



**CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF SUNNYVALE
AND BRAD COX, ARCHITECT, INC.
FOR PARK BUILDINGS REHABILITATION (BRALY AND FAIRWOOD PARKS RESTROOMS)**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and BRAD COX, ARCHITECT, INC. ("CONSULTANT").

WHEREAS, CITY desires to secure professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, services during construction and other services for a project known as Park Buildings Rehabilitation (Braly and Fairwood Parks Restrooms) Public Works Project # PR-21-06; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any, possess the professional qualifications and expertise to provide the required services and are licensed by the State of California to practice engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Brad Cox to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

- (a) CONSULTANT shall commence services upon receipt of a Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.
- (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A," CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"), and if so requested, CITY shall make this determination within fourteen (14) calendar days of such request.

3. Project Schedule

The Project Schedule is set forth in the attached Exhibit "A-1."

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B"



Sunnyvale

entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within 30 days before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this Agreement for the required scope of work exceed the sum of Two Hundred Thirty-Three Thousand Six Hundred Seventy-One and No/100 Dollars (\$233,671) for the duration of the contract, as well as optional services in an amount not to exceed Forty-One Thousand Five Hundred Eighty-Four and No/100 Dollars (\$41,584) unless upon written modification of this Agreement. In no event shall the total amount of compensation payable under this Agreement exceed the sum of Two Hundred Seventy-Five Thousand Two Hundred Fifty-Five and No/100 Dollars (\$275,255). All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

CONSULTANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by the CITY of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated in the Compensation Schedule and shall reference the project title. The final invoice must contain the final cost and all credits due CITY. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work.

5. No Assignment of Agreement

CONSULTANT bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.



8. Standard of Workmanship

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services



rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONSULTANT shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

14. Hold Harmless/Indemnification

To the extent permitted by law (including, without limitation, California Civil Code section 2782.8), CONSULTANT agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. In no event shall the cost to defend charged to the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.



17. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Dennis Ng, Interim Assistant Director/City Engineer
Department of Public Works
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Brad Cox, Architect, Inc.
Attn: Brad Cox
1155 Meridian Ave., Suite 208
San Jose, CA 95125

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.



22. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days after written notification of failure to pay.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Compliance with Laws

- A. CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender



expression, age, sexual orientation, or veteran or military status, or any other protected characteristic in violation of federal or state law. This prohibition shall apply to all of CONSULTANT'S employment practices and to all of CONSULTANT'S activities as a provider of services to the City.

- B. CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.

28. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. Severability Clause.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

32. Exhibits

All exhibits, including all associated attachments, are attached hereto and incorporated herein by reference.

33. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.



IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

Brad Cox, Architect, Inc.
("CONSULTANT")

By _____
Tim Kirby
City Manager

By _____

Name/Title

ATTEST:

By _____
David Carnahan
City Clerk

By _____

Name/Title

APPROVED AS TO FORM:

Susan Yoon
Assistant City Attorney



**Exhibit A
Scope of Work
Park Buildings Rehabilitation (Braly and Fairwood
Restrooms) PR-21-06**

I. General

The City of Sunnyvale is seeking proposals from licensed Architectural firms to provide professional services for design and preparation of bid documents and construction support for the Park Buildings Rehabilitation (Braly and Fairwood Restrooms). The scope of work generally includes preparation of: preliminary design, design development, bid documents, and bidding/construction support for Public Works competitive bidding. Ancillary work includes: hazardous materials determination, construction cost estimating, schedule monitoring, preparation of reports and recommendations, and project management.

II. Project Information

A. Description

This project is comprised of renovating the men and women restrooms at Braly Park and Fairwood Park. The existing restrooms at both locations are currently in poor conditions.

The work at each location shall include, but not be limited to:

Braly Park

- Replace the plumbing infrastructure for the existing men and women restrooms.
- Replace the interior walls, stall partitions, fixtures, and lightings for the existing men and women restrooms.
- Remove the existing water fountain on the exterior of the west facing restroom wall and replace with a Park Standard standalone water fountain.

Fairwood Park

- Replace the existing men, women, and utility/janitorial room with a modular, prefabricated restroom building at the same location.

Fairwood Park restrooms shall be prioritized during construction as that building is in worse condition.

All new and renovated rooms shall comply with Title 24, California Code of Regulations. If any existing electrical panels and subpanels will be impacted, it shall be redesigned and restored to its original function. Newly renovated or constructed restroom building structures shall comply with Americans with Disability Act (ADA) standards and utilize water efficient restroom fixtures. Current City standards for park restrooms with durable, low maintenance materials shall be followed. The Braly Park restrooms shall have dual-access (accessible from both park building interior and exterior with locking doors).

B. Location

Braly Park is located at 704 Daffodil Court, which is west of Braly Elementary School on the southwest corner of Daffodil Court and Gail Avenue. The existing restroom is in the southwest corner of the Recreation Building located South of the parking lot on Daffodil Court. Please see Attachment 1, Location Map for Braly Park.



Fairwood Park is located at 1255 Sandia Avenue, which is on the North side of Sandia Avenue between Fairwood Avenue and Oak Creek Way. The existing restroom is located east of the school parking lot on Sandia Avenue. Please see Attachment 2, Location Map for Fairwood Park.

