

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of February 6th, 2018 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and Bellinger Foster Steinmetz Landscape Architecture, a California S-CORPORATION with its principal place of business at 425 Pacific Street, Suite 201, Monterey CA 93940 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project: **CIP# 5109 Creighton Park Renovation (hereinafter referred to as "the Project")**.

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$217,788. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall

be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder by June 30, 2019 and according to "**Activity Schedule**" as **Exhibit C**. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

b. Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the

City, its officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents and volunteers.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

14. City Material Requirements.

Consultant is hereby made aware of the City's requirements regarding materials, as set forth in **City of Milpitas Standard Details and Specification (latest), City of Milpitas Parks & Recreation Master Plan dated 2007, Engineering Plans and Map Procedures and Guidelines dated July 15, 2010 and City of Milpitas Street Scape Master Plan**, which are deemed to be a part of this Agreement.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the

work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Beth Matz as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Michael Silveira

CONSULTANT:
Belling Foster Steinmetz Landscape
Architecture
425 Pacific Street, Suite 201,
Monterey CA 93940
Attn: Larry Foster

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee,

commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND BELLINGER FOSTER STEINMETZ LANDSCAPE ARCHITECTURE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

**BELLINGER FOSTER STEINMETZ
LANDSCAPE ARCHITECTURE**

Steve J. Pangelinan,
Interim City Manager

Signature

Larry Foster
Name

Date

Principal
Title

Approved As To Form:

Date

Christopher J. Diaz
City Attorney

Will Fuentes,
Director of Finance

EXHIBIT A
Scope of Services

General:

Creighton Pinewood Park is approximately 5 acres and was originally constructed in 1968 with the Parktown Development and was expanded and renovated in 1981. The facility is used as a large neighborhood park with a large and small turf area for non-specified use, 10' wide decompose granite vehicle/pedestrian path, play structure area, small picnic areas, and landscaping surrounding the park.

The renovation project is to include the following, but not limited to, improvements that implements community feedback and complies with current the City of Milpitas Parks & Recreation Master Plan, local, state, federal and ADA standards.

- Install a new Tot Lot area with surrounding large and small picnic areas available for rental use,
- install a restroom structure with utility connections,
- install site features, security lighting, utility/infrastructural improvements, etc
- provide ADA compliance for circulation and ADA parking stall(s),
- renovate existing small group picnic areas,
- remove and replace the existing 10' decompose granite path with a 12' to 14' path for maintenance vehicle/pedestrian use (material to be determined),
- revamp existing and install new planting areas and irrigation,
- trim trees and remove any dangerous trees

Task 1 - Concept Design:

1. Initial Project Design Meeting – CONSULTANT shall meet with CITY staff to review concept design and scope. Review project goals, budget, scope and schedule. Verify regulatory items, approval process and administrative procedures. Clarify CITY preferred materials, equipment and available maintenance resources.
2. Condition assessment of park improvements and landscaping at the park.
3. Prepare conceptual design plans including:
 - a. Conceptual site plan(s) includes layout of improvements in relation to existing features.
 - b. Conceptual grading and drainage plan(s) includes strategy for storm water, ADA compliance, and storm water treatment measures consistent with C-3 Requirements.
 - c. Conceptual planting and irrigation plan(s) consistent Milpitas Landscape Ordinance 238.
 - d. Conceptual material and finishes schedule for site features such as lighting, tables, BBQ, bench, etc.

