



REQUEST FOR PROPOSALS

#RFP-2019-01

**PROJECT: LANDSCAPE
ARCHITECTURE & ENGINEERING
CONSULTING SERVICES**

The Authority is issuing this Request for Proposals for Landscape Architecture and Engineering Consulting Services.

**PROPOSALS DUE: FRIDAY, FEBRUARY 15,
2019 by 5 P.M. PACIFIC DAYLIGHT TIME**

Request for Proposals

LANDSCAPE ARCHITECTURE & ENGINEERING CONSULTING SERVICES

BACKGROUND & SCOPE OF WORK

PURPOSE OF REQUEST FOR PROPOSALS (RFPs)

The Santa Clara Valley Open Space Authority (“Authority”) is soliciting proposals from a qualified prime firm and their subconsultant with expertise in landscape architecture and civil and geotechnical engineering consulting services. The team under this contract may perform master planning, design feasibility analysis, pre-design through final construction documentation and construction oversight and administration as needed. Projects under this contract will be focused on small to medium-sized public access facilities such as parking areas, trailheads and trails, accessibility design, restroom structures and other related features. Projects could also include ecological restoration planning and design. Environmental compliance associated with these projects will not be included in this contract, however the Prime Firm will work in collaboration with the Authority’s team. The Authority is seeking proposals from an experienced prime firm and their subconsultant for landscape architecture and engineering consultation which will be on an “As Needed” basis within a four (4) year term, not to exceed \$400,000. The selected professionals will have proven experience in landscape architecture, engineering, and related services for federal, state, and local public agencies and be fully qualified to perform services requested by the Authority in this RFP.

BACKGROUND

The Authority is an independent special district created on February 1, 1993, by an act of the Legislature and is governed by a seven-member elected Board of Directors. The Authority serves a large portion of Santa Clara County by protecting sensitive lands and agricultural resources, preserving natural communities, and managing open space. The Authority has preserved over 22,000 acres, which include three preserves open to the public with over 20 miles of trail. As-needed landscape architecture and engineering consultant services will support the Authority in its role related to connecting people to nature through public access, education and interpretive opportunities, and resource and habitat protection and management through ecological restoration.

We are currently planning multiple public access and capital improvement projects, in addition to resource management planning and master planning for open space management. Design for public access projects may include components of recreational trails, roadways, staging areas, waterway crossings, or other Authority facilities. The Contractor will aid Staff by developing site designs and schematics for permitting and construction needs, as well as for outreach materials for presentation to the Authority’s Board of Directors and to the general public.

OBJECTIVES

The Authority is inviting proposals from qualified consulting firms, groups, or individuals (“Prime Consultant”) to work with Staff and project partners on a variety of tasks that support the organization’s conservation planning and design projects at the project and program level.

SCOPE OF WORK

To provide landscape architecture and engineering | consultation services which will be on an “As Needed” basis within a four (4) year term. The Prime Firm would be responsible for providing tasks as outlined below. The selected firm under this RFP will respond to Authority-issued Task Orders that describe the scope of services needed for specific projects. The Prime Firm will be required to prepare a scope of work and fee proposals for each said task that will require Authority authorization to proceed. The Contract for Services will be for a four (4) year term and may authorize up to \$400,000 in total through any number of Task Orders.

Project tasks may include but are not limited to:

Landscape Architecture/Civil Engineering

- Assist with preserve-wide and landscape scale master planning
- Design feasibility analysis and conceptual development
- Conceptual design alternatives
- Provide accessibility design
- Signage and wayfinding
- Produce display boards, handouts, report graphics, PowerPoint displays, or website graphics
- Prepare maps, diagrams, drawings and/or other graphics to communicate project work including visualizations
- Project cost estimates
- Prepare plans and specifications including 30%, 60%, and 90% construction documents (layout, grading/drainage, landscape)
- Assist with public and stakeholder outreach
- Collaborate with Authority environmental compliance and permitting team

Specialized Assessments

- Limited structural engineering for small structures such as pedestrian bridges
- Provide hydrologic studies for riparian environments
- Evaluate slope stability and investigate subsurface conditions
- Conduct compaction testing
- Provide design for erosion control and bank stabilization
- Produce baseline maps
- Prepare feasibility studies
- Stormwater Improvement Plans
- Climate resilience and adaptive planning and design
- Interpretive planning and design