C. *Existing Conditions*

Braly Park

The existing structure consists of a recreation center and the men and women restrooms are located within the southwest corner of the building. Both restrooms are accessible from inside the center as well as from outside the building. The women's restroom has two stalls, while the men's restroom has one stall and a urinal. A water fountain is attached to the exterior of the west facing restroom wall and the maintenance access is located inside the women's restroom. The plumbing infrastructure, fixtures, walls, stall partitions, and lighting within both restrooms are in poor condition. The utility/janitorial room is located in a separate room in the northwest portion of the building and consists of janitorial equipment, circuit breaker, electrical panels, and controllers that serve various facilities such as the recreation center, irrigation, lighting, and pond pumps throughout the park. Please see Attachment 3, Braly Park Site Photos.

There is an existing mural on the west facing wall of the Braly Recreation Center building. If there is any need to impact the portion of the building where the mural exists, the consultant shall work with the City's Library and Recreation Services Art Coordinator for recommendations on preserving or replacing the artwork.

Fairwood Park

The existing structure is a standalone building and consists of men's and women's restrooms. The women's restroom has one stall, while the men's restroom has one stall and a urinal. The utility/janitorial room is located between the men's and women's restrooms. The utility/janitorial room consists of janitorial equipment, circuit breaker, electrical panels, and controllers that serve the park's irrigation and lighting system. All doors are faced southerly towards Sandia Avenue. Please see Attachment 4, Fairwood Park Site Photos.

The restrooms at both parks are open to the public daily during normal park operating hours.

III. **Consultant Scope of Services**

The consultant will perform all engineering and project management related work necessary to prepare plans and specifications suitable for Public Works bidding.

Consultant services shall include, but are not limited to: Project management, preliminary design, design development, bid documents, bidding support, construction support services, and record documents, as further detailed below:

A. **Task 1 - Project Management**

The consultant will be the primary responsible party for managing the project's schedule and consultant contract budget. In addition, the consultant is expected to attend and/or facilitate a monthly progress meeting and prepare action item logs for subsequent follow-up. The consultant is expected to maintain frequent and timely



communication with City staff throughout the duration of the project.

All project schedules shall be prepared in Gantt chart format, utilizing Microsoft Project software. Three weeks for each City review shall be included. Schedule updates shall be provided at all progress meetings. Schedule must include three (3) months for advertise/bidding/Council award of projects, and take into account Building Division review and PG&E permitting time.

Consultant's own team should have provisions for quality assurance/quality control over work product prepared for the City. A statement of peer review will be required for overall constructability, coordination, and reasonable reduction in errors and omissions.

The total project budget, including both design and construction as well as all contingencies is \$1,700,000. Consultant is expected to design a project that can be constructed within the budget and to communicate often and early with respect to the schedule and budget. The consultant will be expected to attend a pre-submittal over the counter meeting with the Building Division prior to submission of the plans at the 75% submittal stage to the Building Division, per the instructions in *Attachment 5: Bldg. Dept Electronic Plan Check Submittal*. Consultant will also be responsible for making appointments (as necessary) and delivering all subsequent submittals to the Building Division.

E-Builder license and training: Consultant will be required to use e-Builder™ software and protocols included in that software during this project, Consultant shall coordinate with City staff for training materials and e-Builder introduction. City will provide consultant one e-Builder software license for the duration of the project. e-Builder software shall be utilized for all project management documentation and correspondence. The use of project management communications herein described is in addition to and does not replace or change any contractual responsibilities of the consultant.

B. *Task 2 - Preliminary Design*

A technical memorandum outlining provision of options shall be prepared for the City's consideration. A preliminary cost estimate and project schedule shall be included with each option, along with other support information outlining pros and cons for each option.

Braly Park Restrooms

The consultant shall explore the option of replacing existing doors and hardware as necessary, and re-purposing an existing closet space north of the restrooms to allow for a new utility/janitorial room.

Fairwood Park Restrooms

The consultant shall explore the option of shifting the building from the existing footprint further northeast to allow for a wider maintenance vehicle access driveway.

Consultant shall perform camera inspection and prepare a written report of the existing sewer line to evaluate the existing conditions for both park buildings. Video footage shall be provided to the City for review. Consultant shall also perform sampling and testing of any materials that will be demolished. Testing must cover all materials required by the City building department including, but not limited to, lead based



paints, asbestos containing materials and PCBs.

Consultant shall provide a draft technical memorandum, which will summarize the findings and recommendations for the additional renovations to the existing restroom building at Braly Park and summarize the findings and recommendations for shifting the building from the existing footprint further northeast to allow for a wider maintenance vehicle access driveway at Fairwood Park. The technical memorandum shall also include cost estimates and project schedules of each option in table format. Allow three (3) weeks for City to review. A copy of the final memorandum shall be submitted to the City.

C. *Design Development*

Consultants shall be the Architect of Record and responsible for design and preparation of complete plans and technical specifications for the project. The consultant must perform an adequate field investigation to confirm existing conditions.

All work is to comply with all applicable rules, regulations, code, law, and good practice for public facilities. When possible, the Consultant shall incorporate “green” building/construction practices, sustainability, energy efficiency, and low operations and maintenance costs into recommendations and subsequent design.

Use of contractors, and all applicable subcontractors which are required to pay prevailing wages, requires registration with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, potholing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. **For complete details, please refer to *Exhibit D: Labor Compliance*.**

Plans and specifications shall provide sufficient detail to result in a good quality product while allowing competitive pricing where possible and appropriate, and provide options to the contractor where appropriate to obtain the same good level of quality for the best bid price. Plans and specifications shall not specify proprietary products or services. Specifications shall be prepared in CSI 2020 format.