- e. Conceptual playground and equipment plan(s) includes material and finishes.
 - f. Conceptual restroom plan includes material and finishes.
 - g. Prepare outline of technical specification.
 - h. Conceptual tree pruning, protection and removal plan(s) consistent with the Arborist report and City's Heritage and Protected Tree ordinance.
 - i. Evaluate to determine if the renovation project would fall outside the requirements of a categorical exemption.
 - j. Comply with any and Environmental requirements for the project.
 - k. Conceptual security and safety lighting plan includes material and finishes schedule.
 - l. Conceptual cost estimate.
 - m. The use of cost effective design, materials that require minimal maintenance.
 - n. Identify permits and project approvals that will need to be obtained for each concept.
4. Using program elements and findings from field and information gathering prepare concept plan for the improvements to the park. The concept plan shall address all regulatory compliant improvements then the balance of the improvements budget can be applied toward betterments to the park.
 5. CONSULTANT shall meet with CITY staff to review issues associated with the proposed concepts. CONSULTANT shall furnish a meeting agenda and subsequent minutes to summarize the pertinent information.
 6. CONSULTANT shall develop final concept plan graphic and preliminary cost plan for the park within the City's construction budget of \$1.5 million. The budget is intended to cover the following improvements:
 - a. Evaluate all existing park trees to perform necessary trimming and/or removal
 - b. Provide ADA compliance for circulation and correct any deficiencies that are not ADA compliant
 - c. Tot lot and playground equipment according current code and standards.
 - d. New large picnic area and small picnic areas available for rental use.
 - e. Renovate existing small picnic area
 - f. Elevate and rehabilitate irrigation system where there is a lack pressure and flow
 - g. New restroom structure with utility connections,
 - h. New site features, safety and security lighting,
 - i. remove and replace the existing 10' decompose granite path with a 12' to 14' path for maintenance vehicle/pedestrian use (material to be determined),
 - j. revamp existing and install new planting areas and irrigation,
 - k. Install utility/infrastructural improvements.
 - l. Restroom structure
 7. CONSULTANT shall assist CITY Staff in the preparation of a power point presentation to the PRCRC and City Council for approval of the project Conceptual design. CONSULTANT shall assist the City and be present at the meetings to provide narrative and answer any questions when requested. Two meetings shall be budgeted.

8. CONSULTANT shall with the CITY'S input develop a project schedule for the Design and Construction phases of the Project.

Task 2: Field and Document Investigation for Design

1. Geotechnical investigation:
 - a. Collect samples of in-place soil for horticultural soils analysis and provide recommendations for ornamental planting of turf, ground cover, shrubs, new and existing trees and; maintenance during establishment period.
 - b. Complete geotechnical investigation and soils report including recommendations for vehicle/pedestrian path pavement sections and structures proposed for the project.
2. Arborist Report:
 - a. The report shall provide an overall assessment, description and recommended work for all trees within the Park's property.
 - b. Each tree shall have an aluminum tag with corresponding number affixed to the trunk.
 - c. The trees shall be evaluated using the International Society of Arboriculture Best Management for Tree Risk Assessment
 - d. The report shall provide a tree survey chart that documents the dimensions and conditions (health and structure rating), denotes preservation suitability or removal.
 - e. The report shall include an overview of the proposed improvement work and the potential impacts on the health of the subject trees and provide comments or recommendations concerning design considerations in order to facilitate the protection of the subject tree.
 - f. The report shall identify required Tree Protection Zones and minimum setback distance and specify fencing requirements for protection.
3. Field investigation and data collection including review of City's as-builts/record drawings, utility plat maps, arborist report, Utility Company coordination and any other information available for the project site.
 - a. CITY will provide, but can not guarantee the accuracy of:
 - i. Available as-built plans
 - ii. Utility plat maps
 - b. CONSULTANT to perform:
 - i. Field survey shall include, but not limited to:
 1. Establish horizontal and vertical control and datum based on City's Benchmark system.
 2. At grade and below grade utilities structures and lines
 3. Tree trunk locations, canopy and primary root zone
 4. All existing structures and hardscape
 5. Data to compile for one foot contours
 6. Monuments and Property corners

- c. CONSULTANT to perform record research along with field data collection to provide a record boundary and easement location.
 - d. CONSULTANT shall verify locations and inverts of existing underground utilities, and all “as-built” plans provided by the City.
3. Task 1 & 2 shall be performed concurrently

Task 3: Final Design

Objective:

Prepare bid documents, including specifications, drawings, and cost estimates within the CITY’s cost plan and conceptual design in compliance with Public Contracts Code for a Public Works Project.