Construction Administration

- Attend pre-construction meetings, including pre-bid conferences, to address any questions about the project; assist in preparing any addenda that may be required
- Review and respond to contractors’ requests for information, review and approve submittals and document change orders, and advise the Authority in verifying validity of change orders and Certificates of Compliance
- Perform construction inspections

Project Management

- Participate in conference call site visits and face-to-face meetings, and present to Board of Directors and stakeholders, as needed
- Prepare scopes of work and budgets for individual projects as needed
- Manage contract budget, schedule, and team

MINIMUM PRIME CONSULTANT REQUIREMENTS

- Proven experience with projects involving recreation, public access, trails and ecological restoration on public lands.
- Proven experience producing landscape architecture and engineering services for submittal to local agencies as part of the project permitting process.
- Demonstrated execution of site designs for public use that are ecologically responsive and sensitive.
- Ability to design for climate resilience and reduced greenhouse gas emissions when possible.
- Project management experience with proven record of schedule and budget adherence.
- Strong written and graphic capacity to support analyses and communicate information clearly.
- Technical staff expertise with the ability to meet industry standard codes and regulations.
- Experience with local, regional, state, and federal regulatory agencies and their requirements, including Valley Habitat Agency, County of Santa Clara, Regional Water Quality Control Board, California Department of Fish and Wildlife, United States Fish and Wildlife Service, and United States Army Corps of Engineers.

SUBMISSION, REVIEW & SPECIAL CONDITIONS

PREPARATION OF RESPONSES

All responses to the questions in the REQUIRED INFORMATION section must be answered fully and Contractor must be able to substantiate provided information. Each response shall be signed by an individual who has authority to obligate the Contractor.

Key Dates*

Event	Date
RFP Issuance Date	January 11, 2019
Deadline to Submit Questions	January 25, 2019
Final Addenda Released	January 30, 2019
Deadline to Submit Proposal	February 15, 2019
Interviews	February 27-28, 2019
Consultant Selection	March 4, 2019
Contract Award	March 14, 2019

*Dates subject to change.

Submission of Responses

Submit two (2) hardcopies and one (1) electronic copy (flash drive preferred) of the proposal. No facsimiles or emailed copies will be accepted. Proposals shall be delivered in a sealed manner and clearly marked on the outside envelope: "Response for Santa Clara Valley Open Space Authority RFP 2019-01" and addressed as indicated below.

Responses must be received in the office of the Authority no later than **5:00 p.m. Pacific Daylight Time (PDT), Friday, February 15, 2019**. Late responses will not be considered.

Mailing Address:

Santa Clara Valley Open Space Authority
ATTN: RFP-2019-01
33 Las Colinas Lane
San Jose, CA 95119

Note: Any deviation from the requirements listed above may result in the submission being considered non-responsive, thus eliminating the Prime Consultant from further consideration.

The Authority cautions Prime Consultants to ensure actual delivery of mailed or hand-delivered responses directly to the address indicated above by the established deadline. A response received by the Authority after the established deadline will not be considered. Prime Consultants have sole responsibility for ensuring delivery of responses on time and to the proper location.

Addenda

The Authority will post any addenda on the Authority's website (www.openspaceauthority.org). Prime Consultants shall be responsible for ensuring that responses to all addenda are included in their submissions. It is the Prime Consultant's sole responsibility to monitor the Authority website for possible addenda to this RFP.

RFP Questions

Any questions about this RFP shall be submitted in writing to proposals@openspaceauthority.org on or before January 25, 2019 at 5:00 p.m. PDT. The Authority will post written responses to questions no later than January 30, 2019. Responses may be posted incrementally as available.

Public Records Law

Pursuant to the California Public Records Act (California Government Code Section 6250 and following), public records are open to inspection at all times during the office hours of the Authority and every person has a right to inspect any public record or request copies of public records. All submitted responses are public records and are subject to public disclosure pursuant to the California Public Records Act.

Acceptance

Submission of any response indicates acceptance of the conditions contained in this Request for Proposals.

