

CITY OF PALO ALTO CONTRACT NO. C24189293

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN THE CITY OF PALO ALTO AND NOVA PARTNERS, INC.

This Agreement for Professional Services (this “Agreement”) is entered into as of the 18th day of December, 2023 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and NOVA PARTNERS, INC., a California corporation, located at 201 Moffett Boulevard, Mountain View, CA 94043, Department of Industrial Relations (DIR) Registration Number PW-LR-1000689705 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

RECITALS

A. CITY intends to replace Fire Station No. 4 (the “Project”) and desires to engage a consultant to provide construction management services in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess 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, entitled “SCOPE OF SERVICES”.

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

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

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through December 31, 2026 unless terminated earlier pursuant to Section 19 (Termination) 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, entitled “SCHEDULE OF PERFORMANCE”. 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 shall be based on the compensation structure detailed in Exhibit C, entitled “COMPENSATION,” including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **Five Hundred Ninety-Three Thousand Twenty-Eight Dollars (\$593,028.00)**. The hourly schedule of rates, if applicable, is set out in 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 in this Section 4 shall be at no cost to the CITY.

Optional Additional Services Provision (This provision applies only if checked and a not-to-exceed compensation amount for Additional Services is allocated below under this Section 4.)

In addition to the not-to-exceed compensation specified above, CITY has set aside the not-to-exceed compensation amount of **Fifty-Nine Thousand Three Hundred Three Dollars (\$59,303.00)** for the performance of Additional Services (as defined below). The total compensation for performance of the Services, Additional Services and any reimbursable expenses specified in Exhibit C, shall not exceed **Six Hundred Fifty-Two Thousand Three Hundred Thirty-One Dollars (\$652,331.00)**, as detailed in Exhibit C.

“Additional Services” means 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. CITY may elect to, but is not required to, authorize Additional Services up to the maximum amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall provide Additional Services only by advanced, written authorization from CITY as detailed in this Section. Additional Services, if any, shall be authorized by CITY with a Task Order assigned and authorized by CITY’s Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1, entitled “PROFESSIONAL SERVICES TASK ORDER”. Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for Additional Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY’s Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation to CONSULTANT for all Task Orders authorized under this Agreement shall not exceed the amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall only be compensated for Additional Services performed under an authorized Task Order and only up to the maximum amount of compensation set forth for Additional Services in this Section 4. Performance of and payment for any Additional Services are subject to all requirements and restrictions in this Agreement.

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, CONSULTANT's schedule of 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 invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY's Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess 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 subcontractors, if any, 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 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, as amended from time to time. 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 the CITY's stated construction budget by ten percent (10%) or more, 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. CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its

employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

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 approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

SECTION 12. SUBCONTRACTING.

Option A: No Subcontractor: CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

Option B: Subcontracts Authorized: Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

Consolidated Engineering Laboratories (CEL), San Ramon, CA
MultiVista, San Francisco, CA

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with the prior written approval of the City Manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Joe Capps-Jenner, Project Director, 201 Moffett Boulevard, Mountain View, CA 94043, Telephone 415-720-1462, Email joecj@novapartners.com as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager 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 Services or a threat to the safety of persons or property.

CITY's Project Manager is Matt Raschke, Public Works Department, Engineering Division, 250 Hamilton Avenue, Palo Alto, CA, 94301, Telephone: 650-496-5937, Email: matt.raschke@cityofpaloalto.org. 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. All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, 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 product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product 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 Services.

SECTION 15. AUDITS. CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

SECTION 16. INDEMNITY.

[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all third party 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") to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CITY will reimburse CONSULTANT for the proportionate percentage of defense costs exceeding CONSULTANT's proportionate percentage of fault as determined by the final judgment of a court of competent jurisdiction.

[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall 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 a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

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. No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

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, entitled “INSURANCE REQUIREMENTS”. 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. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the 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 provided in material conformity with this Agreement as such determination is 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, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. 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, unless made in accordance with Section 17 (Waivers).

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 Manager at the address of CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

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 subcontractors or other persons or parties 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, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a “Consultant” as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, 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.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to

the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

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, hereby incorporated by reference and as 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 Department'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 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. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. 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 and related requirements.** CONSULTANT is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

OR

26.1. **This Project is subject to prevailing wages and related requirements as a “public works” under California Labor Code Sections 1720 et seq. and related regulations.** CONSULTANT is required to pay general prevailing wages as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the CITY has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the CITY’s Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, web site (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. CONSULTANT shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. CONSULTANT shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including but not limited to Sections 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time. CONSULTANT shall comply with the requirements of Exhibit E, entitled “DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS”, for any contract for public works construction, alteration, demolition, repair or maintenance, including but not limited to the obligations to register with, and furnish certified payroll records directly to, DIR.

SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”. For purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

This Project is a 9204 Public Works Project and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

SECTION 28. CONFIDENTIAL INFORMATION.

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY's Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT's obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. "Confidential Information" means all data, information (including without limitation "Personal Information" about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT's possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

SECTION 29. MISCELLANEOUS PROVISIONS.

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

29.2. 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.