1. Prepare and submit construction plans, specifications and estimates (submittals 50%, 90%, and 100%) suitable for building department approval for structures, electrical, and ADA site compliance work, a building permit shall be obtained for this project. A 100% set of plans which incorporate all comments from the Building Department will be used for bidding the work. For each phase of design the consultant shall respond to and incorporate the CITY’s comments. CONSULTANT shall schedule a minimum of three weeks for City review of each submittal. The 50% and 90% submittals shall include one complete hard copy sets of plans, specifications and calculations. The 100% submittal shall include three complete hard copy sets of plans, specifications, and calculations stamped by a California licensed professional. All submittals shall also be submitted on CD in AutoCAD and PDF formats. Specifications shall be in MS word format, and cost estimate shall be in MS Excel.

Sheets that shall be included, but not limited to, in the Construction Drawings:

- a. Cover Sheet the includes General Notes, Legend and Abbreviation, Site Map, Sheet Index etc.
 - b. Existing Conditions Plan,
 - c. Demolition Plan
 - d. Layout Plan
 - e. Grading and Drainage Plan
 - f. Stormwater Control Plan
 - g. Tree Removal/Pruning Plan
 - h. Restroom Structure Plan
 - i. Planting and Irrigation Plan & Details
 - j. Construction Plan and Details (Material and Finishes)
 - k. Electrical and Lighting Plan & Details
 - l. Erosion Control Plan and Details
 - m. Blueprint for a clean bay (City to provide)
2. CONSULTANT shall attend Team Meeting: Present 50%, 90%, 100% and Building Department Meeting. Four team meeting shall be budgeted.
 3. CONSULTANT shall coordinate and manage sub-consultants throughout Final Design phase.

4. These plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/4" = 1' for structural plans.
5. CONSULTANT shall be responsible for meeting the requirements of the City Building and Planning departments, for review local and state codes for zoning, building, and CEQA submittal and approval requirements.
6. The CONSULTANT shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C.3" and Erosion Control guidelines. The CONSULTANT shall provide Erosion Control Plan and Details, guidelines and technical specification section.
7. The CONSULTANT shall prepare Construction Drawings using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet. (City to provide title block in AutoCAD)
8. Project Specifications shall be prepared using the CITY's standard front end document. The CITY also has several Technical Specification Sections which are also standard that may be used on the project. If CONSULTANT uses the CITY provided technical sections the CONSULTANT will be required to stand behind the design. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, CSI format. The technical specifications shall be coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: California Building Code, Title 24, ADA, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of a the necessary Permits. The specifications shall include measurement and payment wording. The CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. The CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. The construction schedule shall be specified in working days or calendar days as approved by the CITY.
9. CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate all utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.
10. CONSULTANT shall also prepare all submittals for Building Department permit review and approval as required. CONSULTANT shall respond to all Building Department comments. The CONSULTANT is responsible to submit to the Building as many times as necessary to obtain approval at no additional cost to the City. The Building Department submittal process typically takes 15 working days for each submittal review. Each Building Department submittal requires five wet signed hard copies.

11. PRCRC and City Council Meetings: CONSULTANT shall assist CITY Staff in the preparation of power point presentations for presentation to the PRCRC and City Council for approval of the project design. CONSULTANT shall budget for two such meetings and presentation preparation, but CONSULTANT will not be required to attend the meeting.
12. Final plans ready for bidding shall be submitted wet signed/stamped hard copy and on compact disk (CD) in AutoCAD and PDF formats.

Task 4: Quality Control/Quality Assurance (QC/QA):

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality. CONSULTANT shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

- Design and calculations are independently checked, corrected and back checked by the CONSULTANT;
- When different disciplines are involved, means to assure that conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.

CITY reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments, QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and finds that is in compliance with Task 1&3 of this scope of work.

Task 5: Bidding Support Services:

CITY will be responsible for advertisement of the project. CONSULTANT shall assist CITY during bid solicitation process. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following; response to bidders' inquiries, preparation of addenda, attend and assist at two pre-bid meetings, evaluation of bids. Upon completion of bidding, CONSULTANT shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda ready to issue for contract award and construction. CONSULTANT shall submit five signed conformed sets of contract documents hard copies and one electronic copy on CD in Auto CAD, MS Word and PDF formats.