Response Costs

Those submitting responders do so entirely at their own expense. The Authority will not be responsible for reimbursement to any individual or firm for any costs incurred in preparing or submitting responses, providing additional information when requested by the Authority, or for participating in any interviews or meetings.

Non-Discrimination

No person shall be excluded from participation in, denied any benefits, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status of any person, or any other non-merit factor unrelated to job duties and protected by law.

RESPONSE FORMAT

RESPONSE FORMAT

To facilitate the analysis of responses to this Request for Proposals, Prime Consultants are required to prepare their response in accordance with the instructions outlined in this section. Each Prime Consultant is required to submit their response in a sealed package. A Prime Consultant whose response deviates from these instructions may be considered non-responsive and may be disqualified at the discretion of the Authority.

A response should be prepared as simply as possible and provide a straightforward, concise description of the Prime Consultant's capabilities to satisfy the requirements of this Request for Proposal. Emphasis should be concentrated on accuracy, completeness, and clarity of content. All parts, pages, figures, and tables should be numbered and clearly labeled.

Instructions relative to each part of the response to this Request for Proposals are defined in the remainder of this section.

REQUIRED INFORMATION

The Prime Consultant must include the following major sections:

Project Approach

This part of the response should be limited to a brief narrative highlighting how the Prime Consultant and any subconsultants expertise and experience qualifies for this RFP, specifically addressing experience in landscape architecture and engineering consulting services.

Proposed Rate Schedule

The Prime Consultant shall include hourly billing rates for all proposed work and team members, including subconsultants, that may work on tasks related to this RFP as well as other costs that may be required to perform said work.

Firm Qualifications

Please provide an overview of the Prime Consultant and any subconsultants experience and a summary narrative describing how each is qualified to perform tasks that may be requested under this RFP. Please reference specific examples of services provided and include a description of work products prepared as part of your performance.

Relevant Experience

The Prime Consultant and any subconsultants must provide a description of experience, including information about landscape architecture and engineering consulting work demonstrating the team's experience in successful related projects. The proposal must include three (3) examples of projects which demonstrate expertise in the service area of landscape architecture and three (3) examples of projects which demonstrate expertise in the service area of civil engineering. For subconsultants with specialized experience, projects focusing on structural or geotechnical engineering, accessibility, ecological restoration and other related expertise should be demonstrated. The description of experience shall include work with local governments and special districts (if any). For all projects included, please provide the client name and contact information, general scope of work, and total fees for work performed. Please do not include information on projects that are not similar in character to the scope of work described in this RFP.

Team Description and Resumes

Please provide an organizational chart or description of the proposed team, including subconsultants, and information about the roles of key project team members. As part of this section, include resumes for all team members who may work on future projects as part of this RFP including education, special expertise, licensing or certifications, and relevant project experience.

References

A list of at least three (3) clients (include names of contact persons, telephone numbers, brief description of the work performed) for whom the contractor has performed services similar to those required by this RFP.

Statement of Agreement with Terms of Contract/Registration

The Prime Consultant must provide a statement that indicates agreement to the terms of the contract (Attachment 1), including an agreement to meet the insurance requirements. The Prime Consultant must submit a statement to verify registration through the State of California Division of Industrial Relations as required on public works projects.

EVALUATION OF RESPONSES

EVALUATION METHOD

Proposals will be evaluated by Authority Staff and recommended to the Authority's Board of Directors for approval. Authority Staff will conduct interviews as part of the selection process. The Authority's Board of Directors will award the contract to the most responsible and qualified Prime Consultant. The "most responsible and qualified Prime Consultant" means the Prime Consultant deemed by the Board of Directors that best fits the needs of the service contract. In determining the most responsible and qualified

Prime Consultant, the Board of Directors may use the following criteria in addition to the Minimum Prime Consultant criteria listed above:

- A. Experience and qualifications of the Prime Consultant with providing landscape architecture and engineering consultation services.
- B. Experience of the Prime Consultant including past performance of firm on contracts of similar size and scope.
- C. Experience and qualifications of personnel and subconsultants employed by the Prime Consultant.
- D. Demonstrated understanding of the scope of the service.
- E. Best overall financial return to the Board of Directors on the contract.
- F. A responsible Prime Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, and experience to satisfactorily perform the work required.
- G. The Prime Consultant and subconsultants state in their RFP submittal that they are registered through the State of California Division of Industrial Relations to perform work on public works contracts.

