



**COMMUNITY SERVICES DEPARTMENT
ARTS AND SCIENCES DIVISION**

**REQUEST FOR PROPOSAL (RFP) NUMBER 134259
FOR PROFESSIONAL SERVICES**

**CALIFORNIA AVENUE FOUNTAIN REPLACEMENT
PROJECT**

RFP SUBMITTAL DEADLINE:	3:00 P.M., TUESDAY, JANUARY 12, 2010
CONTRACT ADMINISTRATOR:	KATHY BRADLEY
PROJECT MANAGER:	KELLY MORARIU

**CITY OF PALO ALTO
PURCHASING/CONTRACT ADMINISTRATION
250 HAMILTON AVENUE
PALO ALTO, CA 94301
(650) 329-2271**

**REQUEST FOR PROPOSAL (RFP) NO. 134259
FOR PROFESSIONAL SERVICES**

TITLE: CALIFORNIA AVENUE FOUNTAIN REPLACEMENT PROJECT

1. INTRODUCTION

The City of Palo Alto is requesting proposals from qualified professional artists to submit proposals for the design and provision of a fountain to replace the existing fountain on California Avenue. This fountain site is located at the end of South California Avenue (near the Caltrain California Avenue station) at the intersection of California Avenue and Park (Attachment A). The City of Palo Alto Public Art Commission (PAPAC) has budgeted a maximum of \$50,000 for the artist's fee. Artist finalists will be selected by the Public Art Commission. Members of the Community will then be invited to provide feedback on preferences for the final design option. Artist finalist will be selected by the Public Art Commission after weighing the community's preference in the final design option. Artists may be required to either present their proposal at a community meeting, to a review panel, or develop and submit a detailed rendering or maquette, which will be supported by a stipend.

The General required services and performance conditions are described in the attached Scope of Services, Attachment A.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals (RFP) for your review and submittal (see asterisk):

- Attachment A – Scope of Work/Services
- Attachment B – Google map of site.
- Attachment C - Image of Current Fountain in Disrepair
- Attachment D - Pump information
- Attachment E – Proposal Template*
- Attachment F – Sample Agreement

The items identified with an asterisk (*) shall be filled out, signed by the appropriate representative of the company and returned with submittal.

3. INSTRUCTIONS TO PROPOSERS

3.1 Examination of Proposal Documents

The submission of a proposal shall be deemed a representation and certification by the Artist that they have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted, and represent that all information contained in the proposal is true and correct. Promotional projects for nonprofits, commercial businesses, special events or other entities are ineligible.

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. An agreement shall not be binding with the CITY unless and until it is executed by authorized representatives of the CITY and the ARTIST.

The City of Palo Alto and the Public Art Commission is not responsible for the loss of or damage to application materials. Please do not send original artwork.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed to any fact or condition.

3.2 Addenda/Clarifications

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received by the City no later than 5:00 p.m., Tuesday, December 22, 2009. Correspondence shall be addressed to Kathy Bradley, Contract Administrator, City of Palo Alto, 250 Hamilton Avenue, Palo Alto, CA 94301 or e-mailed to Kathy.bradley@cityofpaloalto.org. Responses from the City will be communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFP and shall be acknowledged on the Proposer's Form.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

3.4 Submission of Proposals

All proposals shall be submitted to:

City of Palo Alto
Attn: Kathy Bradley
Purchasing and Contracts Administration
250 Hamilton Avenue, Mail Stop MB
Palo Alto, CA 94301

Proposals may be hand delivered or mailed. Proposer is responsible for the mode of delivery chosen to ensure on-time delivery. Proposals must be delivered no later than 3:00 p.m. on Tuesday, January 12, 2010. All proposals received after that time will be returned to the Proposer unopened.

The Proposer shall submit its proposal in a sealed envelope, addressed as noted above, bearing the Proposer's name and address clearly

marked, "RFP NO. 134259, FOR PROFESSIONAL SERVICES: **CALIFORNIA AVENUE FOUNTAIN REPLACEMENT PROJECT.** The use of double-sided paper with a minimum 30% post-consumer recycled content is strongly encouraged.

3.5 Withdrawal of Proposals

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

3.6 Rights of the City of Palo Alto

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening for its own convenience;
- Remedy technical errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the Proposers;
- Accept other than the lowest offer;
- Award multiple contracts for various phases of the Project
- Waive informalities and irregularities in the Proposals and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the Proposer.