Coordination and preparation of documentation to facilitate permits and outreach with utility companies, regulatory agencies, Building Division, and other stakeholders will also be consultant responsibility.

Optional Service A – Braly Park Existing Closet Conversion: Consultant shall provide additional design fees if it is decided that there is enough budget to include the scope of work to re- purpose an existing closet space north of the restrooms to allow for a new utility/janitorial room.

Optional Service B – Braly Park Doors Replacement: Consultant shall provide additional design fees if it is decided that there is enough budget to include the scope of work to replace existing doors and hardware as necessary.

Optional Service C – Fairwood Park Restroom Building Location Shift: Consultant shall



provide additional design fees if it is decided that there is enough budget to include the scope of work to shift the building from the existing footprint further northeast to allow for a wider maintenance vehicle access driveway.

Optional Service D – Topographical Survey Work at Both Parks: Consultant shall provide topographical survey work at Braly Park and Fairwood Park to include a 30' radius around the perimeter of both park bathroom buildings and survey the accessible pathway between the bathroom entries to the existing accessible parking locations.

Optional Service E – Geotechnical Report for Fairwood Park: Consultant shall provide a geotechnical report for the new prefabricated building location. No geotechnical report will be provided for the work at Braly Park, as it is not pertinent to the work.

All submittals shall include digital copies (PDF and native format) of all documents. As required for Building Permit, each site shall have its own standalone plan set.

1. **Task 3 - 30% Design Development Submittal**: Submit an electronic PDF file package:
 - a. 30% plans (24"x36"): Cover sheet and plan sheet with base mapping and preliminary details.
 - b. Cut sheets for equipment/appurtenances.
 - c. Two color/material board options for restroom building renovations. Color options shall follow the color scheme and the theme of each park.
 - d. Documentation of outreach with franchise utility companies for facilities needed to be relocated or adjusted to grade as a result of the proposed construction activities.
 - e. Project schedule update.
 - f. 30% construction cost estimate.
 - g. Brief memorandum of determination if the project's construction activities are within the NPDES Construction General Permit. Include project type and risk level.
 - h. Table of Contents list for technical specifications.

2. **Task 4 - 75% Design Development Submittal**: All major issues have been resolved prior to this stage. The intent of this submittal is to provide plans and project documents in sufficient detail to allow for thorough and complete review.

Submit in electronic PDF format:

- a. 75% Plans: All subcontracted work shall be accounted for in this submittal. All project details have been accounted for.
- b. 75% specifications:
 - Technical specifications
 - Special Provisions, with recommended changes in track changes format. The Special Provisions shall also include the following:
 - Bid item descriptions and measurement and payment provisions
 - A list of minimum required submittals during construction
 - List of information available to Bidders, with disclaimer
 - A table listing all material testing and associated responsibility
 - A table list of materials requiring warranties, and associated warranty periods



- c. Project schedule update.
- d. 75% construction cost estimate in the form of the bid schedule. Consultant shall submit documentation for sources of pricing and unit costs based upon similar building construction in the geographic area and indexed to the forecasted construction cost at time of bid.
- e. Utility conflicts have been resolved or a timeline for resolution of issues has been determined.
- f. Responses to the City's review comments on the 30% submittal, along with return of mark-ups.
- g. Other supporting documentation as necessary, including backup documentation as required by the Building Division (e.g. calculations and reports).

3. **Task 5 - 100% Design Development Submittal:** All issues, prior comments, and concerns must be addressed in this submittal.

Submit in electronic PDF format:

- a. 100% plans
 - Peer review shall have been accomplished by this stage, with the statement and signature on the cover sheet. The professional shall sign, date, and seal the following Certification of Peer Review on a letterhead document with the transmittal of the final plans and specifications:

"The undersigned hereby certifies that a professional peer review of these plans and the required designs was conducted by me, a professional engineer with expertise and experience in the appropriate fields of engineering equal to or greater than the Engineer of Record, and that appropriate corrections have been made."

- b. 100% specifications
 - Reviewed bid instructions
 - Finalized technical specifications
 - Finalized Special Provisions
- c. Project schedule update.
- d. 100% construction cost estimate. Consultant shall submit documentation for sources of pricing and unit costs based upon similar building construction in the geographic area and indexed to the forecasted construction cost at time of bid.
- e. Responses to the City's review comments on the 75% submittal, along with return of mark-ups.
- f. Other supporting documentation as necessary.

D. Task 6 - Bid Package

The bid package shall be finalized upon incorporation of the City's final comments from the 100% submittal, and incorporation of all Building Division comments.

Submit digital format (PDF and native format) of each of the documents listed below:

1. One digital copy of full sized plans (24" x 36"), stamped and signed on each



- sheet by the Architect of Record and by discipline.
2. One digital copy of the specifications.
 - a. Technical specifications, with cover sheet stamped and signed by all necessary disciplines.
 - b. Special provisions.
 3. Final project schedule update.
 4. Final construction cost estimate.

E. Task 7 - Bidding Services

Consultant will respond to all bidder's requests for information (RFIs), and support the City's coordination efforts to inform plan-holders of significant responses to RFIs and prepare addenda as necessary. During bidding, all proposers' communications will be directed through the City's Purchasing Officer.

If addenda to bid documents are extensive and are as a result of consultant's work product, conformed documents shall be prepared at no expense to the City. City will provide reproduction services.