Task 6: Construction Administration Support:

1. CONSULTANT's responsibility to provide Construction observation and project administration duties shall commence with the award of the construction contract and shall terminate at the conclusion of the warranty/guarantee periods for the Contractor's work.
2. CONSULTANT shall advise and consult with the CITY in all matters and shall promptly submit all observations, recommendations, and reports to the CITY.
3. CONSULTANT shall provide technical and construction administration services within professional standards to observe and determine if the CONTRACTOR is in compliance with the intent of the contract documents and the timely completion of the Project, to the extent required in this Scope of Work.
4. CONSULTANT shall attend the Project pre-bid and pre-construction conference and other meetings as specified in project specifications.
5. CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become familiar with and to keep the CITY informed about the progress and quality of the portion of the work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the work, and (3) to endeavor to determine if the work is being performed in a manner such that the work, when fully completed, will be in accordance with the Contract Documents. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
6. CONSULTANT shall attend construction meetings, as scheduled, with the Contractor, or as requested by the CITY. CONSULTANT shall provide commentary to the CITY on all material issues. Construction meetings are anticipated to be held once a week for the first month and every other week after that.
7. CONSULTANT shall keep the CITY informed of its observations of the progress of the Project.
8. CONSULTANT shall promptly report in writing to the CITY any known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT's negligent, intentional, or reckless acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor,

Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

9. CONSULTANT shall review and respond to Contractor's Requests for Information (RFI's) and submittals including shop drawings, product data, and samples, for conformance with the design concept expressed in the Project Contract Documents. CONSULTANT shall coordinate its review and response to these documents with the CITY and the Contractor as needed to allow for work to proceed, and be cognizant of the Contractor's progress and schedule. In this regard, CONSULTANT shall work in good faith with the Contractor and the CITY to prioritize the processing of critical path RFI's and submittals and other Contractor submitted documents as outlined in this scope of work. CONSULTANT's review and response to RFI's and submittals shall be done in a timely and expeditious manner. So long as Contractor fully complies with the Project's approved submittal schedule, CONSULTANT shall review and respond to required submittals with such reasonable promptness as to cause no delay in the Work, while allowing sufficient time to provide adequate review. Generally, such review shall take no more than four (4) working days for RFIs and Ten (10) calendar days for all other submittals, so long as such submittals are timely and complete. CONSULTANT and its subconsultants shall review submittals for completeness and issue any rejections of submittals on incompleteness grounds as soon as professionally possible, but in no event later than five (5) working days. If additional time is required to review and respond to RFI's or submittals due to circumstances beyond CONSULTANT's reasonable control, CONSULTANT shall notify the CITY in writing of the grounds for such delay and request additional review and processing time from the CITY, the approval of which shall not be unreasonably withheld, but such determination shall be based upon the critical path of the subject document and the overall impact to the Contractor's progress. In such cases, CONSULTANT shall make good faith efforts to resolve or remedy the delay in an expeditious manner.

In cases where CONSULTANT's late response is due to CONSULTANT's negligence, intentional misconduct, or reckless conduct, CONSULTANT shall be held liable for that portion of delay damages incurred by the CITY arising from the CONSULTANT's conduct.

10. CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
11. CONSULTANT shall review requests by the CITY for changes in the work, including adjustments to the contract price or time of completion. CONSULTANT shall provide a recommendation to the CITY in writing.
 - a. CONSULTANT shall review and respond to any Contractor-submitted Change Order within five (5) working days of its receipt.
 - b. CONSULTANT shall assist the CITY in the preparation of Change Orders and Construction Change Directives with all supporting documentation and data as necessary, for the CITY's approval and execution in accordance with the contract

documents. Professional services for researching and preparing Change Orders or Construction Change Directives to correct errors and omissions caused by CONSULTANT shall be provided at no additional cost to the CITY.

