

# **CITY OF EAST PALO ALTO**

## **Request for Proposals**

### **Master Consultant Agreement – Planning On-Call Staff Augmentation RFP**



Release Date: February 21, 2025

Deadline for Submitting Questions: March 7, 2025

Deadline for RFP Responses: March 14, 2025

## I. Purpose

The City of East Palo Alto's Department of Community and Economic Development (CEDD) has been experiencing a significant increase in development review activity over the past few years, exceeding the current CEDD capacity. To address this issue, on April 2, 2019, the City Council took the following action:

1. Authorized staff to enter into contract with two environmental services consultants to assist in processing up to seven development projects in total, and
2. Authorized staff to procure additional consultant services from the City's approved list of qualified consultants, including the recipients of this Request for Qualifications.

In July 2019, the City entered into agreements with qualified consultants for a master consultant agreement to provide professional consultant services in various categories. Following a Council approved extension in 2021 and because the term of the extension is now approaching the expiration, the City is now seeking to procure new contracts for professional consultant services for development review. Individuals and firms responding to this RFP (hereinafter "Respondents") must submit a proposal that thoroughly describes their experience, capacity, and ability to perform the services being sought by the City. Respondents may submit their qualifications to be considered for one or more of the following areas, which will be rated and weighted separately:

Through this RFP process, the City intends to enter into multiple agreements for the various services being sought. As needed, the City may enter into contract with multiple individuals or firms who provide the same services. Consultant services will be on an as-needed, on-call basis. Due to the as-needed nature of the work, no work is guaranteed on a contract, even if awarded. The term of the contracts will be 3-4 years and the scope of work will vary and will be requested on a task order basis as the need arises.

## II. Background

On July 3, 2019, the City issued a similar RFP, specifically to identify firms that will provide the City with assistance reviewing plans during the entitlement phase of the project submittal. The current RFP seeks to enter into a new agreement with selected firms that may continue to augment City staff capacity throughout implementation of a project

## III. Scope of Work for Various Service Categories

The City is seeking qualified professional firms in various service categories, experienced in the evaluation and documentation of development projects for compliance with all local ordinances and policies, State and Federal legislation and policies as applicable.

The scope of work, as described in Attachment 1, shall include the service categories listed below, for development application review, staff augmentation, and other Planning Division duties as assigned.

Respondents shall provide the City with professional services and dedicated personnel to perform the following services as needed: development application review, special projects, and other related tasks.

SERVICE CATEGORY	SPECIFIC TASKS
<b>Designated Contract Planner</b>	Seeking firms, with a variety of skills, to provide senior or principal-level project management assistance on major development projects and activities. Selected firm(s) will receive general direction from the City’s Planning Manager to provide essential services as a Project Planner for a specific project(s).
<b>Environmental Review Analysis</b>	Environmental consultant to prepare CEQA and NEPA documents including but not limited to: drafting an Initial Study, a Notice of Preparation (NOP), a Focused EIR, a Mitigation Monitoring and Reporting Program, all other required noticing, and supporting technical studies, as needed.

<p><b>Housing Needs Assessment</b></p>	<p>Consultant to review planning applications for the purposes of determining a project’s impacts on the need for mixed income housing. Consultant would compare projected housing need to housing supply to estimate the size of expected housing deficits resulting from a project.</p>
<p><b>Fiscal Impact Analysis</b></p>	<p>Economic/fiscal consultant for comprehensive analysis of a proposed project that takes into account increased expenditures and revenues in order to evaluate whether the proposed new development could generate sufficient net positive fiscal impact for the City’s General Fund. Respondents shall also provide information on their experience with calculating public benefits/value capture for larger development projects seeking City concessions/land-use changes. Further analysis could include: jobs impact/employment generation analysis, Opportunity Zone analysis, and other services required by the City to process development applications within Specific Plans including but not limited to: the Westside Area Plan, <a href="#">Ravenswood/4 Corners Transit Oriented Development Specific Plan (Adopted 2024)</a>.</p>
<p><b>Design Review</b></p>	<p>Design professional for architectural design and site plan review of development proposals.</p>
<p><b>Engineering Review Analysis</b></p>	<p>Engineering consultant for plan review of civil engineering and infrastructure improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice. Review storm drain and hydraulic calculations, and compliance with NPDES requirements. Provide estimated water demand calculations for proposed developments and provide general engineering review and calculations of various impact fees</p>
<p><b>Transportation Consultant</b></p>	<p>Traffic engineering and/or transportation planning consultant for review of development proposals for consistency with City and regional transportation policies and programs, traffic impact study guidelines, and transportation best practices.</p>

<b>General Consultant Services</b>	Comprehensive planning consulting services will include policy development, analysis and implementation to ensure that land use, transportation, housing, parks, sustainability and open space and public service decisions are implemented in accordance with the vision of the General Plan and with direction of the City Council, as well as other related tasks.
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### **Ability to Execute on Representative Projects**

Respondents to this RFP are not required to submit specific proposals for each of the projects referenced below. However, the City will evaluate Respondent proposals based on experience that is relevant to current projects that are representative of future City needs.