4. Proposed RFP Timeline

The RFP Tentative Timeline is as follows:

RFP Issued	December 4, 2009
Deadline for questions, clarifications	December 22, 2009
Proposals Must be Received by:	3:00 PM; Tuesday, January 12, 2009
PAC approval of finalists	January 29, 2010
Artist presentations	February 11, 2010
Community input process on finalists	January 29 – February 12, 2010
Finalist approved by Public Art Commission	February 18, 2010
Artist notified regarding final selection	February 22, 2010

5. **Information to be Submitted**

10 collated copies of the following items (1-4 below)

1. **Completed Proposal Template** (Attachment E)
2. Cover Letter
3. Resume (Not to exceed four pages)
4. Annotated digital image sheet

One (1) set of the following (5-7 below):

1. Required jpeg images on CD (maximum of 6 images) sized no larger than 800 x 600 pixels.
2. Self addressed/stamped envelope for Return of CD.
3. Stamped self-addressed postcard to indicate receipt of proposal.

The City of Palo Alto and the Public Art Commission is not responsible for the loss of or damage to application materials. Please do not send original artwork.

6. **Contract Type and Method of Payment**

It is anticipated that the agreement resulting from this solicitation, if awarded, will be either a Lump Sum per Phase type Contract or a time and materials. A Sample Agreement of Services is provided as Attachment F. The method of payment to the successful Proposer shall be based on the type of Contract, either lump sum or time and materials.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements in Attachment F. If a Proposer desires to take exception to the Agreement, Proposer shall provide the following information in their submittal package. Please include the following:

- Proposer shall clearly identify each proposed change to the Agreement, including all relevant Attachments.
- Proposer shall furnish the reasons for, as well as specific recommendations, for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take substantial exceptions to the proposed Agreement may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award.

Insurance Requirements

~~The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment F.~~

~~All policies, endorsements, certificates and/or binders shall be subject to the approval of the Risk Manager of the City of Palo Alto as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the~~

~~Risk Manager. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsement upon award of contract.~~ ***City will provide Insurance for Artist, under the Public Arts Program.***

7. Review and Selection Process

Artist finalists will be selected by the Public Art Commission. Members of the Community will then be invited to provide feedback on preferences for the final design option. Artist finalist will be selected by the Public Art Commission after weighing the community's preference in the final design option. Artists may be required to either present their proposal at a community meeting, to a review panel, or develop and submit a detailed rendering or maquette, which will be supported by a stipend.

8. Presentations

Artists may be required to either present their proposal at a community meeting, to a review panel, or develop and submit a detailed rendering or maquette, which will be supported by a stipend.

9. Public Nature of Proposal Material

Responses to this RFP become the exclusive property of the City of Palo Alto. At such time as the Public Art Commission and the Community Services Department recommends a firm to the City Manager or to the City Council, as applicable, all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary". The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Palo Alto may not accept or approve that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City shall provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

10. Collusion

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from

submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

11. Disqualification

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- 11.1 Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- 11.2 Any attempt to improperly influence any member of the evaluation team;
- 11.3 Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City;
- 11.4 Evidence of incorrect information submitted as part of the proposal;
- 11.5 Evidence of Proposer's inability to successfully complete the responsibilities and obligation of the proposal; and
- 11.6 Proposer's default under any previous agreement with the City, which results in termination of the Agreement.
- 11.7 Evidence of Conflict of Interest

12. Non-Conforming Proposal

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

13. Gratuities

No person shall offer, give or agree to give any City employee any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a city contract.

14. Firms or persons not eligible to submit a proposal

In order to avoid any conflict of interest or perception of a conflict or interest, Proposer(s) selected to provide professional services under this RFP will be subject to the following requirements where applicable:

- 14.1 The Proposer(s) who works on the procurement will be precluded from submitting proposals or bids as a prime contractor or subcontractor the ultimate procurement.
- 14.2 The Proposer(s) may not have interest in any potential Proposer for the ultimate procurement.

ATTACHMENT A
SCOPE OF SERVICES
Request for Proposal for Artist's Services

1. INTRODUCTION

The City of Palo Alto is requesting proposals from qualified professional artists to submit proposals for the design of a fountain to replace the existing fountain on California Avenue. This fountain site is located at the end of South California Avenue (near the Caltrain California Avenue station) at the intersection of California Avenue and Park (Attachment B). The City of Palo Alto Public Art Commission (PAPAC) has budgeted a maximum of \$50,000 for the artist's fee. Artist finalists will be selected by the Public Art Commission. Members of the Community will then be invited to provide feedback on preferences for the final design option. Artist finalist will be selected by the Public Art Commission after weighing the community's preference in the final design option. Artists may be required to either present their proposal at a community meeting, to a review panel, or develop and submit a detailed rendering or maquette, which will be supported by a stipend.