29.3. 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.

29.4. 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, as amended from time to time.

29.5. 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.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

29.7. 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.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

29.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

SECTION 30. EXHIBITS. Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- EXHIBIT A: SCOPE OF SERVICES
- EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER
- EXHIBIT B: SCHEDULE OF PERFORMANCE
- EXHIBIT C: COMPENSATION
- EXHIBIT C-1: SCHEDULE OF RATES
- EXHIBIT D: INSURANCE REQUIREMENTS
- EXHIBIT E: DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS
- EXHIBIT F: CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204
PUBLIC WORKS PROJECTS

***THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS
ARE ATTACHED.***

CONTRACT No. C24189293 SIGNATURE PAGE

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

CITY OF PALO ALTO

NOVA PARTNERS, INC.

City Manager

Officer 1

DocuSigned by:
David Marks, Principal
9D6BA21C9E2A4B2...

By: _____

Name: David Marks, Principal

Title: Principal

APPROVED AS TO FORM:

City Attorney or Designee

Officer 2

DocuSigned by:
Bob Olson
42E6A67E5533425...

By: _____

Name: Bob Olson

Title: Principal

EXHIBIT A SCOPE OF SERVICES

CONSULTANT shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”.

All work described below will be done in conjunction with the City’s ongoing review and approval process for the Fire Station No. 4 Replacement project. The Consultant’s services shall include full construction management services as required to assist City staff in the management of the final design, bidding phase, and construction of the Fire Station No. 4 Replacement project as well as with any claims or other contract disputes that may arise. All work performed by Consultant shall be in accordance with the professional standard and quality and best practices that prevail among professional construction managers in the Peninsula region.

If at any time, the City is not satisfied with the performance of Consultant’s staff, the City reserves the right to request the services of a different individual. If for any reason Consultant proposes a change of staffing during the course of the project, the City reserves the right to approve any new staff. Staffing changes must be approved a minimum of 21 calendar days in advance, in writing, by the City’s Project Manager (PM).

Task 1: Preconstruction Services

Consultant shall assist the City in final reviews of the construction documents and in preparing bid documents. Consultant shall in accordance with the professional standard and quality that prevail among professional construction managers in the San Francisco Peninsula region perform the following services:

- 1.01 Become familiar with the project history and site and meet design team and Fire Department representatives
- 1.02 Assist the Architect and City staff as needed to obtain building permits for the project
- 1.03 Develop an independent cost estimate of probable construction cost based on the 65% and 95% progress sets and the 100% construction documents provided for constructability review and reconcile the estimate to the Architect’s estimate
- 1.04 Provide detailed constructability review of the 65% and 95% progress sets and the 100% construction documents to verify that the construction documents are complete and are internally consistent, and to identify opportunities for value engineering. The principal objectives of the constructability review are to ensure that the construction documents contain all of the necessary detail to prevent delays from occurring during construction and to avoid project change orders resulting from any inadequacy and inconsistencies of the construction documents. Following the constructability review, report to the City all shortcomings identified with a focus in the following areas:
 - Site logistics, constraints, and construction challenges including but not limited to construction deliveries, staging, trailer placement, and laydown areas throughout construction
 - Clarity of documents and identify any areas of ambiguity that may affect contractor bids
 - Completeness of documents – ensuring no scope gaps

- Internal consistency of documents including but not limited to project drawings, project specifications, and other City standards
 - Technical constructability
 - Building code compliance
 - Quality control
 - Compatibility of contract plans, specifications, and applicable standards
 - Utility clearances for constructability
 - Project schedule
 - Pedestrian and vehicular safety and access around project and in coordination with nearby construction projects
 - Opportunities for cost efficiencies
 - Appropriate project allowances, contingencies, liquidated damages, and add-alternates for bidding purposes
 - Potential project risks
- 1.05 Following any modifications to the 100% construction documents resulting from the final constructability review, develop a revised independent estimate of probable construction cost that accounts for the modifications and reconcile the estimate to the Architects' estimate
- 1.06 Prior to solicitation of construction bids, coordinate any significant construction document revisions that need to be included in the bid with the Architect and City staff. Minor design changes can be included after the bid is advertised as part of an addendum before bid due date.
- 1.07 Assist the City with the preparation of the scope of services for the bid packages and other related bid documents needed to ensure a complete bid package. The Architect will prepare the technical specifications, and Consultant will review for completeness.
- 1.08 Become familiar with the various City department functions and requirements for project coordination.
- 1.09 Coordinate and prepare any construction signage or outreach materials that may be needed.
- 1.10 Contractor and Key Subcontractor Prequalification: Prior to soliciting construction bids, the Consultant shall work with the Public Works, Purchasing and City Attorney's Departments to prepare prequalification forms and rating systems required for Prime Contractor and key subcontractor prequalification ("Prequalification"). Prequalification may occur for up to six subcontractors in key disciplines to be identified by the City, with input from Consultant, for each Contractor seeking prequalification. The City shall issue the request for prequalification and the Consultant shall administer the feedback from responders, including but not limited to: answering questions from contractors and subcontractors, coordinating responses with the City's Purchasing Division and Public Works Department, preparing spreadsheets or other documentation necessary to compile and compare contractor responses, preparing a recommended bidder's list with a brief report summarizing findings, assist in representing the City in any subsequent hearings challenging the validity of the results, and any follow-up documentation resulting from said hearings.
- 1.11 Bidding: Contractor bids shall be processed by the City's Purchasing Division. Consultant shall review the contractor bids for compliance with the technical portions

of the bid requirements as set forth in the specifications and make a recommendation for award or rejection. Consultant shall assist with the bid period work items including clarifications and bid evaluation relative to the contract documents. Consultant shall review the subcontractor list for completeness and compliance with the bid documents. The City Purchasing Division will verify Consultant's recommendation in order to finalize the decision.