#### Current and Representative Projects

The City is seeking consultants who have contributed significantly to complex, politically sensitive development projects. Respondents should articulate their experience with these types of projects, as well as managing the requirements and activities associated with these projects, either in an origination or peer review capacity. The City acknowledges that Respondents may need to partner with other entities to meet the City’s needs with regard to these items.

- 1933 Pulgas Avenue– Proposal to construct 58 townhome style residential condominium units on a 2.12 square-foot site:
  - SB 330 preliminary review.
  - Design Review
  - Subdivision
  - CEQA
  - State Density Bonus
  - Affordable housing plan, including the amount, levels of affordability and location of each housing unit.
  - A water supply assessment with guarantees of long-term water availability and new sources of water.
  
- 1600 and 1620 Bay Road- Proposal to demolish an old postal office building and construct a 136 multifamily SRO unit building and a detached building for a leasing office and common amenities.

- Design Review
  - Subdivision
  - CEQA
  - Compliance with the Ravenswood/4 Corners Specific Plan
- Jones Mortuary – Request to build a 200,000 square foot 8-14 story office project at the former Jones Mortuary site – 660 Donohoe. Project would require:
    - General Plan Amendment
    - Zone Change
    - Design Review permit
  - Other Projects – In addition to the above larger projects, the City is also seeking assistance with processing smaller residential and non-residential applications. Respondents shall describe experience, citing specific examples (location, size, partnering entities) with projects that vary in size and complexity, when responding to the key items to address below.

### **Key Items to Address in Response**

The City desires a contract with a professional consultant individual or firm with the necessary expertise to provide the services described in at least one Service Category in this RFP. Key elements of the response should include:

#### **1) Detailed Cover Letter**

Respondents shall submit a detailed cover letter that describes the Service Category(s) for which the individual or firm is submitting a proposal(s). The cover letter shall make a declarative statement that the Respondent has reviewed all aspects of the City’s Contractor and Professional Services Agreement, including the City’s insurance requirements, and is in agreement with these documents. If the Respondent has concerns about the City’s standard forms, those concerns shall be identified in the cover letter.

#### **2) Experience and Expertise**

Respondent shall submit a narrative describing their experience and expertise in at least one specific Service Category, providing the professional services for which the firm wants to be considered. Specific examples of projects, as described in the Current and Representative Projects section above, should also

be applicable to the specific Service Category for which the individual or firm is applying.

Further, Respondent shall provide resumes for key personnel who would be assigned to work on the City's projects. To be considered in more than one Service Category, the Respondent should submit a separate narrative for each, clearly delineated. Respondent shall provide three references for each Service Category for which the individual/firm is applying.

**3) Cost Structure**

Respondent shall submit a detailed schedule of hourly rates for all staff positions that would be assigned to the proposed consulting services. Any additional proposed costs should also be described in this section. To be considered in more than one Service Category, the Respondent should submit a separate cost structure for each, clearly delineated.

**4) Evaluation Criteria**

Proposals will be evaluated solely based on the Respondent's ability and capacity to perform the work outlined in this RFP, in two scored areas:

- a) Experience – 60 points
  - i. Respondent shall demonstrate experience providing the services outlined in this RFP for public agencies, within a specific Service Category, with successful results.
- b) Capacity to Perform – 40 points
  - i. Respondent shall demonstrate the capacity to provide the services described in this RFP and to respond to the public, the City, and other stakeholders in a timely manner. Defined expectations for timeliness of service delivery and stakeholder communication should be outlined with the submittal.

Respondents applying for more than one Service Category will be rated/ranked separately for each category.

**IV. Proposal Requirements**

All services shall be provided in accordance with the City's Standard Consulting Services Agreement (see Attachment 3). Prospective consultants shall be familiar with, and willing to execute, all terms contained in the Agreement before

submitting a proposal. Any potential exceptions to the scope of services or terms of the Agreement should be clearly identified in the response to this RFP.

## **Insurance Requirements**

All proposals shall confirm in writing the ability to fully comply with the below insurance requirements of the City, or specify items for further discussion and possible modification. Prior to entering into contract with the City, Respondent will provide evidence of:

### **1) Types of Insurance**

- a. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
- b. Automobile Liability Insurance: Contractor shall take out and maintain during the life of this Agreement such Automobile Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) for each occurrence combined single limit or not less than One Million Dollars (\$1,000,000) for any one (1) person, and One



Million Dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage. Contractor shall provide the City with certificates of insurance and 4 copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.

