses and industry, schools, community groups, internal staff, and elected officials that collaborate with the City. This contract, which will replace the current contract ending December 31, 2016, includes six main tasks. The contract with Essence will provide market research, strategic campaign planning, graphic design, marketing evaluation and analytics, and website content support.

Summary of Solicitation Process

<b>Title</b>	Utility Marketing, Communication and Graphic Design Services
<b>RFP Number</b>	17165536
<b>Proposed Length of Project</b>	3 year
<b>RFP Issued</b>	August 4, 2016
<b>Number of proposal Packages downloaded</b>	25
<b>Number of vendors notified through City’s eProcurement system</b>	54
<b>Total Days to Respond to proposal</b>	20 days
<b>Pre-proposal Meeting Date</b>	August 11, 2016
<b>Number of Companies at Pre-proposal Meeting</b>	7
<b>Number of Proposals Received</b>	3

Selection Process

The City of Palo Alto issued an RFP in August 2016, notifying 54 potential vendors. A total of 25 vendors downloaded the proposal package. The City scheduled an optional pre-proposal conference call, in which seven vendors participated. CPAU received three proposals by the August 24, 2016 deadline. Staff believe that the low number of vendors responding to the RFP was due to complexity of the requirements for such diverse marketing and communication needs. Two of the vendors that responded to the RFP were invited to interview with the City.

A staff committee reviewed each proposal, vendor qualifications, and submittal package. The following selection criteria guided staff’s decision-making: vendor references; qualifications of

principals and staff; familiarity with the City; financial stability; price competitiveness; completeness of proposal; proposal clarity; methodology; marketing support; quality of portfolio; and completeness of response to scope of services. Based on this selection criteria and committee ranking, staff recommends executing a contract with Essence Partners, a strategic marketing firm specializing in graphic design, marketing and outreach for the utilities industry. Essence Partners clearly emerged as a stronger candidate than the other potential vendor due to their direct experience working with utilities on utility-specific issues.

Essence Partners will provide the following services:

1. Market Research;
2. Strategic Campaign Planning;
3. Graphic Design and Marketing Materials;
4. Analysis & Evaluation;
5. Website; and
6. Contract Management.

**Resource Impact**

There is no impact to the current CPAU budget. Funds for this contract are included in the FY 2017 Utilities Communication and Demand Side Management program budgets. Expenditures for subsequent years are subject to annual appropriations. Subject to evaluation of performance, this contract may be recommended for additional services in the future.

**Budget Breakdown- Total Contract Compensation**

Contract Year	Dates	Funds Encumbered
1	11/14/16-11/13/17	\$ 290,000.00
2	11/14/17-11/13/18	\$ 290,000.00
3	11/14/18-11/13/19	\$ 290,000.00
<b>Total</b>		<b>\$ 870,000.00</b>

### Example Fiscal Year Compensation Breakdown

Utilities Division	Group	Project	Funding Source	Amount
Administration	Communications	General Communications	Utilities Administration Enterprise Fund	\$ 30,000.00
Customer Support Services	Customer Service	Billing & General Customer Service	Utilities Gas, Water, Electric & Wastewater Enterprise Funds	\$ 25,000.00
Resource Management	Resource Planning	EV Charging	Low Carbon Fuel Standard Fund	\$ 10,000.00
Resource Management	Resource Planning	Electrification	Public Benefits	\$ 10,000.00
Resource Management	Utility Program Services	Local Solar Plan	Public Benefits	\$ 15,000.00
Resource Management	Utility Program Services	Programs & Services	Public Benefits	\$200,000.00
			<b>Total</b>	<b>\$290,000.00</b>

### Policy Implications

The proposed contract supports the Council-approved Ten-year Energy Efficiency Portfolio Plan, the Long-term Electric Acquisition Plan, the Gas Utility Long-term Plan, the Urban Water Management Plan and Comprehensive Plan Goal N-9. Implementation of marketing services for efficiency programs supports greenhouse gas reduction goals identified in the Palo Alto Climate Protection Plan and in the California Global Warming Solutions Act of 2006 (AB 32). Continued implementation of public awareness campaigns, outreach for utility safety education and emergency preparedness to customers allows the City to comply with regulatory requirements and supports the Council-approved legislative policy guidelines.