- 1.12 Addenda: If changes to the construction documents are required during the bidding period, Consultant shall prepare the addenda items with the assistance from the Architect. The City will issue the addenda.
- 1.13 Questions: During the bidding process, Consultant shall be prepared to assist writing answers to RFIs received by respective bidders on the project with Architect and City Staff on an as-needed basis.
- 1.14 Pre-bid Conference and Pre-construction Meeting: Consultant shall coordinate and facilitate the Pre-bid Conference and Pre-construction Meeting including preparation of the agendas and meeting minutes. The pre-bid conferences are typically mandatory for bidders to attend.
- 1.15 Hazardous Material Abatement: A hazardous materials study has already been completed for existing Fire Station 4 that is to be demolished. Consultant shall assist City staff in the preparation of plans and specifications, assist in bidding (if removal is by means of a separate contract) and coordinate the remediation contractor's efforts. A third-party consultant shall be employed by the City to survey, test, develop, and implement removal procedures and report results. Consultant shall coordinate as needed between the hazardous materials removal contractor and the third-party consultant hired to monitor the removal.
- 1.16 Relocation of Existing Fire Station: Consultant will assist the City with procuring the services of a moving contractor ("Mover"). The Consultant shall coordinate between the Mover and City staff in order to relocate fire station staff, services, equipment and materials to the temporary station (location to be determined) that will be a pre-fabricated module. A similar move from the temporary station will be coordinated when the new station is ready for occupancy.

Consultant will manage the preconstruction process efficiently by performing the greatest value-added service for a project: reviewing the design documents as they develop. Consultant will review the design and make comments on the efficiency and consider costs related to the design. Consultant will utilize personnel with extensive field experience to assist the team in constructability review of design. Consultant will work to eliminate vague details, unbuildable logic, and poor design to ensure the project will avoid costly construction delays.

Depending upon the project requirements, Consultant will also utilize experts to perform peer reviews of design. As the design progresses, Consultant will verify the costs of the project remain within the budget limits. Consultant is experienced in developing construction estimates, using historical data and previous experience on projects to manage the cost estimates. Consultant will work with several cost estimating experts to obtain reliable estimates that will be reconciled with the Architect's estimates. Where scopes of work exceed the allowed costs, Consultant will manage the value engineering process.

Consultant has the expertise to assist with the bidding process for the City of Palo Alto. Consultant will assemble the bid documents, manage the Invitation for Bid (IFB) documents, assist the

Purchasing Department with release of the IFB and ensure the process is smooth. The Prequalification process must be in alignment with the Public Contract Code requirements. Consultant will score the prequalification responses and provide the City with a formal review document naming the prequalified bidders. When bidding commences, Consultant will manage the pre-bid RFI's, conduct mandatory onsite pre-bid meetings, and prepare Addenda information for the City to publish to the prequalified bidders. Additional services Consultant can provide include specialty contractor coordination such as waterproofing or soundproofing consultants. Consultant may manage any of the specialty contractors the City may utilize on these projects so the City can focus on other business.

Task 2: Construction Management Services

Consultant shall provide construction management services after the approval of the construction contract through completion of the project. Consultant shall in accordance with the professional standard and quality that prevail among professional construction managers in the San Francisco Peninsula region perform the following services:

- 2.01 Throughout the construction process, conduct and lead weekly Owner/Architect/Contractor (OAC) meetings to review project schedule, RFIs, and open items that require resolution, review of Contractor payment applications, review of change order requests, processing of contract change orders, providing an expert review of the entitlement to changes, level of completeness for payment, review of project schedules, and adherence to the contract project schedule. Consultant shall set up and conduct other meetings necessary to facilitate the project work including but not limited to pre-construction and pre-construction preparatory meetings.
- 2.02 Write and distribute the meeting agendas and meeting minutes to include: City-Consultant meetings, pre-construction meetings, pre-construction preparatory meetings, regular site meetings, and meeting with City staff, contractors, various City departments, and the public. Meeting minutes will explicitly track who has the responsibility for each action item with expected completion dates.
- 2.03 Be prepared to address comments and concerns of the Contractor, Architect, Project Manager, City staff, and the general public on an as-needed basis.
- 2.04 Provide project management tools that will be customized to the specific City needs. For example, budget spreadsheets have been built to track various project funding sources such as grants.
- 2.05 Oversee the day-to-day construction work performed by the Contractor. Provide a CM Field Superintendent (CMFS) who shall maintain a field presence whenever work is underway by the Contractor. CMFS is not responsible for the means and methods of the Contractor, nor for safety of any of the Contractor's employees, but will have the authority, although not the responsibility, to observe and report concerns with regards to such issues. CMFS will perform the following:
 - Ensure that work is being constructed in compliance with the contract documents, the approved shop drawings, the current RFI answers, and other Construction Contract documents, and in general to protect the interest of the City daily in the field
 - Observe and report daily field problems with respect to quality, cost, and schedule
 - Develop and maintain deficiency, incomplete work item, and preliminary