- c. Worker's Compensation and Employer's Liability Insurance:  
Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement".
  
- d. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

## 2) **Additional Requirements**

- a. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-

contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.

- b. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors and volunteers shall be named as additional insured on any such policies of comprehensive general and automobile liability insurance.
- c. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- d. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause). All certificates and endorsements are to be received and approved by the City Attorney's Office at least five days before Contractor commences work to be performed pursuant to the agreement.
- e. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 2415 University Avenue, East Palo Alto, CA 94303, of any pending change or cancellation of the policy.
- f. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.

- g. **Breach:** In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

## V. Submittal Requirements

### **City Council Consideration**

City staff anticipates seeking City Council approval for contractual agreements with individuals and firms to provide the consulting services described in this RFP in May 2025. Respondents must submit three (3) hard copies of each proposal submitted as well as an electronic version of each proposal on a flash drive or via email. If Respondents are submitting proposals for multiple services, they can be combined in one hard copy as long as each proposal is clearly identified.

### Submission Deadline

Respondents must submit one (1) electronic copy of the proposal. This may be submitted by email to the Community and Economic Development Department through the following email inbox: [Planning@Cityofepa.org](mailto:Planning@Cityofepa.org) and also included on a flash drive, if not emailed, with the hard copy submissions.

Respondents are asked to mail or drop off three (3) hard copies of the proposal, by 12:00 PM on March 21, 2025 to the following address:

ATTN: CEDD – Planning Division RFP  
City of East Palo Alto  
1960 Tate Street,  
East Palo Alto, CA 94303

**VI. RFP Questions & Answers**

Questions regarding this RFP may be submitted by e-mail to. The deadline to submit questions for this RFP is March 7, 2025 before 5:00 PM. The City will e-mail the Question & Answer response via Addendum to the RFQ on March 14, 2025.

**VII. Selection Criteria & Process**

City staff anticipates seeking City Council approval for contractual agreements with individuals and firms to provide the consulting services described in this RFP on May 6, 2025.

**VIII. Selection Schedule**

Event	Date
Release of RFP	February 21, 2025
Non-mandatory pre-submittal meeting	March 5, 2025
Q&A Period (Questions Due)	February 21 – March 7
Proposals Due	March 21, 2025
Proposal evaluation completed by City	March 28, 2025
Interviews	April 1 – 10, 2025
Notice of results (estimated)	April 14, 2025
City Council consideration of consultant agreements	May 6, 2025

**IX. General Terms and Conditions**

The City reserves the right to reject all proposals and will not be responsible for any costs incurred by responding firms for preparing and submitting proposals and other associated expenses. The City retains the right to reject all proposals or withdraw the RFP at any time. All proposals become the property of the City once submitted and will not be returned.

Questions regarding the RFP should be directed to, Management Analyst at [Planning@cityofepa.org](mailto:Planning@cityofepa.org). In the event the City deems it necessary to clarify or amend the RFP, these changes will be made in the form of a written addendum

posted on the City’s website at: <https://www.cityofepa.org/rfps> and will be issued by the City to all firms receiving or requesting information on this RFP.

A professional services agreement will be prepared in the form shown in Attachment 3 with the attached scope of work, budget, insurance requirements (Exhibit C). As of the submission deadline, if applicable, the consultant shall be registered with the California Secretary of State and be in good standing.

Prior to the City executing the professional services agreement, the consultant firm shall submit the required insurance certificates verifying compliance with Attachment 3 and a copy of the firm’s current City of East Palo Alto business license. Information on obtaining a business license is available at <https://eastpalosalto.hdlgov.com/>.

There shall be no right to appeal any decision by the City concerning this RFP, including without limitation, the City’s selection of the winning Proposer. Any such decision or determination is a final decision by the City of East Palo Alto.

Any information required by this RFP shall not be regarded as confidential and may be subject to public inspection or disclosure in accordance with federal, state, or local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Accordingly, Proposers are prohibited from including information that it regards as confidential or otherwise proprietary, including without limitation, copyright, trade secret or other proprietary protection.