2. BACKGROUND

The current fountain has been in place for over thirty years, has fallen into major disrepair (Attachment C) and needs to be replaced.

3. SCOPE OF WORK

The PAPAC encourages artists to use sustainable materials and incorporate environmentally friendly elements in their proposals. It is essential that the fountain make a splashing water sound. The pump in the existing fountain has a 5HP Marathon motor, 208 volt Single Phase that the City of Palo Alto Parks Department has scheduled for repair or replacement (see Attachment D for pump information). Fountain design should reflect the site-specific spirit of California Avenue. California Avenue in Palo Alto is known as the "Avenue of the Arts". The design of the fountain should fit within the existing fountain footprint which measures 16-feet in diameter. Proposals may include benches or bollard elements in efforts to prevent vehicular traffic damage to the fountain without obstructing traffic at this site. These elements must be carefully considered so as not to restrict pedestrian, bicycle or vehicular traffic. Fountain design should reflect a fountain that is easy to maintain and durable.

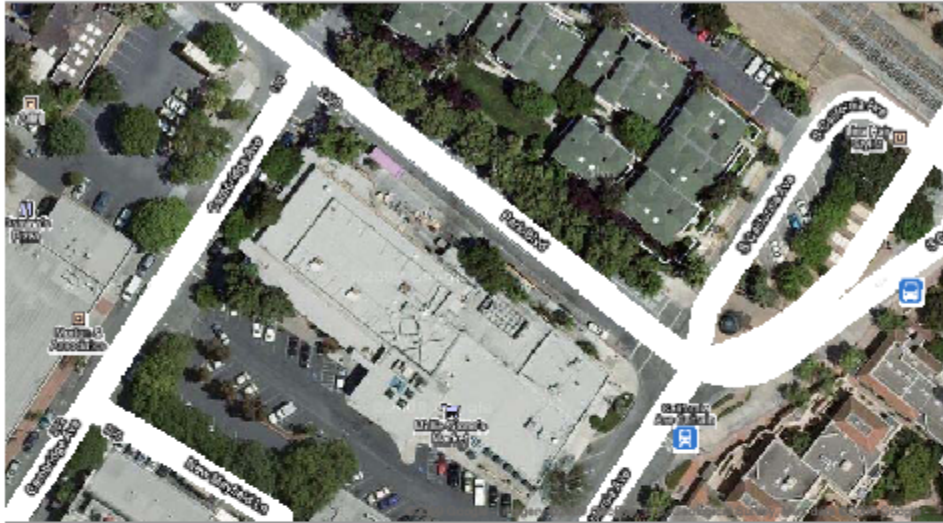
The artist budget is inclusive of the material costs, fabrication, delivery of fountain to site and installation. The selected artist is also responsible for developing engineered drawings to scale of fountain to be approved by the City's Public Works Engineering Division. Artist will install fountain and/or make arrangements for fountain to be installed onsite and supervise the installation. The Artist may work in collaboration with a contractor who will remove existing fountain, prepare site and install mechanicals, i.e. pump and electrical (separate and not included in artist fee), and if required for fountain, construct pool.

ATTACHMENT B MAP

/S. California Avenue and Park Blvd, Palo Alto, ca - Google Maps

Page 1 of 1

Google maps Address



ATTACHMENT C



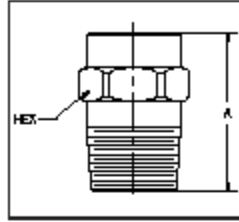
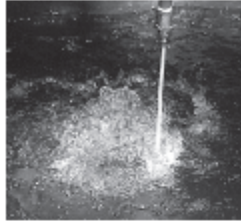
ATTACHMENT D

LOW PRESSURE FLAT FAN



SOLID STREAM

1/8" TO 1" NPT (M)



"NPT	Dimensions		App. Wt. Lbs.
	HEX	A	
1/8	9/16"	.87	0.5
1/4	9/16"	.87	0.6
3/8	1 1/16"	.97	0.6
1/2	1 3/16"	1.28	2.4
3/4	1 1/16"	1.66	6.0
1	1 7/16"	2.22	12.7

Low Pressure Solid Stream
Lechler Low Pressure Solid Stream nozzles provide a concentrated, high velocity liquid stream that has high spray integrity over a long distance as a result of optimum flow geometry.