- punch list reports in a live document shared with the City and reviewed on a weekly basis
- Maintain a daily construction report shared with the City as the daily history of the project to include significant jobsite field events occur each day
 - Monitor any ‘time and materials’ work performed by the Contractor and their subcontractors to ensure that the work being performed is being charged appropriately to Field Order and not-in-contract work
 - Manage third-party testing and agency inspections
 - Review the contractor’s as-built drawings on a weekly basis to ensure any changes have been properly and completely documented
- 2.06 Track construction process, logistics, Request for Information (RFI), Architect’s Supplemental Information (ASI), Change Order (CO), and other information or requests.
- 2.07 Oversee construction activities and ensure that all aspects of LEED construction requirements are followed and documented. Consultant shall work closely with the project’s Commissioning Agent, who will be hired separately by the City.
- 2.08 Coordinate and work with Contractor and any other involved parties to implement logistical and communication measures to minimize any impacts to the nearby residential neighborhoods, park, playing field, library, churches, and various schools in the vicinity. Consultant shall implement expeditious methods for resolving conflicts. Consultant shall handle coordination between the City staff, Contractor, and Architect.
- 2.09 If nighttime, holiday, or weekend work is required periodically to minimize impacts or due to delay in the schedule, Consultant services shall still be required in full effect but will be compensated as Additional Services for costs incurred. Work on the following City holiday shall not be considered Additional Services and shall be regular working days for the Contractor and Consultant, with the cost for same included in the Consultant’s fee:
- The third Monday in January (Martin Luther King Day)
 - June 19 (Juneteenth)
 - The second Monday in October (Columbus Day)
 - November 11 (Veteran’s Day)
 - The Friday following Thanksgiving Day (the fourth Thursday in November)
 - December 24 (Christmas Eve)
 - December 31 (New Year’s Eve)
- 2.10 Coordinate with City staff, Contractor, and Architect to establish deadlines for submittal of response to RFIs, deferred submittals, construction coordination drawings, construction schedules, inspection requests, change order requests, and claims (see example City standard construction contract and General Conditions). Consultant shall track all such requests and submittals to ensure compliance with deadlines and in order to prevent any delays to the project. Consultant shall track all requests and submittals in a format acceptable to the City staff, and Consultant shall make the tracking document available to City staff through electronic file sharing. Consultant shall increase its project staffing in a timely manner if needed to process requests and submittals in accordance with the established deadlines and to avoid delays. Comments from different reviewers of the submittal shall be compiled before being returned to the Contractor for revisions. All submittals shall be sent directly

- between the Contractor and the Architect, with copies, documentation, and management reports submitted to and managed by the Consultant.
- 2.11 Outreach: Provide monthly construction updates including progress photos of project and summary of performed activities. Consultant shall provide the updates in a format and layout approved by the City and submitted to the City seven (7) calendar days prior to the end of each month. Consultant shall provide updates suitable for uploading onto the City's website. Consultant shall respond within 24 hours to resident questions and complaints. Consultant shall create a communication plan prior to start of construction for review and approval by the City.
- 2.12 Oversee, manage, and track the Contractor's preparation and/or review of all necessary documentation for the project including, but not limited to:
- Daily logs and inspection progress reports
 - Photos/videos
 - RFI's
 - ASI's
 - Correspondence
 - Shop drawings
- 2.13 Review and comment on any project-related correspondence as request by the City. Routine correspondence that is related to product information or minor design issues may be prepared and answered by Consultant on its letterhead, with a copy of the response directed to Project Manager and Architect. Correspondence requiring City response, including but not limited to correspondence with residents, cost or contractual issues, may be draft by Consultant but shall be signed only by City.
- 2.14 Utilize a professional web-based construction project management file sharing tool, like Procore or BIM 360, in order for the Consultant, City staff, Architect, Contractor, City contractors, and other as appropriate to post project documents for shared viewing and download. Web-based tool to be hosted and maintained by General Contractor. Documents shall include: architectural plans and specifications, submittals, RFI's, ASI's, inspection logs, schedules, meeting agendas and minutes, LEED documents, construction progress photos, and any other documents request to be posted by City or that will benefit the various parties involved.
- 2.15 Analyze, monitor, and request updates for the master schedule as the project progresses. Consultant shall analyze the schedule for construction constraints, level of critical activities, and to verify progress in conjunction with the analysis of pay applications. Consultant shall review Contractors' individual Critical Path Method (CPM) schedules, monitor Contractor's progress, notify the City of any slippage, and coordinate Contractor recovery plans. In addition, Consultant shall develop a detailed procurement log with the Contractor to address material delivery on-site, delivery times, fabrication lead times, A/E submittal reviews (including time for revisions and resubmittals), deferred submittals, coordination and contractor design.
- 2.16 Review progress payment requests submitted by Contractor within five (5) business days of receipt and verify the accuracy and percentage of completion against the schedule and resolve any discrepancies in the invoices. Consultant shall review the invoices and backup from completeness and compliance with contract documents and make a recommendation to Project Manager for payment of the progress payment request. Consultant shall also implement a process assuring contractors provide accurate certified payroll documentation to the Department of Industrial Relations

(DIR).