All proposals must be received by the city no later than March 21, 2025. Submittals shall consist of three hard copies and an electronic copy of the proposal on a thumb drive (or emailed) delivered to:

ATTN: CEDD – Planning Division RFP  
City of East Palo Alto  
1960 Tate Street  
East Palo Alto, CA 94303

## **X. Attachments**

- Attachment 1 – Requested Scope(s) of Professional Services

East Palo Alto: Planning Division On-Call  
Contract Request for Qualifications

- Attachment 2 – Key City Websites/References
- Attachment 3 – Contractor and Professional Services Agreement with:
  - Exhibit A – Scope of Work
  - Exhibit B – Compensation
  - Exhibit C – Insurance Requirements
  - Exhibit D – City of East Palo Alto’s Policy Against Discrimination, Harassment Retaliation

**Attachment 1**  
**RFP for Consulting Services**  
**Scope of Services for Various Service Categories**

**Environmental Review**

At the request of the City, and as directed by the City, Consultant shall provide comprehensive environmental analysis services in accordance with the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA). Services shall include, but are not limited to, the preparation of initial study checklists, negative declarations, mitigated negative declarations, environmental impact reports, and expanded initial studies as well as their required noticing documents. Additional services shall include, but are not limited to, the following activities:

1. Meet with City staff for project status and updates;
2. Provide environmental review services and technical expertise;
3. Prepare CEQA and/or NEPA studies and documents, (EIR, EIS, MND, ND and CE), in accordance with Local, State, and Federal Statutes;
4. Provide accurate and defensible environmental determinations;
5. Review and/or prepare (and/or use sub-consultant, as needed) technical documents including but not limited to the following:
  - a. Cultural and Historical Evaluations;
  - b. Biological studies;
  - c. Noise Studies;
  - d. Air Quality Studies;
  - e. Transportation Studies;
  - f. Water Quality/Supply Studies;
  - g. Stormwater/Wastewater Control and management;
  - h. Hazards and Hazardous Materials Studies; and,
  - i. Green House Gas emissions.
6. Prepare Environmental Mitigation Studies/Reports;
7. Coordinate with City staff, sub-consultants, and outside agencies;
8. Coordinate and distribute environmental documents and notices;
9. Prepare Mitigation Monitoring and Reporting Program (MMRP);
10. Attend and give presentations at public meetings, when applicable and upon request;
11. Respond to public inquiries as directed by City; and,
12. Perform related duties and responsibilities as required.

### **Fiscal Impact Analysis**

At the request of the City, and as directed by the City, Consultant shall provide the services that will include, but will not be limited to analyzing City General Fund revenue and service cost impacts of specific projects; developing sustainable financing structures for delivering municipal services; establishing public benefit programs; evaluating warranted public benefit contributions; identifying incentives that will create value for public benefits; and evaluating the benefits created by opportunity zones.

Contractor will be expected to provide “on-demand” services in response to City staff requests in the area of Fiscal Impact Consulting. Services shall include, but are not limited to, the following activities:

1. General Fund Municipal Revenue and Service Cost Analysis - Evaluate the on-going municipal revenues to be generated by a future development project and the cost of providing municipal services to the development. The purpose of the analysis will be to determine if the proposed project will generate a net fiscal benefit or deficit to the City of East Palo Alto;
2. Municipal Services Financing Plans - In the event that the fiscal impact analysis of a proposed project indicates that the project is likely to generate an on-going fiscal deficit to the City of East Palo Alto, the consultant will assist in developing a fiscally sustainable plan for delivering on-going municipal services. The plan may involve shifting funding obligations to property owners, phasing requirements, and/or developer exactions. The plan will be implemented through a Development Agreement;
3. Development Agreements – the consultant will assist the City in negotiating the business terms of Development Agreements to ensure that proposed projects will generate fiscal and economic benefits to the City and are financially feasible. Business terms may include incentive programs, public benefit contributions, land use requirements, etc;
4. Calculation of Warranted Public Benefits Created by Incentives and Zoning Changes – the consultant will evaluate the value that would be created through the approval of requested zoning changes and incentives. Examples include: value created by permitting additional building square footage; value created by reducing parking or setback requirements; value created by permitting office and residential development. The consultant will calculate the magnitude of a public benefit contribution that would be supported by the additional value created by the incentives and/or zoning changes;
5. Economic Impact Analyses, Including Job Creation, Income Generation, and Economic Activity – The consultant will evaluate the magnitude of new



direct, indirect, and induced employment, employee income, and business output that a proposed new development or business would generate to the City;

6. Value Created by Opportunity Zone - Opportunity zones increase the return to investors in businesses and real estate projects that are located within the boundaries of opportunity zones. The consultant will estimate the marginal value that is created by the opportunity zone designation on specific projects, which may help projects exceed thresholds of feasibility;
7. Preparing Subsidy Reports Pursuant to AB 562 – The consultant will prepare reports in support of the City’s provision of financial subsidies to projects or businesses pursuant to the requirements of AB 562; and,
8. Other related services as may be requested by the City.