The Authority's Board of Directors may reject any proposal if:

- A. The Prime Consultant fails to respond to the RFP Required Information, or otherwise comply with the format and submission requirements set forth in this RFP, or
- B. The Prime Consultant misstates or conceals any material fact in the response.

The Authority may reject all nonconforming, non-responsive, or conditional proposals, and may waive any minor informalities or irregularities in any proposal and at the Authority's sole discretion. The Authority's Board of Directors may reject all proposals.

ATTACHMENTS

LIST OF ATTACHMENTS

- Attachment 1: [Terms of the Contract]

CONTRACT FOR SERVICES

THIS AGREEMENT is entered into between the Santa Clara Valley Open Space Authority (hereinafter "Authority") and [INSERT NAME] (hereinafter "Contractor") and sets forth the terms of this Agreement. Authority and Contractor are collectively referred to as the "Parties." This Agreement is effective upon full execution of this Agreement by the Parties.

RECITALS

WHEREAS, Authority desires to engage the services of Contractor to provide the services herein described; and

WHEREAS, Contractor desires to perform such services for Authority;

NOW, THEREFORE, in consideration of the facts recited above, and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of California, the parties agree as follows:

1. Scope of the Agreement

- a. During the term of this Agreement, Contractor shall provide the [(OPTION 1) services set forth in the Scope of Work, attached hereto as Exhibit A and hereby incorporated by reference. Such services may also be referred to as "Project" or the "work" herein. However, if any provision or term of Exhibit A conflicts with any provision or term of this Agreement, the provisions and terms of this Agreement shall prevail and supersede any inconsistent provisions or terms in Exhibit A. (OR OPTION 2) following services: _____.]
- b. All documents, materials, and records of a finished nature, including but not limited to final plans, specifications, video or audio tapes, photographs, computer data, software, reports, maps, electronic files and films, and any final revisions, prepared or obtained in the performance of this Agreement (collectively "work product"), shall be delivered to and become the property of Authority without restriction or limitation on their use. All documents and materials of a preliminary nature, including but not limited to notes, sketches, preliminary plans, computations and other data, and any other material referenced in this section, or prepared or obtained in the performance of this Agreement, shall be made available, upon request, to Authority at no additional charge and without restriction or limitation on their use. Upon Authority's request, Contractor shall execute appropriate documents to assign to the District the copyright or trademark to work product created pursuant to this Agreement. Contractor shall return all Authority's property in Contractor's control or possession immediately upon termination.

2. Payment

- a. Payment for Services. [(OPTION 1) Authority shall pay for services and reimbursable expenses in a total amount of \$_____ upon completion of the services to the satisfaction of Authority and delivery of the work product. (OR OPTION 2) Authority shall pay for services performed in accordance with this Agreement according to the fee schedule and any reimbursable expenses contained in Exhibit B. Contractor shall invoice Authority monthly. (OR OPTION 3) Authority shall pay for services performed

in accordance with this Agreement at an hourly rate of \$_____, and reimbursable expenses in the amount of \$_____. Contractor shall invoice Authority monthly.]

b. [(OPTIONAL PROVISION IN LIEU OF REIMBURSIBLE EXPENSES ABOVE) Reimbursement of Expenses. All expenses incurred as part of this Agreement will be reimbursed at actual cost.]

c. [THIS IS AN OPTIONAL NOT TO EXCEED PROVISION TO ADD TO OPTIONS 2 AND 3 SET FORTH ON SUBSECTION a.:] Maximum Payment. Contractor agrees that fees and any reimbursable expenses to complete the services promised under this Agreement shall not exceed a maximum of \$_____.

d. Audit of Records. Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to Authority or establishing the basis for an invoice, for a minimum of four (4) years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow an Authority representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

3. Time for Performance

Contractor's work shall be scheduled and performed to meet agreed-upon deadlines. The term of this Agreement shall end [(OPTION 1:) on or before [INSERT END DATE], unless abandoned as provided in section 5 below. The time for performance may not be extended without Authority's express written approval. (OR OPTION 2:) when the services described herein are completed, unless abandoned as provided in section 5 below.]