- 2.17 Review all change order requests submitted to the City for accuracy, completeness, appropriateness, and compliance with the City contract documents. Consultant shall work with the Architect to determine the validity of change order requests, however, the Architect will not be expected to provide input on the validity of the dollar value of the claim, only input as to whether the work is indeed 'extra'. In instances when the work is determined to be extra, Consultant shall make recommendations to the City on the pricing of the change orders using compensation methodologies specific in the Construction Contract. If necessary or if requested by the City, Consultant shall prepare an independent estimate of the value of the additional work to verify the reasonableness of fixed price change orders. Consultant shall reject change order requests that are determined to be invalid. Consultant shall process change order requests according to the schedule developed under "Establishment of deadlines", and shall coordinate responses with the City and Architect.
- 2.18 Analyze any claims from the Contractor (i.e., compensation and delay) as to whether they are excusable, inexcusable, or compensable and prepare a response for the City. Consultant shall process claims according to the schedule developed under "2.10 Establishment of deadline".
- 2.19 Assist the City in the procurement, scheduling, submittal review, documentation and management of City contractors and, in particular, with the coordination of their work with the Contractor's work. City contractors are contracted directly with the City including, but not limited to furniture installers, C.3 observation, and movers.
- 2.20 Quality Control and Assurance: Monitor and document the Contractor's work for any deviations in scope, schedule, or performance and keep the City informed of and assist in resolving any issues that may arise.
- 2.21 Coordinate the preparation of record drawings with the Contractor and Architect on a regular basis, both during the construction and post-construction phases, and review the drawings for "as-built" accuracy.
- 2.22 Work with commissioning agent, Architect, and the Contractor to ensure that all new equipment have been installed in accordance with the contract documents, are working properly as stand-alone equipment, and are working properly as part of a complete system.
- 2.23 Prepare and compile a project punch list with the assistance from the City and Architect to be forwarded to the Contractor once the Contractor requests substantial completion and it is determined to be warranted. Consultant shall oversee the completion of the punch list items before the final notice of completion is issued.
- 2.24 Coordinate the logistics related to a groundbreaking and ribbon-cutting ceremony, including working with the Fire department, identifying power sources, etc. Costs for beverages, materials and photographs shall not be the responsibility of the Consultant.
- 2.25 Ensure completion and delivery of all required close-out documents including operation and maintenance (O&M) manuals, record drawings, and warranties. Consultant shall review all these materials for compliance with the contract documents and for completeness and report any deficiencies or discrepancies to Contractor for corrections and resubmittal. Consultant shall work under the direction of the Project Manager to resolve any contract claim issues that may arise (stop work notices, delays, extra work, etc.). As-built drawings shall be scanned by Consultant for archiving by City.

- 2.26 Complete City IMS template spreadsheet including information on value of systems installed including, but not limited to, ADA, conveyor, electrical, exterior envelope, fire life safety, interior, mechanical, plumbing, roofing, site work, structural, and others. Record overall soft costs and unallocated costs of the project.
- 2.27 Consolidate and deliver all project files and documentation to be retained by the City.
- 2.28 Consultant shall host a monthly job walk for City staff to view the construction as it progresses after publication of the monthly report.

Task 3: Budget and Schedule Management

Consultant shall review, manage, and maintain the project schedule and budget to be shared with City staff on a monthly basis. Consultant shall in accordance with the professional standard and quality that prevail among professional construction managers in the San Francisco Peninsula region perform the following services:

- 3.1 Develop and maintain a detailed schedule and perform critical CPM analysis as needed throughout the project. Provide a monthly updated schedule to City staff.
- 3.2 Develop a construction budget format and tracking system. Consultant shall track on a constant basis all project construction and soft-cost expenses, including third-party contracted costs (furniture, fixtures, movers, etc.) and shall reconcile these costs monthly with City staff.

Task 4: Testing and Special Inspections

A testing and inspection agency(s) shall be under contract with and paid for by the Consultant. Consultant shall coordinate with the Contractor in scheduling the testing agency services for materials testing and special inspections needed for the life of the project. The testing includes industry standard testing and inspections as required by applicable building codes. Consultant shall ensure that all required sign-off are reviewed and distributed and comply with the specifications and the latest California Building Codes. Consultant shall coordinate, schedule and provide physical oversight of the geotechnical engineer's work that relates to the construction phase of the project. Geotechnical inspections are provided by the City's Geotechnical Engineer, and are not provided by the Consultant.