## **Transportation**

At the request of the City, and as directed by the City, Consultant shall provide comprehensive services which include as-needed staff augmentation and transportation and traffic review related development activity in the City. Services shall include, but are not limited to, the following activities:

1. Review proposed development projects' traffic studies by providing a thorough review of the traffic operations analysis, including Level-of-service (LOS) and Vehicle Miles Traveled (VMT) analysis, queuing analysis, and any proposed mitigations;
2. Review plans for consistency and compliance with local and regional guidelines, goals, and policies;
3. Review any available traffic model developed for any proposed developments;
4. Assist with the scope of work for any future traffic impact studies proposed within the City;
5. Review building and/or encroachment permits for traffic design to confirm consistency with the City's transportation design standards;
6. Assist with the preparation of conditions of approval for proposed development projects;
7. Calculate and provide traffic related fees to developer, and review impact fees and credits;
8. Provide a letter report with all conclusions regarding the traffic operations analysis study report's adequacy;
9. Assist with review of and traffic control plans and construction detour plans;
10. Provide recommendations for traffic calming measures, signal timing assistance, engineering and traffic surveys, and traffic data collection;
11. Assist in preparation and review of a TDM Plan as needed; and,
12. Perform related duties and responsibilities as required.

## **Engineering**

At the request of the City, and as directed by the City, Consultant shall provide comprehensive services which include as-needed staff augmentation and development review associated with land development activity in the City. Services shall include, but are not limited to, the following activities:

1. Review of new or proposed amendments to specific plans, tentative maps, planned development zoning, and other development entitlement applications.
2. Assist City with development of conditions of approval, development agreements, and other requirements associated with development applications;
3. Assist City in negotiations with developers regarding terms of agreements or conditions;
4. Review and recommend approval of improvement plans, subdivision maps, and other document;
5. Review documents for conformance to approved tentative map, specific plans, and conditions of approval;
6. Confirm that plans conform to City standard design criteria, including draft or proposed standards as needed, and infrastructure or other master plans;
7. Coordinate plan review with other City departments;
8. Confirm that developer has obtained necessary permits or approvals from other public and regulatory agencies as needed including compliance with storm water treatment and retention;
9. Review and recommend approval of engineering bond estimates and subdivision guarantees;
10. Assist staff in preparing subdivision improvement agreements, other agreements, and staff reports;
11. Work with and manage City's consultant reviewing hydrology to determine proper mitigations and needs to avoid increasing flooding risks to existing residents;
12. Work with and manage City's consultant reviewing hydrology and developer to submit required Conditional Letters of Map Revision (CLOMARs), and subsequent Letters of Map Revision (LOMARs) as needed;
13. Calculate and provide fees to developer, and review impact fees and credits;
14. Provide analysis of water use and impacts to the water system;
15. Draft engineering reports and resolutions for Council approval as needed
16. Meet with developers, consultants, or other agencies on behalf of staff; and,
17. Perform related duties and responsibilities as required.

### **General Consulting Services**

At the request of the City, and as directed by the City, Consultant shall provide comprehensive planning consulting services for the City of East Palo Alto. The purpose of this work will be to assist City staff with policy development, analysis and implementation to ensure that land use, transportation, housing, parks, sustainability and open space and public service decisions are implemented in accordance with the vision of the General Plan and with direction of the City Council.

Consultant will work on an on-call basis and will implement tasks including, but not limited to, the following:

1. Modifying existing, or creating new, policies related to land use, transportation, climate change, sustainability and other growth, development and conservation-related topics;
2. Participating in major development projects to ensure consistency with the City's vision and goals, including the General Plan and zoning code;
3. Conducting policy analysis of existing or proposed City policies;
4. Creating objective development standards to ensure consistency with State law;
5. Modifying the existing General Plan, zoning code or other City policies as a result of changes in State law and changes in City Council direction. This includes modifying existing General Plan elements or creating new elements;
6. Creating policies, plans and programs related to health, equity, sustainability and climate change;
7. Organizing, facilitating or participating in public workshops, public meetings, meetings with advocacy organizations, City Council meetings and other boards and commissions;
8. Assisting the City with tasks related to regional coordination such as updating growth projections for the One Bay Area plan;
9. Updating and Enhancing the City's GIS program and database;
10. Writing grant applications to pursue funding for planning and infrastructure projects; and,
11. Perform related duties and responsibilities, as required.

**Design Review**

At the request of the City, and as directed by the City, Consultant shall provide ongoing urban design and architectural design review support for current development proposals in the City of East Palo Alto. The purpose of this work will be to ensure that the development proposals are consistent with the city’s vision as defined in the General Plan and zoning code. Services shall include, but are not limited to, the following activities:

1. Review project information provided by the City of East Palo Alto;
2. Review the City’s initial analysis on the project;
3. Provide detailed feedback and written comments on the proposal from an urban design and architecture perspective. This feedback will include elements such as land use mix, circulation, massing, height, scale, relationships with the street, landscape elements, etc.;
4. Brief review of and suggestions for the architectural design elements will also be included;
5. Provide an assessment of whether the project is in conformance with zoning and the General Plan;
6. Response to questions from the City staff; and,
7. Perform related duties and responsibilities as required.