F. Task 8 - Construction Support Services

The City's construction management team will have primary responsibility for construction management and inspection. The consultant's point of contact will be the City's construction manager, not the contractor.

The following is a minimum list of services and submittals required.

1. Attend and prepare information for an internal handoff meeting from the design team to the construction management team. Consultant shall be prepared to address: possible construction pitfalls, items for the construction management team to be aware of (special working hours, shortened timelines for submittal reviews, etc.).
2. Attend the pre-construction meeting.
3. Attend up to five (5) periodic construction progress meetings.
4. Participate in the Hazardous material clearance inspection, development of punch lists, and final inspection.
5. Respond to RFIs, which includes clarifying or providing revisions or additional detail where necessary on the plans and specifications. Response to RFIs shall be timely in order to avoid construction delays and claims.
6. For projects with a building permit, the consultant shall stamp and sign any revisions to the contract plans as a result of responses to RFIs or as a result of executed change orders. Consultant shall ensure that all changes comply with the applicable codes. Coordination with the Building Department may be necessary.
7. Review and respond to all submittals within the period allocated in the contract documents or per the timeline requests by the Construction Manager as necessary to avoid construction delays and claims.
8. Review proposed substitutions, if any, for conformance to plans and technical specifications.
9. Review and make recommendations on proposed changes to the contract (Request for Quotations and Contract Change Orders).
10. Prepare Record Drawings based upon red-lines provided by the contractor and field reviews. All changes shall be indicated in red and clouded. All plan sheets



shall be stamped with red “Record Drawings” stamp. The stamp shall include Engineer of Record Company Name, name of Engineer of Record, date of the Record Drawing update, and standard disclaimer. See suggested stamp below:

RECORD DRAWINGS
COMPANY NAME:
ENGINEER OF RECORD:
DATE:
THE RECORD DRAWINGS HAVE BEEN PREPARED BASED ON INFORMATION PROVIDED BY OTHERS. THE ENGINEER HAS NOT VERIFIED THE ACCURACY OF THIS INFORMATION AND SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH MAY BE INCORPORATED AS A RESULT.

The Record Drawings shall be prepared digitally, using AutoCAD. Final Record Drawings shall be submitted electronically, in PDF and CAD format.

11. Participate in the “Lessons Learned Meeting” with all parties at the end of the project.

IV. Available Documents

The below list of information is available for information only:

- Record drawings. The City does not guarantee the accuracy or completeness of record drawings. Consultant shall verify all information to their professional satisfaction.
 - PR-67-4 Braly Park, 8-12-68
 - PR-94-5 Braly Park Improvements, 7-11-94
 - PR-15-01-15 Playground Equipment Replacement at Orchard Garden Park/Fairwood Park/Braly Park, 6-24-16
 - PR-90-15 Fairwood Playground, 11-5-90
 - PR-93-05 Fairwood School Open Space Improvements, 4-13-94
- Utility block maps for City sanitary sewer and storm drain are available on the City’s website. City staff will provide water facilities block maps as necessary.
<https://www.sunnyvale.ca.gov/city-services/online-services/maps-and-gis/utility-maps>
- Benchmarks for vertical control are listed on the City’s website:
<https://www.sunnyvale.ca.gov/home/showpublisheddocument/1590/637820851886430000>
- City standard specifications and details are available on the City’s website – Details:
<https://www.sunnyvale.ca.gov/home/showpublisheddocument/2920/637822741794530000> Specifications:
<https://www.sunnyvale.ca.gov/home/showpublisheddocument/1606/637820851912670000>

The below information will be provided during design to the consultant.

- GIS data for property lines, street center lines, and two (2) foot contours
- Aerial photographs from 2023 (ArcGIS format)
- City standard plan cover sheet



V. Reimbursable Expenses and Markups

For preparation of the cost proposal template and invoicing during the project, no markups shall be allowed on reimbursable expenses and the maximum markup on each subconsultant shall be 5%.

VI. Attachments

Attachment 1 - Location Map for Braly Park

Attachment 2 - Location Map for Fairwood
Park

Attachment 3 - Braly Park Site Photos

Attachment 4 - Fairwood Park Site
Photos

Attachment 5 - Building Department Electronic Plan Check Submittal

Attachment 1

Location Map for Braly Park



Attachment 2

Location Map for Fairwood Park



Attachment 3 – Braly Park Site Photos

Braly Park Restroom Building



Door to Women's Restroom/Water Fountain



Inside Men's Restroom



Attachment 4 – Fairwood Park Site Photos

Fairwood Park Restroom Building



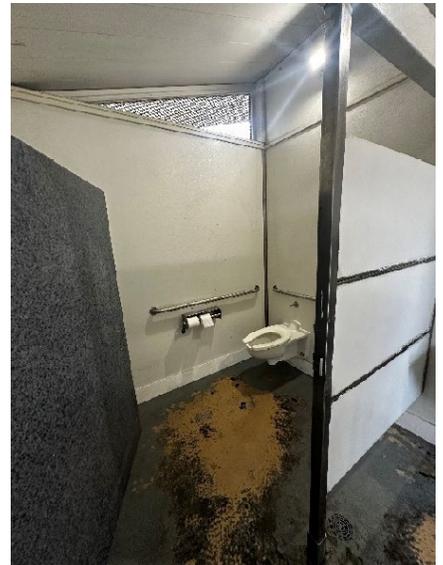
Utility Room



Urinal/Sink in Men's Restroom



Toilet Stall in Men's Restroom



ATTACHMENT 5



Sunnyvale

ELECTRONIC PLAN CHECK SUBMITTALS

BUILDING DIVISION REQUIREMENTS

- All building permit applications requiring plan check must be sent to the following email: planchecksubmittals@sunnyvale.ca.gov
- When sending resubmittals, addendums and deferred submittals, note the project address and permit number in the subject field of the email.