Typical Applications:
Cleaning
Paper and pulp trimming
Degreasing

FLAT FAN



Product Codes for Ordering									Orifice Diam. (In.) *	Flow Rate (Gallons Per minute)						
Nozzle Type	Material Code 303 SS 16 303 16 30	Nozzle Inlet Conn. ("NPTM)								Flow Rate (Gallons Per minute)						
		1/8	1/4	3/8	1/2	3/4	1	10 psi		20 psi	2 bar	40 psi	60 psi	80 psi	100 psi	
544.110	O O	BA	BC	—	—	—	—	—	.008	.005	.009	.04	.01	.01	.01	.02
544.160	O O	BA	BC	—	—	—	—	—	.011	.01	.01	.06	.01	.02	.02	.03
544.200	O O	BA	BC	—	—	—	—	—	.015	.01	.02	.10	.03	.04	.044	.05
544.240	O O	BA	BC	—	—	—	—	—	.018	.02	.04	.16	.05	.06	.07	.08
544.280	O O	BA	BC	—	—	—	—	—	.023	.04	.05	.25	.08	.09	.11	.12
544.320	O O	BA	BC	—	—	—	—	—	.028	.06	.09	.40	.12	.15	.18	.20
544.360	O O	BA	BC	—	—	—	—	—	.032	.10	.14	.83	.20	.24	.28	.31
544.400	O O	BA	BC	—	—	—	—	—	.041	.16	.22	1.00	.31	.38	.44	.49
544.440	O O	BA	BC	—	—	—	—	—	.042	.19	.27	1.25	.39	.48	.55	.61
544.480	O O	BA	BC	—	—	—	—	—	.053	.25	.35	1.80	.50	.61	.70	.78
544.510	O O	BA	BC	—	—	—	—	—	.065	.29	.42	1.90	.59	.72	.83	.93
544.560	O O	BA	BC	—	—	—	—	—	.067	.39	.55	2.50	.78	.95	1.10	1.23
544.600	O O	BA	BC	BE	—	—	—	—	.075	.49	.69	3.15	.98	1.20	1.38	1.54
544.640	O O	—	BC	BE	—	—	—	—	.083	.62	.88	4.00	1.24	1.52	1.75	1.96
544.680	O O	—	BC	BE	—	—	—	—	.095	.78	1.10	5.00	1.55	1.90	2.19	2.45
544.720	O O	—	BC	BE	—	—	—	—	.104	.98	1.38	6.30	1.95	2.39	2.76	3.09
544.800	O O	—	BC	BE	—	—	—	—	.130	1.55	2.19	10.0	3.10	3.80	4.39	4.90
544.880	O O	—	BC	BE	—	—	—	—	.164	2.48	3.51	16.0	4.96	6.08	7.02	7.85
544.920	O O	—	BC	BE	BG	—	—	—	.185	3.10	4.38	20.0	6.20	7.59	8.37	9.80
544.960	O O	—	BC	BE	BG	BK	—	—	.209	3.88	5.48	25.0	7.75	9.50	10.9	12.2
545.000	O O	—	BC	BE	BG	BK	—	—	.232	4.89	6.91	31.5	8.77	11.9	13.8	15.4
545.040	O O	—	—	BE	BG	BK	—	—	.262	6.20	8.77	40.0	12.4	15.2	17.5	19.6
545.080	O O	—	—	BE	BG	BK	BN	—	.296	7.75	10.9	50.0	15.5	18.9	21.9	24.5
545.120	O O	—	—	BE	BG	BK	BN	—	.331	8.77	13.8	63.0	18.5	23.9	27.6	30.9
545.200	O O	—	—	—	—	BK	BN	—	.414	15.5	21.9	100.	31.0	37.9	43.8	49.0
545.280	O O	—	—	—	—	BK	BN	—	.524	24.8	35.0	160.	48.6	60.7	70.1	78.4
545.360	O O	—	—	—	—	BK	BN	—	.654	38.7	54.8	250.	77.5	94.9	108.	122.

* Nozzles are manufactured to spray performance, not orifice diameter.