**Designated Contract Planning**

At the request of the City, and as directed by the City, Consultant shall provide senior or principal-level project management assistance on major development projects and activities. Services shall include, but are not limited to, the following activities:

1. Application intake and reporting;
2. Assistance with the public and front counter;
3. Consultation with other City departments as needed;
4. Preliminary project and application review;
5. Formal application review and evaluation for completeness;
6. Analysis of zoning, General Plan, Specific Plans, and Area Plans;
7. Site visits and applicant meetings;
8. Preparation of staff reports for review by advisory bodies, Planning Commission, and City Council as required;
9. Engagement and management of technical consultants for specific tasks or reports ;
10. Presentations and/or assistance to City staff with project presentations to the Planning Commission, City Council, or other City hearing bodies as needed;
11. Conduct of scoping, outreach, or public information meetings with City staff; and,
12. Perform related duties and responsibilities as required.

**Housing Needs Assessment**

Consultant to review planning applications for the purposes of determining a project's impacts on the need for mixed income housing. Consultant would compare projected housing need to housing supply to estimate the size of expected housing deficits resulting from a project.

**Attachment 2**  
**Key City Websites/References**

1. Planning Division Website: <https://www.cityofepa.org/planning>
2. City of East Palo Alto Municipal Code Title 18:  
[https://library.municode.com/ca/east\\_palo\\_alto/codes/code\\_of\\_ordinances?nodeId=EAPAALDECO2018EDCUORNO02-2022ADMA32022\\_TIT18DECO](https://library.municode.com/ca/east_palo_alto/codes/code_of_ordinances?nodeId=EAPAALDECO2018EDCUORNO02-2022ADMA32022_TIT18DECO)
3. Vista 2035 General Plan: <https://www.cityofepa.org/planning/page/vista-2035-general-plan>



**Attachment 3**  
**Contractor and Professional Services Agreement**

This Contractor and Professional Services Agreement ("Agreement") is made by and between the City of East Palo Alto, a municipal corporation ("City"), as authorized by the East Palo Alto City Council via Resolution No. \_\_\_\_\_, and \_\_\_\_\_, hereinafter referred to as "Contractor", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
- 2. Payment.** City shall pay Contractor for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement.
- 3. Term.** The term of this Agreement shall commence on \_\_\_\_\_ and shall continue in full force and effect until \_\_\_\_\_. Upon mutual consent if funds have not been fully expended, the City may extend the term of the agreement for up to an additional six months to \_\_\_\_\_.
- 4. Facilities and Equipment.** Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 5. Indemnification.** Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, for the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City. The provisions of this section shall survive the expiration or termination of this Agreement and are not limited by any provisions relating to insurance in this Agreement.
- 6. Insurance Requirements.** Contractor agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for

Contractor.” Failure to maintain required insurance at all times shall constitute a default and material breach

**7. Accident Reports.** Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the City any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

**8. Conflict of Interest.** Contractor warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Contractor’s family, business, real property or financial interests and the services to be provided under this Agreement. Contractor shall comply with the City of East Palo Alto Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Contractor’s family, business, real property, or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Contractor shall disclose such conflict in writing to City.

**9. Independent Contractor.** Contractor is an independent contractor. Neither Contractor nor any of Contractor’s officers, employees, agents, or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Contractor only insofar as the results of Contractor’s services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes services pursuant to this Agreement.

**10. Licenses, Permits, Etc.** Contractor represents and warrants to City that all Contractor services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Contractor has all the permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession.

**11. Business License.** Contractor, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Contractor until such business license(s) has been obtained.

**12. Standard of Performance.** Contractor shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Contractor's profession currently practicing in California.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred or, beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Contractor is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor.

Contractor's responsibilities under this section shall not be delegated. Contractor shall be responsible to City for acts, errors, or omissions of Contractor's subcontractors.

**13. Force Majeure.** Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause by circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts. In the event that the Contractor is unable to meet the

completion date or schedule of services, Contractor shall inform the City Representative of the additional time required to perform the work and the City Representative may adjust the schedule.

**14. Time is of the Essence.** Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

**15. Personnel.** Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City.

The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

**16. Prevailing Wages for Public Works Projects.** For public works projects, Contractor shall comply with all provisions of California laws dealing with prevailing wages, apprentices, and hours of work. Contractor shall also comply with provisions of Labor Code section 1720 as applicable. Contractor shall maintain certified payroll records evidencing such payment of prevailing wages as required by law.