### Environmental Review

Approval of the recommended contract does not meet the definition of a project pursuant to Section 21065 of the California Public Resources Code, thus no environmental review under CEQA is required.

### Attachments:

- Attachment A: Contract with Essense Partners (PDF)

**CITY OF PALO ALTO CONTRACT NO. C17165536**  
**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND**  
**ESSENSE PARTNERS**  
**FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this 14th day of November, 2016, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and ESSENSE PARTNERS, a New York corporation, located at 125 Park Avenue, 25th Floor, New York, NY 10017 (“CONSULTANT”).

**RECITALS**

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to produce integrated outreach and marketing materials for the Utilities Resource Management, Customer Support Services and Administration Divisions (“Projects”) and desires to engage a consultant to provide market research, strategic campaign planning, graphic design, marketing evaluation and analytics, and website content support in connection with the Projects (“Services”).
- B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

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

**AGREEMENT**

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

**SECTION 2. TERM.** The term of this Agreement shall be from the date of its full execution through November 13, 2019 unless terminated earlier pursuant to Section 19 of this Agreement.

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

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A” (“Basic Services”), and reimbursable expenses, shall not exceed Two Hundred Ninety Thousand Dollars (\$290,000.00) per fiscal year for a not to exceed amount of Eight Hundred Seventy Thousand (\$870,000.00) for all three years. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount.

The applicable rates and schedule of payment are set out at Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE,” which is attached to and made a part of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

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

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

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

required to perform the Services.

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

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

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

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

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

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

**SECTION 12. SUBCONTRACTING.** Notwithstanding Section 11 above, CITY agrees that subconsultants may be used to complete the Services. CITY authorizes CONSULTANT to use subconsultants for photography, videography and other specialty assignments as needed. 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 Mei Shibata as the Project director to have supervisory responsibility for the performance, progress, and execution of the Services and Francesca Jones as the Project coordinator to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the Project director, Project coordinator, or any other key personnel for any reason, the appointment of a substitute Project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

CITY's Project manager is Bruce Lesch, Utilities Department, Resource Management Division, 250 Hamilton Ave Palo Alto, CA 94303, Telephone: 6503292244. The Project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests 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.**

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 attorney's 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. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be

construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

**SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

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

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

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

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

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

**SECTION 20. NOTICES.**

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

To CITY:                      Office of the City Clerk  
                                         City of Palo Alto

Post Office Box 10250  
Palo Alto, CA 94303

With a copy to the Purchasing Manager

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

**SECTION 21. CONFLICT OF INTEREST.**

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

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

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

**SECTION 22. NONDISCRIMINATION.** As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person 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 CITY’s Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY’s Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONSULTANT shall comply with the following zero waste requirements:

- (a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes,

invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.

- (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.
- (c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.**

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

**SECTION 25. NON-APPROPRIATION**

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

**SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS**

26.1 CONSULTANT is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7 if the contract is not a public works contract, if the contract does not include a public works construction Project of more than \$25,000, or the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, 'improvement') Project of more than \$15,000.

26.2 CONSULTANT shall comply with the requirements of Exhibit "E" for any contract for public works construction, alteration, demolition, repair or maintenance.