Ordering Information:

Type + Material Code + Inlet = Order No.
544. 110 16 BC 544. 110. 16 BC

Material Code:

16 303 SS
30 Brass

ATTACHMENT E

Proposal Template-TO BE COMPLETED & SUBMITTED

Required Submittal Items:

Artist's Name:

Artist's Phone:

Artist's Fax Number:

Artist's Email Address:

Artist's
Return Address:

Additional Contact
Person
w/name/phone/fax (if
applicable):

PROJECT SUMMARY:

Project Description including Work plan. Describe your approach for addressing the requested scope of services including major tasks and subtasks. Include a preliminary conceptual sketch/drawing of the proposed sculpture. Include information about type and amount of care or maintenance the artwork may require over its lifetime. ATTACH ADDITIONAL PAGES IF NECESSARY-TYPED 2 PAGE MAXIMUM plus drawing).

QUALIFICATIONS

Qualifications of the Artist - include a brief description of the Artist's qualifications and previous experience on similar or related projects. Provide descriptions of pertinent project experience with other public municipalities and private sector that includes a summary of the work performed, and phone number of clients to be contacted for references.

PROPOSED BUDGET

Proposed costs to provide the services desired (include hourly rates, fee schedule and/or all other related expenses for deliverables as appropriate):

Expense item	Description	Cost
Artist fee		
Fees for services, (sub-contract) Including engineering		
Supplies and materials:		
Fabrication		
Equipment rental		
Transportation		
Installation		
Site clean-up		
Documentation		
Other		
TOTAL		

PROPOSED SCHEDULE/TIMEFRAME

Include proposed timeframe for design, fabrication, installation, etc.

DOCUMENTATION OF RELEVANT PREVIOUS WORK

Submit either up to six (6) slides, which must be contained in a plastic slide sheet. Each slide must be numbered and include the artist's name (mark the direction of each slide with an arrow to indicate which side is up). Or submit a PC compatible CD with 6 jpeg images (no larger than 2 megabytes each). Number each digital image in the same order noted on the annotated index. An annotated index for the documentation of previous work, providing a brief description including setting, dimensions, materials, date of work, and one sentence description about each image.

EVALUATION OF PROPOSALS

The Public Art Commission will review and evaluate the proposals provided in response to this RFP based on the following criteria:

- Quality and completeness of proposal;
- Artistic merit and originality of the work of art to be provided by the Artist;
- Demonstrated ability of the artist, including the experience of staff to be assigned to the project, to implement the proposal aesthetically and technically, as evidenced in documentation of past work and the engagements of similar scope and complexity; and
- Feasibility of the proposed project, as determined by the accuracy and appropriateness of the budget, as well as the evidence of a thorough consideration of safety, maintenance, operational issues;
- Responsiveness and appropriateness of the proposal to the context of Mitchell Park, particularly its Community Center and Library.

The committee may identify up to five finalists who will be asked for a final proposal. The final proposal may include the following:

- Maquette and/or complete drawing of the proposed sculpture.
- Final project budget and fee schedule.

Finalists will be asked to present their work at an open community meeting. The Artist to be recommended for award of contract will be selected from among the finalists by a silent vote of community members attending. The community will be notified of the meeting through a public announcement in the local press. The acceptance of the proposal will be evidenced by written Notice of Award from the City's Purchasing/Contract Administration Division to the successful Artist. The Palo Alto Public Art Commission will oversee this project along with the City of Palo Alto Arts and Culture staff.

NOTE: The selection committee reserves the right to decline any and all of the applications submitted, and the Public Art Commission reserves the right to reopen the application process after the deadline.

All proposed projects will be subject to review and approval by various city agencies. All selected projects must be approved by the Public Art Commission and are subject to permit requirements, building code restrictions, ADA accessibility guidelines, and other approvals. Projects approved by the Public Art Commission will not be implemented if such approvals and other requirements are not obtained.

How did you learn about this project opportunity?

*Printed notice*_____ *Friend* _____ *Email*_____ *US Mail* _____

PAC Website <http://www.cityofpaloalto.org/community-services/acult-artinpublic.html>)

City of Palo Alto Website _____

*Other (please describe)*_____

ARTIST'S SIGNATURE:

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Artist that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Artist was not fully informed as to any fact or condition.