**17. Contractor Not Agent.** Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Contractor shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

**18. Termination or Abandonment by City.** The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Contractor. Upon

receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Contractor for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Contractor for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

**19. Products of Consulting Services.** The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations, and other work products, whether complete or incomplete, of Contractor resulting from services rendered pursuant to this Agreement, shall become the property of City. Contractor agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**20. Cooperation by City.** City shall, to the extent reasonable and practicable, assist and cooperate with Contractor in the performance of Contractor's services hereunder.

**21. Assignment and Subcontracting.** Contractor shall not subcontract, assign, or transfer voluntarily or involuntarily any of its rights, duties, or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty, or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Contractor shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Contractor. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Contractor to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Contractor's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

**22. Successors and Assigns.** All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

**23. Non-Discrimination/Fair Employment Practices.** Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to non-discrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition, or physical handicap. Contractor agrees to abide by the City's Policy Against Discrimination, Harassment and Retaliation as set out in attached Exhibit D.

**24. Official Notices.** All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City:

Melvin E.Gaines  
City Manager  
City Manager's Office  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto, CA 94303-1148

If to Contractor:

\_\_\_\_\_

Any party may change its address to receive notices by giving written notice of such change to the other party in accordance with this section. Routine administrative

communications shall be made pursuant to section 1 of Exhibit A.

**25. Integration Clause.** This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

**26. Severability Clause.** Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

**27. Law Governing.** This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of San Mateo County in the State of California or in the United States District Court, Northern District of California, San Francisco/Oakland Division, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**28. Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right hereunder.

**29. Ambiguity.** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

**30. Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**31. Compliance with Laws.** Contractor will comply with all statutes, regulations, and ordinances in the performance of all services under this Agreement.

**32. Confidentiality.** Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this Agreement as confidential and shall not at any time, either directly or indirectly, divulge, disclose, or

communicate in any manner any City records on information to any third party, other than its own employees, agents or subcontractors who have a need for the City records or information for the performance of services under this Agreement.

A violation by Contractor of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Contractor agrees and acknowledges that this confidentiality provision does not limit the City's disclosure as required by law, pursuant to a subpoena, the California Public Records Act, or Order of the Court.

**33. News and Information Release.** Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

**34. Counterparts.** The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

**35. Authority.** The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor.

**36. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

- Exhibit A, entitled "Scope of Work," including any attachments.
- Exhibit B, entitled "Compensation"
- Exhibit C, entitled "Insurance Requirements," including any attachments.
- Exhibit D, entitled "Policy Against Discrimination, Harassment and Retaliation"



East Palo Alto: Planning Division On-Call  
Contract Request for Qualifications

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

Company: \_\_\_\_\_

CITY OF EAST PALO ALTO,  
a municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Melvin E. Gaines  
City Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

James Colin  
City Clerk

DATE: \_\_\_\_\_

\_\_\_\_\_  
East Palo Alto Business License No.

APPROVED AS TO FORM:

\_\_\_\_\_  
John D. Lê  
City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**

*Intentionally left blank.*  
*This page will be filled upon execution of the contract.*

**EXHIBIT B  
COMPENSATION**

**1. Contractor’s Compensation.**

A. City agrees to pay \_\_\_\_\_ (“Contractor”), at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total amount not to exceed \_\_\_\_\_.

Contractor shall notify City in writing no later than thirty (30) days prior to the estimated date when Contractor will have billed City the maximum payment amount permitted under this Agreement, and Contractor shall provide City with an estimate of the additional compensation required to complete the project.

**2. Appropriate Billable Rates for Services and Additional Services.**

Contractor’s billable rates shall be based on each participant enrolled in the program and shall be as set forth in Attachment 1 of Exhibit B.

**3. Contractor’s Reimbursable Expenses**

Reimbursable Expenses shall be limited to actual reasonable expenditures of Contractor for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

**4. Payments to Contractor.**

A. Payments to Contractor shall be made within a reasonable time after receipt of Contractor’s invoice, said payments to be made in proportion to services performed. Contractor shall submit invoices for payment on a quarterly basis along with a quarterly performance report as set forth in Exhibit A and confirmation of enrollment or completion of program by participants. Contractor shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Contractor shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number

4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice
7. Total Billed to Date

C. Billings that do not conform to the format outlined above shall be returned to Contractor for correction. City shall not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

**5. Accounting Records of Contractor.**

Contractor shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Contractor's direct salary costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Contractor shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty-four (24) hours notice.

The obligations of Contractor under this section shall survive this Agreement.

**6. Taxes.**

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request. Contractor hereby agrees to indemnify and defend City for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by City arising out of Contractor's breach of this section pursuant to the Indemnification provisions of this Agreement.