**SECTION 27. MISCELLANEOUS PROVISIONS.**

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

27.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

27.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorney's fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

27.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

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

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

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

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

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

27.10. All unchecked boxes do not apply to this agreement.

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

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

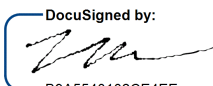
IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

**ESSENSE PARTNERS**

City Manager or Designee

**Officer 1**

By: 

Name: Mei Shibata

APPROVED AS TO FORM:

Title: CEO

City Attorney or Designee

**Officer 2**

By: 

Name: Geoff Wyatt

Title: COO

**Attachments:**

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

## **EXHIBIT “A” SCOPE OF SERVICES**

### Task 1: Market Research

CONSULTANT shall work with CITY staff to develop and implement market research to identify the various segments of Palo Alto’s customer base and the issues/concerns of each segment as well as develop strategy to reach and engage each group. CONSULTANT will gather data by conducting research (primary and/or secondary\*) to gain insight into consumers’ perceptions as well as evaluate the impact of existing CITY programs and educational efforts.

\*Secondary research needs will be determined based on CITY requirements for each individual campaign or Project.

### Deliverables:

- Key findings report
- Research summary
- Market analysis
- Customer journey mapping

Task 2: Strategic Campaign Planning. CONSULTANT will assess the market research findings and work closely with CITY staff to develop integrated outreach strategies and materials.

CONSULTANT will develop a marketing roadmap for CITY’s customer service, efficiency and customer renewable programs, safety awareness, emergency preparedness and general utility education initiatives.

### Deliverables:

An annual outreach plan at the start of each calendar year or fiscal year, based on scheduling and reporting requirements, as discussed and agreed upon by CITY staff and CONSULTANT, incorporating the following attributes:

- Use of a variety of outreach mechanisms/media
- Identification of barriers and proposed solutions
- Use of commitments, prompts, norms and incentives
- Use of community-based social marketing (CBSM)
- Incorporate appropriate analytics tracking into campaign design

Task 3: Graphic Design and Marketing Materials. CONSULTANT will develop distinctive creative concepts tailored to CITY’s target audience, while remaining consistent with CITY branding. Examples of CITY audiences include: residents, businesses and industry, schools and community groups, internal staff, elected officials and/or other government agencies with whom the City collaborates. CONSULTANT shall collaborate with Project manager at the start of each

calendar or fiscal year, whichever is most appropriate for scheduling and developing strategic communication campaigns, to develop annual outreach materials, incorporating traditional and new media.

Specifically, CONSULTANT shall assist CITY with creating outreach materials and provide graphic design services to include, but not limited to:

- a) Utility bill inserts, print ads, Op-Ed pieces, factsheets, newspaper articles, displays, brochures
- b) High-resolution photographs with a regional context (including original photography if needed)
- c) Images, charts, infographics and graphs clearly explaining complicated information or a compelling call to action
- d) Videos and animated images for a variety of uses including but not limited to online and classroom education videos, television commercials, and other dynamic media advertisements
- e) Movie making, including story and script development, animation and graphics
- f) Promotional items for residents, schools, special events, and businesses
- g) Customized illustrations and artwork for a variety of formats
- h) Coordinate with outside printers and in-house CITY copying services

Deliverables:

- High resolution design files for each requested campaign delivered to CITY vendors upon request (Prodigy, The Post, The Weekly, Facebook Ads etc.)
- High resolution design file archive for each piece of marketing material transferred to CITY on a monthly basis via DropBox or other agreed upon means of transfer

Task 4: Evaluation & Analytics. CONSULTANT shall work with CITY staff to run comprehensive analytics on marketing efforts in order to focus campaign direction and assess cost effectiveness.

Quantitative methods can include but are not limited to:

- a) A/B testing
- b) Google analytics
- c) Beta testing/focus groups
- d) Customer-wide survey tactics and analytics

Deliverables:

- Annual, quarterly and ad hoc reports on completed Projects or campaigns including:
  - marketing analysis (demographics, click rates, program participation numbers etc.)
  - lessons learned
  - application of analytical insights to strategic planning
  - benchmark of CITY campaigns against industry
  - Cost effectiveness



Task 5: Website

CONSULTANT shall:

- a) Evaluate the CITY website and recommend how to make it more engaging, educational and interactive
- b) Assist CITY staff in developing creative elements for the website including photographs, graphics, charts, videos, games and other elements
- c) Assist CITY staff in organizing the website architecture and page mapping