INSTRUCTIONS FOR SUBMITTING:

New Building Permits – All new building permit submittals must include the following documents in .pdf format.

- Permit Application – Must be complete with all fields filled in. Applications are available online at <https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?BlobID=23617>
- Questionnaire for Non-Residential projects – Complete the questionnaire at the end of this handout and include it with your submittal documents.
- Plans – Saved to a single file as one complete set, digitally stamped and signed by a design professional, if applicable.
- Structural Calculations – Digitally stamped and signed by a design professional, if applicable, and saved in a separate file.
- Other Supporting Documents (energy calculations, special inspection forms, etc.) – Saved in a separate file.
- Green Halo Registration – Newly constructed buildings and demolition projects, commercial and residential additions and alterations to non-residential projects must register with Green Halo (GH) to track construction & demolition waste and recycling. Visit Sunnyvale.wastetracking.com to register. A screenshot of your in-progress GH registration, showing the project address and GH tracking number, must be included in your submittal package, if applicable.

Resubmittals –

- Submit a **complete**, revised set of plans, calculations and supporting documents with changes clouded. If there have been no changes to the plans and documents, you must still send the latest **complete** set. It is important that a complete plan set package is submitted at each round of plan check.
- Include a formal response letter addressing all city comments.

Addendums –

- Submit revised sheets only with changes clouded and corresponding revision delta symbols. Sheets shall be digitally stamped and signed by the design professional, if applicable.

- Submit an itemized list of all revisions and addendums organized by page number.
- Include revised structural calculations, if applicable, with changes clouded and digitally stamped and signed by the Design Engineer.
- A separate file should be included containing a copy of the approved full set of plans for reference.

Deferred Submittals –

- Each plan sheet must be digitally stamped and signed with the Design Engineer’s professional stamp and digitally stamped and signed with the EOR review stamp. **No typed names or initials will be accepted.**
- The first page of the calculations must be digitally stamped and signed with the design Engineer’s professional stamp and digitally stamped and signed with the EOR review stamp. **No typed names or initials will be accepted.**
- Include a copy of the approved plan sheet that lists the city-approved deferred items.

Additional Instructions –

- The city can accept a total attachment size of 150 megabytes; however, this number may be limited by your email provider.
- Larger files can be sent through a link to cloud storage. The link cannot require special permissions or login credentials.
- Plan sets must be submitted as one file. Larger plan sets can be organized into separate folders by discipline (Architectural, Mechanical, Electrical, Plumbing, etc).
- Structural Calculations, response letters and other supporting documents must be organized into separate folders and not included in the plan set file.
- Files should be named so it is clear what they contain, with no internal company file names or file numbers.

Questionnaire for Non-Residential Projects -

1. Is this project associated with an already-approved planning permit?
2. Does the project involve a change of use (ex. previous tenant was an office, new tenant is a restaurant)?
3. Are exterior changes to the building or site proposed (ex. new roof-mounted equipment or trees for removal modifications to the parking lot, new windows or doors)?
4. Is the project proposing any kitchen/café improvements? (This is for Public Works to determine any sewer/water connection fees and updates to the trash management plan.)
5. Is the project going in a new shell building or space that has never been occupied OR an existing building where landlord/market-ready shell improvement is in progress? If yes, provide the building permit number for the shell work. PLEASE NOTE A BUILDING PERMIT WILL NOT BE RELEASED UNTIL THE SHELL WORK IS COMPLETE OR SUBSTANTIALLY COMPLETE