- c. CONSULTANT shall identify causes for all Change Orders to the CITY in writing for CITY's review.
 - d. CONSULTANT shall maintain all records relative to changes in the Work.
 - e. CONSULTANT shall be responsible for those costs associated with any and all Change Orders and/or delays to the extent caused by negligent, intentional, or reckless errors or omissions in the CONSULTANT's design.
12. CONSULTANT may, after receiving approval from the CITY, reject work that does not conform to the contract documents. Whenever CONSULTANT considers it necessary or advisable for implementation of the intent of the contract documents, CONSULTANT will notify the CITY when consultant feels additional inspection or testing of the work in accordance with the provisions of the contract documents is necessary.
13. CONSULTANT shall review, reports, summaries, instruction books, operational manuals, warranties, and other Contractor provided documents to determine in general, whether or not the Contractor is in compliance with the contract documents.
14. As directed by the CITY, CONSULTANT shall assist the CITY in fulfilling the legal requirements and mandates of third-party regulatory agencies.
15. CONSULTANTS certification for payment shall constitute a representation to the CITY, based on the CONSULTANT's evaluation of the work and on the data comprising the Contractor's Application for Payment, that, to the best of the CONSULTANT's knowledge, information and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.
16. CONSULTANT shall respond to CITY's questions in writing when such questions are necessary to provide clarification to the plans and specifications.
17. CONSULTANT shall generate supplemental drawings and clarifications, as necessary, or as may be requested by the CONTRACTOR or the CITY to clarify the design intent at no additional cost to the CITY.
18. CONSULTANT shall review Notices of Potential Claim and render written decisions on all Notices of Potential Claim, claims, disputes or other matters in question between the CITY and Contractor relating to the execution or progress of the work as provided in the

contract documents within five (5) working days or as agreed to by CONSULTANT and CITY.

19. CONSULTANT shall prepare a final punch list of any discovered incomplete and/or unaccepted items of the construction work for the CITY's review and approval. CONSULTANT shall make, with the CITY, a final close-out walk-through of the Project when all punch list items have been corrected in accordance with the requirements of the construction documents.
20. CONSULTANT shall perform a final playground inspection at the completion of the installation of improvements at the Park. The task shall include issuing a correction notice for any items not repaired or replaced to standard and issue a final inspection report.
21. The Construction duration of the project is estimated to take 6 months and a plant establishment period of 60 days would follow initial acceptance of the project by the City Council.

Task 7: Record Documents and Project Closeout

1. CONSULTANT shall review all Contractor supplied operation and maintenance manuals, and warranties.
2. CONSULTANT shall maintain up to date record drawings throughout project construction. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the Contractor's as-built drawings and specifications, and shall return them for Contractor revision if they are not accurate and complete. CONSULTANT shall incorporate all changes shown on the Contractor's As-Built Drawings, executed RFI's, submittals, and Contract Change Orders from the Conformed set into a final Record Drawing set. CONSULTANT shall also draft and initial the official Record Drawings and submit both a hard copy and an electronic copy in the latest AutoCAD format, PDF and TIF on digital video disc (DVD) to the CITY within 25 days of receipt of completed Contractor red line drawings. AutoCAD files shall meet the requirements set in the City's "Guidelines for Submitting CAD Digital Files to the City" Memo dated 10/11/12.
3. Prior to the expiration of each of the Contractor's warranties and guarantees, CONSULTANT shall perform a careful review of the work subject to each warranty and guarantee. CONSULTANT shall immediately report any discovered defective materials or workmanship to the CITY so that the CITY may make timely demand to the Contractor to repair the defects.
4. CONSULTANT shall meet with the CITY or the CITY's Designated Representative promptly after Substantial Completion to review the need for facility operation services.
5. Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and

the CITY's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

Task 8: Storm Water Pollution Prevention Plan

The CONSULTANT shall prepare the SWPPP for compliance with the State NOI requirement if the threshold of disturbed area is exceeded.

Task 9: Additional Services

The City will provide written direction and authorization prior to beginning any additional services.

Task 10: Reimbursable

Provide a reimbursable budget for printing, reproduction, and delivery services.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

EXHIBIT C
Activity Schedule

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or 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 hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

- Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
- Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

- Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate
- (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
- Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

- Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

- Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor’s or Consultant’s Pollution Legal Liability:

___ Contractor’s or Consultant’s pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s or Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be

endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of **five (5) years** after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or 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.