1. If Artist is INDIVIDUAL, sign here

Date: _____

Artist's Signature

Artist's typed name and title

2. If Artist is PARTNERSHIP or JOINT VENTURE, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date: _____

Member of the Partnership or Joint Venture signature

Date: _____

Member of the Partnership or Joint Venture signature

ATTACHMENT F –SAMPLE AGREEMENT

CITY OF PALO ALTO CONTRACT NO. _____

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND

**_____
FOR PROFESSIONAL SERVICES
(PROJECT NAME)**

This AGREEMENT is entered into _____, by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and _____, a _____ located at _____ ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to **(DESCRIBE WHAT THE CITY PLANS TO DO – E.G. CONSTRUCT A NEW LIBRARY)**("Project") and desires to engage a consultant to **(DESCRIBE SERVICES – I.E. FEASIBILITY STUDY, ARCHITECTURAL DESIGN, ENGINEERING SERVICES)** in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

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

AGREEMENT

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

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through [INSERT DATE OR IF NO DATE ADD "completion of the services in accordance with the Schedule of Performance attached as Exhibit "B"] **unless terminated earlier pursuant to Section 19 of this Agreement.**

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

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

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$_____). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed _____ Dollars (\$_____). The applicable rates and schedule of payment are set out in Exhibit "C", entitled "COMPENSATION," which is attached to and made a part of this Agreement.

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

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

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

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

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

SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

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

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

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

SECTION 12. SUBCONTRACTING.

[OPTION A: NO SUBCONTRACTORS] CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

[OPTION B: SUBCONTRACTS AUTHORIZED] Notwithstanding Section 11 above, CITY agrees that subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are:

- 1.
- 2.

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

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign _____ as the project director to have supervisory responsibility for the

performance, progress, and execution of the Services and _____ as the project coordinator to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is _____, _____ Department, _____ Division, _____ Palo Alto, CA 94303, Telephone: _____.. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands,

claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

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

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

SECTION 18. INSURANCE. **Not applicable**

~~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 "G". 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, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.~~

~~18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement,~~

~~including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.~~

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

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

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

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

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

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

SECTION 20. NOTICES.

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

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Purchasing Manager

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

SECTION 21. CONFLICT OF INTEREST.

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

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

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

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit "E."

SECTION 23. MISCELLANEOUS PROVISIONS.

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

23.2. 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.

23.3. 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.

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

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

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

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

23.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 23.8 shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

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

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

CITY OF PALO ALTO

[CONSULTANT/ARTIST]

City Manager

By:_____

Name:_____

APPROVED AS TO FORM:

Title:_____

Senior Asst. City Attorney

APPROVED:

Director of Administrative
Services

Attachments:

EXHIBIT "A":	SCOPE OF WORK
EXHIBIT "B":	SCHEDULE OF PERFORMANCE
EXHIBIT "C":	COMPENSATION
EXHIBIT "D":	INSURANCE REQUIREMENTS
EXHIBIT "E":	CERTIFICATION OF NONDISCRIMINATION

EXHIBIT “A”
SCOPE OF SERVICES

(INSERT SCOPE OF SERVICES HERE)

EXHIBIT “B”
SCHEDULE OF PERFORMANCE

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

Milestones
No. of Days/Weeks

Completion

From

NTP

- 1.
- 2.
- 3.
- 4.
- 5.

EXHIBIT “C”
COMPENSATION

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

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Basic Services") and reimbursable expenses shall not exceed \$_____. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$_____. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's _____ may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed \$_____ and the total compensation for Additional Services does not exceed \$_____.

BUDGET SCHEDULE

NOT TO EXCEED AMOUNT

Task 1
(_____)

\$_____

Task 2
(_____)

\$_____

Task 3
(_____)

\$_____

Task 4
(_____)

\$_____

Task 5
(_____)

\$_____

Sub-total Basic Services

\$_____

Reimbursable Expenses

\$_____

Total Basic Services and Reimbursable expenses \$_____

Additional Services (Not to Exceed) \$_____

Maximum Total Compensation

\$_____

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall

reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: **(modify list as needed)**

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

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

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$_____.00 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's _____ and CONSULTANT prior to commencement of the services. . Payment for additional services is subject to all requirements and restrictions in this Agreement

Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services:

[LIST CONSULTANT'S ASSUMPTIONS WHICH IF EXCEEDED WILL BE CONSIDERED AS ADDITIONAL SERVICES- I.E. 10 MEETINGS, 3 SUBMITTALS ETC.]

END OF ATTACHMENT F-SAMPLE AGREEMENT