Exhibit A-1 Project Schedule

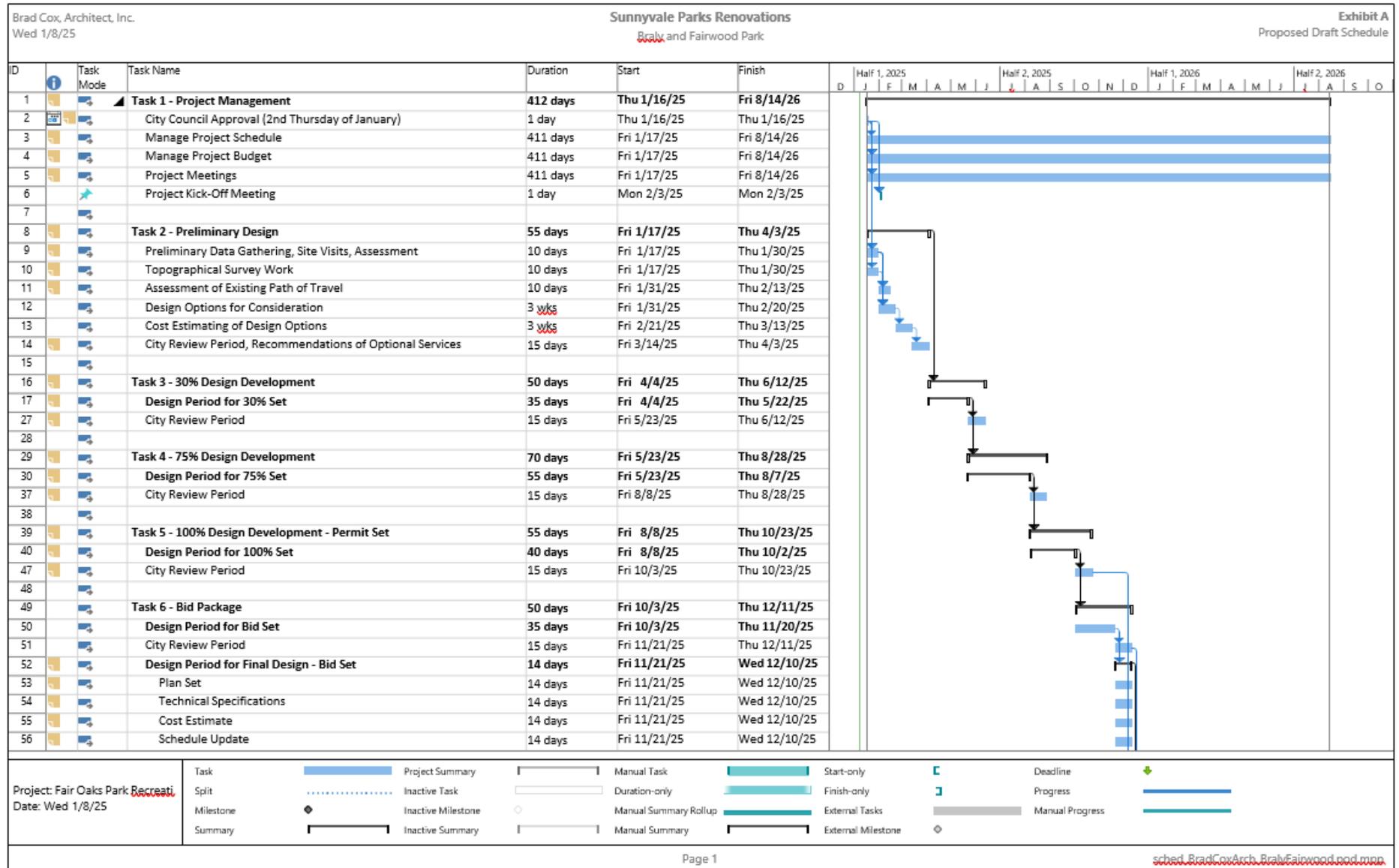


Exhibit B Compensation Schedule

City of Sunnyvale

Consultant Name: Brad Cox, Architect, Inc.

Proposal For: Park Buildings Rehabilitation (Braly & Fairwood Restrooms)

Project #: PR 21-06

Tasks		Labor							Subconsultants							ODCs	Total
Task #	Task Description	Principal	Project Lead	Designer	Designer	Project Admin	Total Hours	Total Labor Costs	Survey	Site Work	Geotech.	Hazardous Materials	Structural	MEP and T24	Cost Estimating	Other Direct Costs	Total Fee
		Brad Cox	Hara Chung	Anne Sherwood	Xu-Chen Wang	Ellen Robinson			MH Engineers	MH Engineers	Pacific Geotech	Clancy	GMEP	GMEP	Silva Consulting		
		Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS			Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS			
1	Project Management	8	18	-	-	12	38	\$5,620	0	\$0	0	0	0	0	0	0	\$5,620
2	Preliminary Design	16	32		32		80	\$12,240	0	\$5,250	0	5250	735	1890	0	656	\$26,021
3	30 % Design Development	24	48		48		120	\$18,360	0	\$4,200	0	0	1470	3780	3570	650	\$32,030
4	75% Design Development	24	48	48	48		168	\$25,320	0	\$8,400	0	0	1470	3780	4998	933	\$44,901
5	100% Design Development	24	48	48	48		168	\$25,320	0	\$5,250	0	0	1470	3780	5712	810	\$42,342
6	Bid Package	24	48		48		120	\$18,360	0	\$6,720	0	0	735	1890	0	468	\$28,173
7	Bidding Services	12	24		24		60	\$9,180	0	\$2,520	0	0	0	0	0	126	\$11,826
8	Construction Support Services	32	64	12	64		172	\$26,220	\$0	\$8,400		2100	1470	3780	0	788	\$42,758
Proposal Subtotal		164	330	108	312	12	926	\$140,620	\$0	\$40,740	\$0	\$7,350	\$7,350	\$18,900	\$14,280	\$4,431	\$233,671
Optional Services																	
A	Braly Park Existing Closet Conversion	8	16	-	16	2	42	\$6,360	0	0	0	0	0	0	0	-	\$6,360
B	Braly Park Doors Replacement	8	16	-	16	2	42	\$6,360	0	0	0	0	0	0	0	-	\$6,360
C	Fairwood Park Restroom Building Location Shift	8	16	-	16	2	42	\$6,360	0	0	0	0	0	0	0	-	\$6,360
D	Survey Work for both Sites	2	2	-	-	-	4	\$670	13650	0	0	0	0	0	0	683	\$15,003
E	Geotechnical Report for Fairwood Park	1	1	-	-	-	2	\$335	0	0	\$6,825	0	0	0	0	341	\$7,501
Total Optional Services		27	51	0	48	6	132	\$20,085	\$13,650	\$0	\$6,825	\$0	\$0	\$0	\$0	\$1,024	\$41,584
Total Including Optional Services		191	381	108	360	18	1,058	\$160,705	\$13,650	\$40,740	\$6,825	\$7,350	\$7,350	\$18,900	\$14,280	\$5,455	\$275,255
Notes:																	
1																	
2																	
3																	
4																	

Exhibit C
Insurance Requirements For Consultants/Contractors

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this Agreement for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation: Statutory Limits and Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

Professional Liability / Errors and Omissions Liability coverage with limits not less than \$1,000,000 per claim.

