



City of Palo Alto

City Council Staff Report

(ID # 10792)

Report Type: Action Items

Meeting Date: 11/4/2019

Council Priority: Fiscal Sustainability

Summary Title: Potential Ballot Measure Polling/Outreach, Contract, Solicitation Exemption and Budget Amendment

Title: Consideration of a Revenue Generating Ballot Measure Including Review and Approval of Stakeholder Outreach and Initial Polling Framework; Approval of an Exemption to Competitive Solicitation Requirements for Selection of Polling Consultant, Fairbank, Maslin, Maullin, Metz & Associates; Approval of an Exemption to Competitive Solicitation Requirements for Contract No. C20177157 with Terris Barnes Walters Boigon Heath Inc., d/b/a TBWB Strategies for Stakeholder Outreach and Authorization for the City Manager or Designee to Enter into this Contract with TBWB Strategies; and Approval of Budget Amendment in the General Fund

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff and Finance Committee recommend that the City Council:

- 1) Consider a Revenue Generating Ballot Measure Including Review and approval of the stakeholder outreach and initial polling framework as outlined in the Finance Committee report ([CMR 10743](#)) and direct staff to begin stakeholder outreach and conduct initial polling for a potential ballot measure; and
- 2) Approve by Council action, per PAMC 2.30.330, an exemption from competitive solicitation requirements for the selected consultant, Fairbank, Maslin, Maullin, Metz & Associates, to conduct public opinion research on the potential ballot measure, described below from the competitive solicitation requirements of the Palo Alto Municipal Code (PAMC); and
- 3) Approve by Council action, per PAMC 2.30.330, an exemption from competitive solicitation requirements, and approve and authorize the City Manager or his designee to execute professional services contract, Contract No. C20177157 (Attachment A), in an amount not to exceed \$94,125 with Terris Barnes Walters Boigon Heath Inc., d/b/a TBWB Strategies, to provide community outreach services related to the potential revenue generating ballot

measure for a one-year term ending October 31, 2020, in the amount of \$89,125 with a \$5,000 contingency for a total not-to-exceed amount of \$94,125; and

- 4) Amend the Fiscal Year 2020 Budget Appropriation Ordinance for the General Fund by:
 - a) Increasing the Administrative Services Department appropriation by \$179,125; and
 - b) Decreasing the General Fund Budget Stabilization Reserve by \$179,125.

Background

As part the 2019 Fiscal Sustainability City Council Priority, the Finance Committee has served as the working body throughout development process for a potential revenue measure, including reviewing revenue ballot measure options; reviewing staff, consultant, and stakeholder feedback; and forwarding the Committee's recommendations to Council for review and direction. Throughout this iterative process, several relevant reports were presented to the Committee and Council and are linked below:

- 2019 Fiscal Sustainability Workplan, 4/22/19, [CMR 10267](#)
- City Council Approve Workplan for a Potential Revenue Generated Ballot Measure, 4/22/19, [CMR 10261](#)
- Finance Committee Review, Comment, and Accept Preliminary Revenue Estimates for Consideration of a Ballot Measure, 6/18/19, [CMR 10392](#)
- Finance Committee Evaluation and Discussion of Potential Revenue Generating Ballot Measures, 8/20/19, [CMR 10445](#)
- City Council Evaluation and Discussion of Potential Revenue Generating Ballot Measures and Budget Amendment, 9/16/19, [CMR 10615](#)
- Finance Committee Approve Revised Workplan to Address the City Council Direction for Further Consideration of a Ballot Measure, 10/1/19, [CMR 10712](#)
- Finance Committee Consideration of a Revenue Generating Ballot Measure and Potential Recommendation to City Council to Approve Framework and Direct Staff to Proceed with Stakeholder Outreach and Initial Polling, 10/15/19, [CMR 10743](#)

Discussion

At the October 1, 2019 the Finance Committee reviewed and approved the revised workplan timeline (as outlined in [CMR 10712](#)) and provided input to staff detailing general guidelines and a proposed framework on how to proceed with polling and outreach efforts. The framework for polling and outreach was confirmed by the Finance Committee in the October 15, 2019 meeting. Summarized below is the polling and outreach framework the Committee recommends that Council approve. More detailed information can be found in the staff report to the Committee ([CMR 10743](#)).