**7. Taxpayer Identification Number.** Contractor shall provide City with an IRS Form W-9, Request for Taxpayer Identification Number and Certification, containing an original signature and any other State or local tax identification number requested by City.

## EXHIBIT C

### INSURANCE REQUIREMENTS

#### I. TYPES OF INSURANCE

- A. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence.
  
- B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
  
- C. Worker's Compensation and Employer's Liability Insurance: Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement".

Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described here

## II. ADDITIONAL REQUIREMENTS

- A. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.
- B. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors, and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.
- C. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause).
- E. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 2415 University Avenue, East Palo Alto, CA 94303, of any pending change or cancellation of the policy.
- F. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.
- G. Breach: In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

**EXHIBIT D**  
**CITY OF EAST PALO ALTO'S POLICY AGAINST**  
**DISCRIMINATION, HARASSMENT AND RETALIATION**

EFFECTIVE DATE: 12/21/2004

REVISED DATE: 1/12/07

ADOPTED BY CITY COUNCIL: 12/21/2004

**I. PURPOSES**

The purposes of this policy are to emphasize the City's commitment to keeping its workplace free of harassment, discrimination, and retaliation, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted on City bulletin boards in all City facilities.

**II. POLICY**

All of the following are prohibited by this Policy:

- Discrimination or harassment in any aspect of City employment based on any legally protected characteristic or status, including sex, gender, sexual orientation, race, color, national origin, language, ancestry, religion, age, marital status, domestic partner, physical disability, mental disability, or medical condition.
- Retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment or discrimination.
- Aiding, abetting, inciting, compelling, or coercing or any such discrimination, harassment, or retaliation, or attempting to do so.

The City will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrence. Any City employee, Council member, member of any advisory body, including any Commissioner, Committee member, or Board member found having engaged in any such misconduct will be subject to disciplinary action up to and including termination or censure or removal and will be deemed to have acted outside the course and scope of his or her employment.

This policy applies to all City employees, volunteers, interns, vendors, and contractors as well as to all applicants for City positions

The policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable State or Federal law or regulation, or increase the legal liability of the City.

### **III. DESCRIPTION AND EXAMPLES OF PROHIBITED HARASSMENT**

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- An individual's submission to such conduct is made explicitly or implicitly, a term or condition of that individual's employment; or,
- An individual's submission to or rejection of such conducts is used as the basis for an employment decision affecting that individual; or,
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility towards the victim's gender, or towards the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may either be the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it if he or she witnesses it.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, threatening, or intimidating comments, epithets, slurs, or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.
- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.



- Physical harassment may consist of assault, battery, or unwelcome, unnecessary, and offensive touching (kissing, hugging, patting, rubbing, pinching, brushing against), stating, leering, gesturing, whistling, or making noises, impeding, or blocking movement, or physical interfering with normal work or movement. In addition to prohibiting harassment based on sex or gender, this policy also prohibits harassment based on sexual orientation, or upon any other legal protected characteristic or status, such as race, religion, creed, color, national origin, language, ancestry, physical disability, mental disability, medical condition, marital status, domestic partner, or age.

Harassment on the basis of such factors is subject to the principles applicable to sexual harassment, as stated above.

#### **IV. REPORTING DISCRIMINATION, HARASSMENT OR RETALIATION**

Any City employee, volunteer, intern, vendor, contractor, or applicant who becomes aware of any discrimination, harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, or higher ranking supervisor, or the Assistant City Manager. Under no circumstances shall such a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported.

Reports may be made orally or in writing, free of requirements as to form.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

#### **V. INVESTIGATION AND RESOLUTION**

The City of East Palo Alto will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and contractors, members of the City Council, or members of a City advisory body shall cooperate with any such investigation.

Any supervisor, manager department head, member of the City Council, or member of a City advisory body who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the Personnel Officer. Upon receiving the report, the Personnel Officer shall direct any report that accuses a City Council member or appointee to the City Council for investigation and resolution.

The City Council shall delegate the responsibility to conduct a prompt, full, and fair investigation to the qualified private investigator. Upon receiving a report regarding a non-City Council member or appointee, the Personnel Officer shall conduct a prompt, full, and fair investigation, or delegate that responsibility to a qualified City employee or private investigator. The person performing the investigation shall:

- Interview the complainant, the accused, and any other person the investigator believes to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

## **VI. OUTSIDE ADMINISTRATIVE AGENCIES**

In addition to the remedies described in this Policy, the U.S. Equal Employment Commission and the California Department of Fair Employment and Housing provide administrative complaint and investigation processes as to harassment, discrimination, or retaliation on the basis of a protected status. The toll-free telephone number for such office is listed below:

California Department of Fair Employment and Housing 1.800.233.3212  
U.S. Equal Employment Opportunity Commission 1.800.669.4000