Valuable Papers and Electronic Data Processing with limits not less than \$10,000 each.

Cyber & Tech Liability coverage with limits not less than of \$1,000,000 per occurrence or claim.

Commercial Crime coverage with limits not less than \$1,000,000 per occurrence to include employee and non-employee dishonesty and theft, forgery, fraud, disappearance and destruction of money and securities.

Coverage must include third party premises endorsement.]

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and reviewed by the City of Sunnyvale, Risk Manager. The Consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the Agreement, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in the Consultant's commercial general liability policy (and if industry specific coverage is checked above, valuable papers, electronic data processing, and cyber liability policies) with respect to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

2. During the term of the Agreement, the Consultant's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For all Architects, Engineers and Design Professionals - If Industry Specific Coverage box is check above **and** if the Consultant's Professional Liability/Errors and Omissions coverage is written on a claims made basis:
 - a. The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.*
 - c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the Agreement effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of contract work.
4. For any claims related to this agreement, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
6. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
8. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the Consultant's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.
9. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Consultant's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this

agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than Superior or Excellent, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

City utilizes PINSAdvantage.com (PINS) to track and verify all insurance related documents. City is no longer accepting Certificates of Insurance by mail and requires the use of PINS. City will email the Contractor/Consultant requesting proof of insurance for this Contract through the PINS platform (no-reply@pinsadvantage.com), which include instructions on how to upload insurance documents electronically. Contractor/Consultant shall furnish the City with an electronic Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf and name City of Sunnyvale, Attn: Risk Management, 456 W. Olive Ave, Sunnyvale, CA 94088 as the certificate holder. All certificates are to be received and approved by the City Risk Manager prior to commencement of work.

The Consultant shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. Consultant shall submit insurance certificates reflecting the policy renewals through PINS. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors

Consultant shall require all sub-contractors to procure and maintain insurance policies subject to these requirements. Failure of Consultant to verify existence of sub-contractor's insurance shall not relieve Consultant from any claim arising from sub-contractors work on behalf of Consultant.

Exhibit D Labor Compliance

Contractor Registration with the State of California – Contractors, and all applicable subcontractors which are required to pay prevailing wages, must be registered with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, pot holing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. Registration must remain current throughout the project entirety. It is the contractor's responsibility to not allow their PWC Registration to lapse during the project and to ensure all Subcontractor's registrations remain current. The Labor Commissioner can assess penalties to public works contractors of up to \$10,000, in addition to the registration fee, for failure to register. Awarding agencies are also subject to penalties of \$100 a day, up to a maximum of \$10,000, for having an unregistered contractor perform work on a public works project. If any penalties are issued to the City for unregistered subcontractors or for a lapse in a contractor/subcontractor's PWC Registration, these penalties will be passed onto the contractor. **A contractor that allows an unregistered subcontractor to work on the project is also subject to penalties of \$100 a day up to \$10,000.** Contractors shall list all applicable PWC registration numbers on the Bid Form.

Hours of Work – Pursuant to Labor Code, Section 1810, eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to the City, twenty-five dollars (\$25.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code. Such forfeiture amounts may be deducted from the contract sum.

Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the project, which record shall be kept open at all reasonable hours to the inspection of the City, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

Wage Rates – Pursuant to Sections 1770, 1771 and 1774 of the Labor Code of the State of California, or any applicable local law, contractors shall not pay less than the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations. The City has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. The City has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against the City.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify the City who will

promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

Prevailing Wage – As identified in the Notice to Bidders, the work contemplated by this agreement is a public work subject to prevailing wages under California Labor Code, Sections 1720 et. seq. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for each craft, classification, or type of worker required to perform the work. A schedule of the most recent general prevailing per diem wage rates made available to the City will be on file at the City's principal facility office and will be made available to any interested party upon request. This prevailing wage rate schedule is provided by the City for Bidder's information only and is not guaranteed by the City to be current. Contractor is obligated to verify all appropriate prevailing wage rates and pay those rates as required. By this reference the verified current schedule of prevailing wage rates is made part of the Contract Documents. Contractor shall pay not less than the prevailing per diem wage rates, as specified in the schedule and any amendments thereto, to all workers employed by contractor in the execution of the work. Contractor shall cause all subcontracts to include the provision that all subcontractors shall pay not less than the specified prevailing per diem wage rates to all workers employed by such subcontractors in the execution of the work.

Contractor shall forfeit to the City, as a penalty, no more than two hundred dollars (\$200.00) for each calendar day or portion thereof for each worker that is paid less than the specified prevailing per diem wage rates for the work or craft in which the worker is employed for any portion of the work done by contractor or any subcontractor in violation of the provisions of the Labor Code, and in particular Sections 1770 to 1781 thereof, inclusive. Such forfeiture amounts may be deducted from the contract sum. Contractor shall also pay to any worker who was paid less than the specified prevailing per diem wage rate for the work or craft for which the worker was employed for any portion of the work, for each calendar day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rates set forth in the Agreement, including payment in excess of the prevailing wage for extra work paid by force account. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the contractor's bid and will not, under any circumstances be considered as the basis of a claim against the City under the Agreement.