Both polling and stakeholder outreach efforts are recommended to be facilitated by consultants that are familiar with the community, economic, and political landscape of the City.

Polling

The City has contracted with Fairbank, Maslin, Maullin, Metz & Associates (“FM3”) to conduct public opinion research on the potential ballot measure. It is recommended that two rounds of polling be completed. FM3 will conduct an initial poll to ascertain public opinion towards a revenue ballot measure. The initial poll should begin with the same methodology used in the 2016 Funding Transportation Improvements Citywide Voter Survey ([CMR 7118](#)). A second, more refined survey will be conducted (expected to be completed in 2020) that is based on more fully developed model measures, using analysis and data collected from the initial poll. Staff will return to the Committee and/or City Council prior to the recommended second round.

The total not-to-exceed amount of this contract is \$85,000 and is within the Chief Procurement Officer’s contract award authority per PAMC 2.30.200. However, this contract requires Council authorization for an exemption from PAMC competitive solicitation requirements. Professional services contracts not exceeding \$85,000 shall be solicited by informal request for proposals in accordance with PAMC 2.30.400. FM3 was not selected through an informal competitive solicitation process. Professional services contracts may be exempted from competitive solicitation requirements “by Council action” under PAMC 2.30.330. To move forward with polling efforts within the timeline outlined in the revised workplan with a firm that has extensive experience with the City of Palo Alto, staff recommends that Council exempt the contract with FM3 from competitive solicitation requirements “by Council action” pursuant to PAMC 2.30.330.

Stakeholder Outreach

Terris Barnes Walters Boigon Heath Inc., d/b/a TBWB Strategies (“TBWB Strategies”) has worked with the City in a variety of outreach efforts; most recently on business sentiment and reaction to transportation tax concepts in 2016 and City infrastructure needs and a potential ballot measure in 2013. The proposed professional services agreement with TBWB Strategies was negotiated without engaging in the competitive solicitation process. Professional services contracts exceeding \$85,000 shall be solicited by formal request for proposals in accordance with PAMC 2.30.400. Professional services contracts may be exempted from competitive solicitation requirements “by Council action” under PAMC 2.30.330. To move forward with stakeholder outreach efforts and the timeline outlined in the revised workplan for consideration of a ballot measure, staff recommends that Council exempt this contract from competitive solicitation requirements “by Council action” pursuant to PAMC 2.30.330, and authorize the City Manager or his designee to execute the professional services agreement with TBWB Strategies (Attachment A).

Outreach will occur with the goal of establishing an iterative approach where multiple touchpoints will be included throughout the development and refinement of a potential ballot measure. Stakeholders include but are not limited to the business community as well as the community at large. The actual questions and selection of groups and focus will be developed by the consultant and staff.

Resource Impact

Consulting services for polling and stakeholder outreach under the two contracts detailed above total \$179,125. Funding for these services is not currently budgeted in Fiscal Year 2020, therefore, staff recommends the approval of a \$179,125 General Fund appropriation increase in the Administrative Services Department, offset by a reduction in the Budget Stabilization Reserve (“BSR”), to fund both the polling contract with FM3 and the stakeholder outreach contract with TBWB Strategies. It is expected that the BSR will remain at or above the target level of 18.5 percent of Fiscal Year 2020 General Fund expenses.

Policy Implications

This recommendation aligns with existing City policy and City Council direction as part of the 2019 Fiscal Sustainability Workplan.

Environmental Review

This report is not a project for the purposes of the California Environmental Quality Act (CEQA). Environmental review is not required.

Attachments:

- ATTACHMENT A: C20177157 Terris Barnes Walters Boigon Heath, INC. Contract

CITY OF PALO ALTO CONTRACT NO. C20177157
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (this “Agreement”) is entered into as of the 4th day of November, 2019, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and **TERRIS BARNES WALTERS BOIGON HEATH, INC., DBA TBWB STRATEGIES**, a California corporation, located at 400 Montgomery Street, 7th Floor, San Francisco, California, 94104 (“CONSULTANT”).