Task 5: Photographic Recording

Based upon a build period of eighteen (18) months, Consultant shall provide a photographic record of the following:

- pre-construction site-survey of existing condition
- eighteen (18) maximum exterior progressions
- interior progressions
- six (6) maximum interior mechanical, electrical and plumbing
- pre-concrete slab pour
- exterior elevation, including window-flashing and waterproofing
- three (3) maximum roofing showing the roof at various stages of the project
- and finished condition prior to occupancy.

All documentation shall include consultants with the City identifying project-specific needs, appropriate photographic intervals, schedules, determination of optimal locations based on the site plans, a representative number of digital photographs at such intervals and for such durations and at the specified milestone; linking each photo set to the appropriate location on the site plans and

floor plans; online web hosting of the documentation for the construction period covered by the documentation and for a minimum period of 1-year thereafter; password protected access to the documentation; and digital original copies on a USB drive of the entire documentation upon completion.

Task 6: Allowance for Additional Testing

The construction contract requires the Contractor to reimburse the City for re-testing that results from failed inspections. The City does not, however, have an administrative mechanism to return/rebate re-testing fees to the Consultant. The Consultant shall therefore carry a budget to pay for any additional re-testing that may be required. This allowance shall only be expended if authorized in advance, in writing, by the City's Project Manager.

Task 7: Deconstruction and Construction Materials Management

The Consultant is to oversee Contractor material sorting and verify divergence of materials from landfills. Existing building features are to be disassembled piece by piece in order to salvage materials fit for reuse such as doors, windows, lighting and plumbing fixtures, and lumber. Consultant shall in accordance with the professional standard and quality that prevail among professional construction managers in the San Francisco Peninsula region perform the following services:

- 7.1 Assist City in completing City's [DECONSTRUCTION / DEMOLITION SUBMITTAL CHECKLIST](#). The City has already completed the salvage survey.
- 7.2 Attend pre-demolition meeting with City of Palo Alto Zero Waste group of the Public Works Department, GreenWaste of Palo Alto, Contractor, demolition subcontractor, and Owner. Attend subsequent site visits as needed
- 7.3 Coordinate with City of Palo Alto Utilities and Contractor on utilities disconnect
- 7.4 Monitor storm drain protection measures for Polychlorinated Biphenyls (PCBs) by assessing protection measures weekly and during the rainy season, daily. Notify Contractor to replace if found deficient or not in place.
- 7.5 Verify source separation per Palo Alto Municipal Code ([PAMC 5.24.050](#)) takes place by Contractor with periodic spot checks during demolition phase of project
- 7.6 Obtain copies of debris weight tags, trucking, and haul away tags from the Contractor to document landfill diversion
- 7.7 Obtain copies of certifications of salvaged items
- 7.8 Coordinate site visit as needed with City of Palo Alto Zero Waste team to complete deconstruction requirements

Task 8: Post-Construction Services

City Fire Department staff and some equipment will be relocated to a temporary fire station. Consultant shall oversee the efforts related to moving back to Fire Station No. 4 at 3600 Middlefield Road. Consultant shall in accordance with the professional standard and quality that prevail among professional construction managers in the Peninsula region perform the following services:

- 8.1 Assist City in coordinating move back to the new Fire Station No. 4 with City departments and movers.
- 8.2 Coordinate modification work between City staff and contractor(s) for temporary fire station site. Any design effort shall be by separate contract with City.

- 8.3 Record Drawings and Close-out: Within 60 calendar days after the “Notice of Completion to the Contractor”, Consultant shall:
- Coordinate preparation of record drawings with the contract and review these drawings for “as-built” accuracy
 - Ensure completion and delivery of all Contractor required close-out documentation including O&M manuals, record drawings, warranties, etc.
 - Consolidate all project files and documentation maintained by the Consultant to be retained by the City of Palo Alto Under direction of the City’s Project Manager, work to resolve any contract claim issues (stop notices, bonding, delays, extra work, etc.) that may arise
 - Consultant will set up and coordinate contractor-provided training of City staff as required by the contract documents and as necessary to ensure that the appropriate City personnel are adequately trained and familiar with the new and refurbished equipment
 - Respond to and coordinate with the Contractor or responsible party to repair and/or replace defective work items that are included in the project’s 1-year warranty period which may extend to one year from the Notice of Completion.
- 8.4 Meet with the Fire Department and Public Works staff monthly for three (3) months commencing after the building is fully operational to complete any remaining punch-list items and/or to contact the Contractor for any warranty issues that might arise. After initial three-month period, Consultant shall contact City staff quarterly for a period of nine months to determine whether any new building or systems issues have been identified. Systems deficiencies that cannot be resolved by the Contractor shall be reported to the Commissioning Agent, Architect, and City.
- 8.5 Participate in an off-season testing (i.e., testing the heating system prior to winter) session and work with the Contractor to correct any deficiencies.
- 8.6 Compile final testing documentation for inclusion in the Commissioning Record and in the O&M manuals.
- 8.7 Return to the site at month 10 of the 12-month warranty period and review operating conditions with City facility staff and the Commissioning Agent in order to identify any outstanding issues related to the original and seasonal commissioning. The Commissioning Agent will interview occupants and facility staff to identify problems or concerns that they have with operating the building as originally intended. The Commissioning Agent will make suggestions for improvements and for recording these changes in the O&M manuals. The Commissioning Agent will identify areas that may come under warranty or under the original construction contract. The Consultant shall work with the Contractor to resolve any warranty issues.