Deliverables:

- Evaluation report with site improvement proposal
- Proposed website improvement timeline
- Improve site based on CITY work order request form

Task 6: Contract Management

Consultant shall maintain Project management relationship with CITY by keeping up an active shared Project tracking list and annual report to be reviewed during:

- 6.1) Two in-person meetings per year at CITY offices, including one initial kick-off meeting the first year
- 6.2) Check-in calls or webinars upon CITY request

**EXHIBIT “B”  
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each Project on an as needed agreed upon basis. 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.

For each Project CITY shall submit to CONSULTANT a work order request form outlining the goal and scope of the Project. CONSULTANT shall provide CITY with a written estimate for each Project. CONSULTANT shall not begin work on any Project until CITY approves estimate.

<u>Tasks</u>	<u>Timeline</u>
1. Task 1: Market Research	Ongoing as needed
2. Task 2: Strategic Planning	Ongoing as needed
3. Task 3: Graphic Design & Marketing	Ongoing as needed
4. Task 4: Analysis & Evaluation	Ongoing as needed
5. Task 5: Website	Ongoing as needed
6. Task 6: Contract Management	Ongoing as needed
Task 6.1: In-Person Meeting	Within 30 days of contract execution; then every 6 months
Task 6.2: Calls/Webinars	Monthly and as needed

**EXHIBIT “C”  
COMPENSATION**

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement based on the hourly rate schedule attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all services, additional services, and reimbursable expenses shall not exceed the amount(s) stated in Section 4 of this Agreement. CONSULTANT agrees to complete all Services and Additional Services, within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

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.

**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 expenses, 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.

Budget Breakdown- Total Contract Compensation

Contract Year	Dates	Funds Encumbered
1	11/14/16-11/13/17	\$ 290,000.00
2	11/14/17-11/13/18	\$ 290,000.00
3	11/14/18-11/13/19	\$ 290,000.00
	<b>Total</b>	<b>\$ 870,000.00</b>

Example Fiscal Year Compensation Breakdown

Utilities Division	Group	Project	Funding Source	Amount
Administration	Communications	General Communications	Utilities Administration Enterprise Fund	\$ 30,000.00
Customer Support Services	Customer Service	Billing & General Customer Service	Utilities Gas, Water, Electric & Wastewater Enterprise Funds	\$ 25,000.00
Resource Management	Resource Planning	EV Charging	Low Carbon Fuel Standard Fund	\$ 10,000.00
Resource Management	Resource Planning	Electrification	Public Benefits	\$ 10,000.00
Resource Management	Utility Program Services	Local Solar Plan	Public Benefits	\$ 15,000.00
Resource Management	Utility Program Services	Programs & Services	Public Benefits	\$ 200,000.00
			Total	\$ 290,000.00

**EXHIBIT "C-1"**  
**SCHEDULE OF RATES**

**Role**

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<b>CEO</b>	<b>\$225</b>
<b>Project/Account Manager</b>	<b>\$150</b>
<b>Senior Strategist</b>	<b>\$200</b>
<b>Senior Copywriter</b>	<b>\$165</b>
<b>Copywriter</b>	<b>\$110</b>
<b>Editor</b>	<b>\$150</b>
<b>Event Coordinator</b>	<b>\$150</b>
<b>Creative Director</b>	<b>\$155</b>
<b>Graphics Designer</b>	<b>\$110</b>
<b>Market Researcher</b>	<b>\$150</b>
<b>Media Coordinator</b>	<b>\$165</b>
<b>Outreach Coordinator</b>	<b>\$150</b>
<b>Videographer</b>	<b>\$165</b>
<b>Developer</b>	<b>\$165</b>

## 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:

REQUIRE D	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
	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, <b>NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

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 AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>.

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, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
  
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

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

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

**OR**

**[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET\\_BIDS\\_HOW\\_TO.ASP](HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP)**