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to conduct outreach services (“Project”) and desires to engage a consultant to provide services in connection with the Project (“Services”).
- B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

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

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, in accordance with the requirements of the Scope of Services as described in Exhibit “A”.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through October 31, 2020 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably

prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A" (also referred to herein as the "Basic Services"), and any reimbursable expenses specified in Exhibit "C", shall not exceed Eighty Nine Thousand One Hundred Twenty Five Dollars (\$89,125), as detailed in Exhibit "C". CONSULTANT agrees to complete all Basic Services, including any specified reimbursable expenses, within this amount. In the event Additional Services (as defined below) are authorized, the total compensation for Basic Services, Additional Services and any specified reimbursable expenses shall not exceed Ninety Four Thousand One Hundred Twenty Five Dollars (\$94,125), as detailed in Exhibit "C". The applicable schedule of rates of payment for Additional Services (if authorized by CITY), is set out at Exhibit "C-1" entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum 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, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit "C" or, as applicable, the CONSULTANT's billing rates as set forth in Exhibit "C-1" with regard to Additional Services, if any. If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City's Project Manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

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

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

similar circumstances.

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

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

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

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

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

SECTION 12. SUBCONTRACTING.

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

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

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Charles Heath, email cheath@tbwb.com, as the CONSULTANT'S Project Manager to have supervisory

responsibility for the performance, progress, and execution of the Services to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the CONSULTANT's Project Manager, project coordinator, or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager 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 CONSULTANT 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 Christine Paras, Administrative Services Department, Administration Division, 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone:(650) 329-2486. The CITY's 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 attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed

to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

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

SECTION 18. INSURANCE.

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

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

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. 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, 25, and 27.

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

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

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

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

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

- (a) All printed materials provided by CCONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY’s Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division’s office.

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

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.

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

SECTION 25. NON-APPROPRIATION

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

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

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

SECTION 27. MISCELLANEOUS PROVISIONS.

27.1 This Agreement will be governed by California law, without regard to its conflict of law provisions.

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

27.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value

of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

27.4 This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code.

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 is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

27.7 All exhibits referred to in this Agreement and any exhibits, addenda, appendices, attachments, and schedules to this Agreement referred to herein (collectively, "exhibits") are, by such reference, incorporated into this Agreement in full and deemed 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 (if any), the exhibits shall control.

27.9 If, pursuant to this Agreement with CONSULTANT, CITY shares with CONSULTANT any 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. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

27.10 CONSULTANT understands and agrees that, in connection with this Agreement, the CONSULTANT may have access to proprietary and/or confidential information which may be owned or controlled by the CITY, the disclosure of which to third parties may be damaging to the CITY, its employees or customers/residents. CONSULTANT also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the CONSULTANT to civil liability. Consequently, CONSULTANT agrees that all information disclosed by the CITY to the CONSULTANT shall only be used in the performance of this Agreement, unless disclosure is required by law or court order. CONSULTANT shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of

care. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

27.11 The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

27.12 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.

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

CONTRACT NO. C20177157 SIGNATURE PAGE

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

CITY OF PALO ALTO

**TERRIS BARNES WALTERS BOIGON
HEATH, INC., DBA TBWB
STRATEGIES**

City Manager

Officer 1

APPROVED AS TO FORM:

DocuSigned by:
By: *Charles Heath*
Name: Charles Heath

Title: vice president

City Attorney or designee

Officer 2 (Required for Corp. or LLC)

DocuSigned by:
By: *David Tiek*
Name: David Tiek

Title: Chief Financial officer

Exhibits:

- 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

Pursuant to this Agreement, CONSULTANT shall provide the following Services and deliverables:

Task 1: Feasibility Assessment

CONSULTANT will collaborate with CITY and CITY's public opinion research consultant to develop concepts and messages to be tested in various public outreach efforts. In partnership with the CITY's opinion research consultant, CONSULTANT will assist in the development of an analysis, set of conclusions, and recommendations to the CITY.