Certified Payroll Records – Pursuant to Labor Code, Sections 1776 et. Seq., contractor and all subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the work. All payroll records shall be certified as being true and correct by contractor or subcontractors keeping such records; and the payroll records shall be provided to the City no later than three weeks after closing of payroll for City-funded projects, and no later than one week for federal aid projects. The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in Labor Code section 1776 (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Certified payroll records shall be made available at reasonable hours at the contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code section 1776. Certified payroll shall also be made available for inspection upon request by the State of California Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

Each contractor and every lower-tier subcontractor will be required to submit certified payrolls and labor compliance documentations electronically via the software LCPtracker. Contractor shall cause all subcontracts to include the provision that all subcontractors submit certified payrolls and labor compliance documentation electronically via LCPtracker. Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser.

Each contractor user will be given a Log-On identification and password to access the City's reporting system. Access will be coordinated by a City representative.

Apprentice Program – Attention is directed to State of California Labor Code, Sections 3095, 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200, and the applicable Sections that follow. Responsibility for compliance with these requirements lies with the contractor. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, contractor or subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of the work. In the event contractor willfully fails to comply with this section, it will be considered in violation of the requirements of the Contract.

Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares the unlawful discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.

Attachment D
POLICY 5.1.6 WAGE THEFT PREVENTION – COUNCIL POLICY MANUAL

POLICY PURPOSE: To establish a Council Policy and procedure to prevent wage theft on City goods and services contracts as well as deny, suspend or revoke certain City permits and licenses to businesses with unpaid wage theft judgments.

BACKGROUND:

Wage theft occurs when an employer fails to pay its workers the wages to which they are legally entitled. It is the crime of stealing earned wages from workers. There are numerous forms of wage theft involving violations of employment laws but all resulting in workers earning less than they are entitled to earn.

Local and national studies on wage theft report that wage theft is a pervasive and chronic problem. Wage theft is not incidental, aberrant, rare or committed only by a few rogue employers at the periphery of the labor market. Instead it takes place in industries that span the economy – from retail, restaurants and grocery stores; caregiver industries; manufacturing, construction and wholesalers; building services such as janitorial and security; and personal services such as dry cleaning and laundry, car washes and beauty and nail salons.

POLICY STATEMENT:

A. GOODS AND SERVICES AGREEMENTS

It is the policy of the City of Sunnyvale that all parties contracting with the City pursuant to Sunnyvale Municipal Code Chapter 2.08 must comply with all applicable federal, state and local wage and hour laws including, but not limited to, the Federal Fair Labor Standards Act (“FLSA”), the California Labor Code and the Sunnyvale Minimum Wage Ordinance.

This Policy does not apply to any “public works” contracts as defined in City Charter Section 1309, Sunnyvale Municipal Code Chapter 2.09, and state law.

B. MANDATORY DISCLOSURE REQUIREMENT

As a part of any City solicitation for supplies, materials, goods and/or services, a potential contractor shall fully complete a “Bid Certification” (“Certification”). The Certification requires each potential contractor to disclose whether the contractor has been found by a court or final administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws within the past five (5) years from the date of the submitted bid or proposal. For each disclosed violation, the potential contractor shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of potential contractor’s efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the potential contractor to the City as a part of its bid or proposal.

A. Bid or Proposal Disqualification Circumstances

A potential contractor that has submitted a formal or informal bid or proposal to provide supplies, materials, goods and/or services to the City pursuant to Sunnyvale Municipal Code Chapter 2.08 ***shall*** be disqualified if the potential contractor has been found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws on one (1) or more occasion ***and*** has one (1) unpaid wage judgment in the past five (5) years prior to the date of submission of a bid or proposal to provide supplies, materials, goods and/or services.

B. Grounds for Contract Termination after the Award of the Contract

A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five (5) years prior to or during the term of the contract with the City, ***may*** be in material breach of its contract with the City if the violation is not fully disclosed and/or satisfied per City contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

C. Inaccurate or Incomplete Disclosures

Inaccurate or incomplete disclosures constitute a violation of the City's Wage Theft Prevention Policy and **may** result in immediate disqualification from the City solicitation and contracting process or immediate termination of any contract with the City.

3. CONTRACT LANGUAGE AFTER SUCCESSFUL BID OR PROPOSAL

All City contracts subject to this Policy shall include the following provisions:

Wage Theft Prevention

Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the Sunnyvale Prevailing Wage Policy and Minimum Wage Ordinance.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, the City of Sunnyvale or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City with documentary evidence of compliance with the final judgment, decision or order within five (5) calendar days of satisfying the final judgment, decision or order. The City reserves the right to require Contractor to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

4. DENIAL AND REVOCATION OF PERMITS AND LICENSES UNDER THE SUNNYVALE MUNICIPAL CODE

The Sunnyvale Municipal Code shall contain language that allows the City to deny, suspend or revoke certain permits or licenses if a business fails to pay a court or final administrative action of an investigatory government agency for violating applicable wage and hours laws.

If the City receives complaints about permittees or licensees regarding wage theft, the department responsible

for issuance of the permit or license shall work with the Economic Development Division and the City Attorney's Office to investigate the complaint to determine whether denial, suspension, or revocation of the permit or license until the wage judgment is satisfied.

(Adopted: RTC #18-0215 (April 10, 2018)) Lead Department: Office of the City Manager