**EXHIBIT A-1
PROFESSIONAL SERVICES TASK ORDER**

CONSULTANT shall perform the Services detailed below in accordance with all the terms and conditions of the Agreement referenced in Item 1A below. All exhibits referenced in Item 8 are incorporated into this Task Order by this reference. CONSULTANT shall furnish the necessary facilities, professional, technical and supporting personnel required by this Task Order as described below.

CONTRACT NO.
OR PURCHASE ORDER REQUISITION NO. (AS APPLICABLE)

- 1A. MASTER AGREEMENT NO. (MAY BE SAME AS CONTRACT / P.O. NO. ABOVE):
 - 1B. TASK ORDER NO.:
 - 2. CONSULTANT NAME:
 - 3. PERIOD OF PERFORMANCE: START: _____ COMPLETION: _____
 - 4. TOTAL TASK ORDER PRICE: \$ _____
BALANCE REMAINING IN MASTER AGREEMENT/CONTRACT \$ _____
 - 5. BUDGET CODE _____
COST CENTER _____
COST ELEMENT _____
WBS/CIP _____
PHASE _____
 - 6. CITY PROJECT MANAGER'S NAME & DEPARTMENT: _____
 - 7. DESCRIPTION OF SCOPE OF SERVICES (Attachment A)
MUST INCLUDE:
 - SERVICES AND DELIVERABLES TO BE PROVIDED
 - SCHEDULE OF PERFORMANCE
 - MAXIMUM COMPENSATION AMOUNT AND RATE SCHEDULE (as applicable)
 - REIMBURSABLE EXPENSES, if any (with "not to exceed" amount)
 - 8. ATTACHMENTS: A: Task Order Scope of Services B (if any): _____
-

I hereby authorize the performance of the work described in this Task Order.

I hereby acknowledge receipt and acceptance of this Task Order and warrant that I have authority to sign on behalf of Consultant.

APPROVED:
CITY OF PALO ALTO

APPROVED:
COMPANY NAME: _____

BY: _____
Name _____
Title _____
Date _____

BY: _____
Name _____
Title _____
Date _____

EXHIBIT B
SCHEDULE OF PERFORMANCE

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

Milestones	Completion Number of Days/Weeks (as specified below) from NTP
1. Preconstruction Services	27 weeks
2. Construction Management Services	115 weeks
3. Budget and Schedule Management	115 weeks
4. Testing and Special Inspections	115 weeks
5. Photographic Recording	115 weeks
6. Allowance for Additional Testing	115 weeks
7. Deconstruction and Construction Materials Management	115 weeks
8. Post-Construction Services	156 weeks

Optional Schedule of Performance Provision for On-Call or Additional Services Agreements.
(This provision only applies if checked and only applies to on-call agreements per Section 1 or agreements with Additional Services per Section 4.)

The schedule of performance shall be as provided in the approved Task Order, as detailed in Section 1 (Scope of Services) in the case of on-call Services, or as detailed in Section 4 in the case of Additional Services, provided in all cases that the schedule of performance shall fall within the term as provided in Section 2 (Term) of this Agreement.

EXHIBIT C COMPENSATION

CITY agrees to compensate CONSULTANT for Services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth below.

CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Section 4 of this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), 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.

BUDGET SCHEDULE

TASK	NOT TO EXCEED AMOUNT
Task 1 (Preconstruction Services)	\$128,482.00
Task 2 (Construction Management Services)	\$246,364.00
Task 3 (Budget and Schedule Management)	\$82,110.00
Task 4 (Testing and Special Inspections)	\$62,333.00
Task 5 (Photographic Recording)	\$28,000.00
Task 6 (Allowance for Additional Testing)	\$10,000.00
Task 7 (Deconstruction and Construction Materials Management)	\$9,390.00
Task 7 (Post-Construction Services)	\$26,349.00
Sub-total for Services	\$593,028.00
Reimbursable Expenses (if any)	\$0.00
Total for Services and Reimbursable Expenses	\$593,028.00
Additional Services (if any, per Section 4)	\$59,303.00
Maximum Total Compensation	\$652,331.00

REIMBURSABLE EXPENSES

CONSULTANT'S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed are: **NONE** up to the not-to-exceed amount of: **\$0.00**.

**EXHIBIT C-1
SCHEDULE OF RATES**

CONSULTANT's schedule of rates is as follows:

Role	2023 Rates	2024	2025	2026
Principal	223	223	223	223
Project Director	215	215	215	215
Sr Project Mgr	206	206	206	206
Project Mgr	181	181	181	181
Admin Support	150	150	150	150
Sr Estimator / Sr Cost Mgr	206	206	206	206
Scheduler	206	206	206	206
Estimator	187	187	187	187

EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS 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 HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY	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: CONSULTANT, 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 CONSULTANT 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 CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.