Deliverables:

- 1) Develop potential Revenue Measure strategies to meet CITY's funding needs to be tested in polling;
- 2) Collaborate with CITY's opinion research consultant to design, conduct and analyze an opinion survey of voters within CITY's jurisdiction to assess the electoral feasibility of a Revenue Measure;
- 3) Conduct a demographic analysis of voters within CITY's jurisdiction and how they break into key sub-groups by age, ethnicity, political party, length of residency, and other key criteria;
- 4) Analyze past election results in the jurisdiction and region to understand voter turnout trends and other relevant voting patterns;
- 5) Research other local tax proposals that may be heading to an upcoming ballot that could compete with CITY's Revenue Measure;
- 6) Make a specific recommendation regarding type of revenue measure to pursue, optimal election date, tax rate, tax structure and other important Revenue Measure features; and
- 7) Present recommendations, timelines and work plans to City Council, committees and commissions.

Task 2: Public Information and Outreach

CONSULTANT will develop strategies and recommended interactive communication vehicles to facilitate community dialogue.

Deliverables:

- 1) Develop strategies and plans to inform and engage influential stakeholder groups including elected leaders, business leaders business organizations, large property owners, taxpayer groups and others;
- 2) Develop informational fact sheets and other messaging collateral as needed to support outreach efforts;
- 3) Provide talking points, answers to frequently asked questions and a message training to city staff and others as needed;
- 4) Provide content to be added to CITY's website, included in email updates, social media posts and newsletters;

- 5) Prepare PowerPoint presentations for community meetings;
- 6) Develop strategies for managing coverage of a potential Revenue Measure in the local press; and
- 7) Write, design, and produce mailings and advertising to educate, inform and engage voters.

Task 3: Ballot Measure Development

Contingent upon opinion research findings related to the viability of a measure, CONSULTANT will work with CITY to qualify a measure for the ballot. CONSULTANT will assist in developing and presenting final documents, along with related research, conclusions, and recommendations to the City Council and other relevant committees, organizations or elected bodies as needed.

Deliverables:

- 1) Recommend a final tax type, tax rate, duration and tax structure;
- 2) Recommend the final the list of projects, programs and services to be funded by the measure and prepare messaging that clearly articulates how these programs will benefit from additional revenue provided by the measure;
- 3) Recommend procedures for the taxpayer accountability protections, such as a process for an independent citizens' oversight committee;
- 4) Work with legal counsel to develop a resolution or ordinance calling for the election;
- 5) Work with legal counsel to develop the 75-word ballot question;
- 6) Work with legal counsel to develop and refine the full text of the measure and other materials that will appear in the ballot pamphlet mailed to all voters;
- 7) Present recommendations, documents and resolutions to CITY's administration and City Council for approval; and
- 8) Work with the City Clerk and County Registrar of Voters Office as needed to assist CITY in completing the process of qualifying for the ballot.

**EXHIBIT “B”
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services as specified in Exhibit “A” Scope of Services during the Term defined in Section 2 of this Agreement.

EXHIBIT “C” COMPENSATION

The CITY agrees to compensate the CONSULTANT for the Services performed in accordance with the terms and conditions of this Agreement as set forth in the budget schedule 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 any specified reimbursable expenses, and the total compensation for Additional Services, if any, do not exceed the amounts set forth in Section 4 of this Agreement.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1: Feasibility Assessment	\$13,500
Task 2: Public Information and Outreach	\$60,875
Task 3: Ballot Measure Development	\$14,750
Sub-total Basic Services	\$89,125
Reimbursable Expenses (if any)	\$0.00
Total Basic Services and Reimbursable expenses	\$89,125
Additional Services (if any)	\$5,000
Maximum Total Compensation	\$94,125

REIMBURSABLE EXPENSES

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

ADDITIONAL SERVICES

The CONSULTANT shall provide Additional Services (as defined in Section 4) 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 proposed

scope of services, schedule of performance, and maximum compensation, including any specified 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 such services. Performance of and payment for Additional Services, if any, is subject to all requirements and restrictions in this Agreement.

EXHIBIT "C-1"
SCHEDULE OF RATES

CONSULTANT's schedule of rates is as follows:

Partner	\$325 per hour
Consultant	\$275 per hour
Associate	\$250 per hour
Art Director/Graphic Designer	\$250 per hour
Other Support Staff	\$200 per hour

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

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. 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 INSUREDS"
 - A. PRIMARY COVERAGE

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

B. CROSS LIABILITY

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

C. NOTICE OF CANCELLATION

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

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

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

OR

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