II. THE CONSULTANT MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE TO THE FOLLOWING: PURCHASINGSUPPORT@CITYOFPALOALTO.ORG

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.

EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING EMAIL ADDRESS:
PURCHASINGSUPPORT@CITYOFPALOALTO.ORG

EXHIBIT E

DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

This Exhibit shall apply only to a contract for public works construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONSULTANT without proof that CONSULTANT and its listed subcontractors are registered with the California Department of Industrial Relations (“DIR”) to perform public work, subject to limited exceptions. City requires CONSULTANT and its listed subcontractors, if any, to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. This Exhibit E applies in addition to the provisions of Section 26 (Prevailing Wages and DIR Registration for Public Works Contracts) of the Agreement.

CITY provides notice to CONSULTANT of the requirements of California Labor Code Section 1771.1(a), which reads:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

This Project is subject to compliance monitoring and enforcement by DIR. All contractors must be registered with DIR per Labor Code Section 1725.5 in order to submit a bid. All subcontractors must also be registered with DIR. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with DIR. Additional information regarding public works and prevailing wage requirements is available on the DIR web site (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

CITY gives notice to CONSULTANT and its listed subcontractors that CONSULTANT is required to post all job site notices prescribed by law or regulation.

CONSULTANT shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

CITY requires CONSULTANT and its listed subcontractors to comply with the requirements of Labor Code Section 1776, including but not limited to:

Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, CONSULTANT and its listed subcontractors, in connection with the Project.

The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of CONSULTANT and its listed subcontractors, respectively.

At the request of CITY, acting by its Project Manager, CONSULTANT and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the CITY Project Manager within ten (10) days of receipt of CITY's request.

CITY requests CONSULTANT and its listed subcontractors to submit the certified payroll records to CITY's Project Manager at the end of each week during the Project.

If the certified payroll records are not provided as required within the 10-day period, then CONSULTANT and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and CITY shall withhold the sum total of penalties from the progress payment(s) then due and payable to CONSULTANT.

Inform CITY's Project Manager of the location of CONSULTANT's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to CITY's Project Manager within five (5) business days of any change of location of those payroll records.

Eight (8) hours labor constitutes a legal day's work. CONSULTANT shall forfeit as a penalty to CITY, \$25.00 for each worker employed in the execution of the Agreement by CONSULTANT or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Sections 1810 through 1815 thereof, except that work performed by employees of CONSULTANT or any subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours per week, at not less than one and one-half (1&1/2) times the basic rate of pay, as provided in Section 1815.

CONSULTANT shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700 (Labor Code 1861). CONSULTANT shall sign and file with the CITY a statutorily prescribed statement acknowledging its obligation to secure the payment of workers' compensation to its employees before beginning work (Labor Code 1861). CONSULTANT shall post job site notices per regulation (Labor Code 1771.4(a)(2)).

CONSULTANT shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

EXHIBIT F
CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204 PUBLIC WORKS
PROJECTS

The provisions of this Exhibit are provided in compliance with Public Contract Code Section 9204; they provide the exclusive procedures for any claims pursuant to Public Contract Code Section 9204 related to the Services performed under this Agreement.

1. Claim Definition. “Claim” means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.

(B) Payment by the City of money or damages arising from the Services performed by, or on behalf of, the Contractor pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.

(C) Payment of an amount that is disputed by the City.

2. Claim Process.

(A) Timing. Any Claim must be submitted to City in compliance with the requirements of this Exhibit no later than fourteen (14) days following the event or occurrence giving rise to the Claim. This time requirement is mandatory; failure to submit a Claim within fourteen (14) days will result in its being deemed waived.

(B) Submission. The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Exhibit, and must include reasonable documentation substantiating the Claim. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(C) Review. Upon receipt of a Claim in compliance with this Exhibit, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days from receipt, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the City and Contractor may, by mutual agreement, extend the time period provided in this paragraph 2.

(D) If City Council Approval Required. If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(E) Payment. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, paragraph 3, below, shall apply.

3. Disputed Claims

(A) Meet and Confer. If the Contractor disputes the City's written response, or if the City fails to respond to a Claim submitted pursuant to this Exhibit within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement.

(B) Mediation. Any remaining disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing by the Contractor. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to any other remedies authorized by the Agreement and laws.

(i) For purposes of this paragraph 3.B, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(ii) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation, if any, under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. City's Failure to Respond. Failure by the City to respond to a Claim from the Contractor within the time periods described in this Exhibit or to otherwise meet the time requirements of this Exhibit shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the City's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Exhibit, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

5. Interest. Amounts not paid in a timely manner as required by this section shall bear interest at seven (7) percent per annum.

6. **Approved Subcontractor Claims.** If an approved subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the City because privity of contract does not exist, the Contractor may present to the City a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

7. **Waiver of Provisions.** A waiver of the rights granted by Public Contract Code Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Public Contract Code Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.