4. Standard of Performance

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

5. Abandonment of Project

Authority shall have the right to abandon or indefinitely postpone ("abandonment") the project that is the subject matter of this Agreement and the services hereunder, or any portion thereof, at any time. In such event, Authority shall give written notice of such abandonment. In the event of abandonment prior to completion of the project, Contractor shall cease work immediately. All charges incurred up to the time of notice of abandonment, together with any other charges outstanding at the time of termination, shall be payable by Authority within 30 days following submission of a final statement by Contractor and shall be considered as full payment due hereunder. However, Authority may condition payment of such compensation upon Contractor's delivery to Authority of any or all work product generated by Contractor pursuant to this Agreement.

6. Contractor as Independent Contractor

At all times during the term of this Agreement, it is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be an independent contractor and shall not be an employee of Authority. It is agreed that Authority is interested only in the results obtained and that Contractor shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Authority shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, Authority shall not have the right to control the means by which Contractor accomplishes the results required under this Agreement. Contractor has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of Contractor's employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for Contractor's

own acts and this of Contractor's subordinates, subcontractors, agents, and employees. Contractor is responsible for all insurance and all taxes, charges, fees, benefits or contributions required to be paid or withheld on behalf of Contractor, including, but not limited to, compliance with social security, withholding, and all other regulations governing such matters. Contractor is not entitled to any employee benefits. Contractor shall exonerate, indemnify, defend, and hold harmless Authority (which shall include, without limitation, its officers, agents, employees and volunteers) from and against any and all federal, state, and local taxes, charges, fees, or contributions required to be paid with respect to Contractor and Contractor's officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

7. Non-Discrimination

During and in relation to the performance of this Agreement, Contractor agrees as follows. Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status of any person, or any other non-merit factor unrelated to job duties and protected by law. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status of any person, or any other non-merit factor unrelated to job duties and protected by law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Furthermore, Contractor shall include this requirement in any and all sub-contracts it enters into in any way related to this Agreement. Nothing in this section shall prohibit Contractor from applying a bona fide occupational qualification, or any other exception established by the California Fair Employment and Housing Act under Government Code Section 12940.

8. Indemnification

a. Contractor agrees to indemnify, hold harmless, defend and protect Authority, its directors, officers, officials, employees, agents and invitees, from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including attorneys' fees), penalties, judgments, or obligations whatsoever arising out of, pertaining or relating to the negligence, omission, recklessness or willful misconduct of Contractor, its employees, subcontractors, or agents, or on account of the performance or character of the Services or in any way related to activity conducted by Contractor, except for any such claim resulted from the sole negligence or the intentional and willful misconduct of Authority, its officers, directors, agents or employees. The provisions of this section shall survive the termination or expiration of this Agreement. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

b. The provisions of this section shall survive the termination or expiration of this Agreement.

9. Insurance

- a. Contractor shall procure and keep in force during the term of this Agreement, at Contractor's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company and which are acceptable to Authority:
- i) If Contractor has and will have employees during the term of this Agreement, Workers' Compensation Insurance as required by law with limits of **\$1,000,000**;
 - ii) Comprehensive or Commercial General Liability Insurance, which shall be occurrence coverage, in the minimum amount of **\$1,000,000 per occurrence, \$2,000,000** aggregate, combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability;
 - iii) Business Automobile Liability Insurance for each of Contractor's vehicles used in the performance of this Contract, including owned, non-owned (e.g., owned by Contractor's employees), leased or hired vehicles, in the minimum amount of **\$1,000,000** per occurrence for bodily injury and property damage; **and**
 - iv) **Professional Liability Insurance (or Errors and Omissions Insurance) in the minimum amount of \$1,000,000. The policy must contain a cross liability or severability of interest clause. If the policy is on a claims-made basis, coverage must extend to a minimum of three (3) years beyond completion of the services provided pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to this Agreement's effective date, Contractor shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the services provided pursuant to this Agreement.**

All required insurance shall be placed with California-admitted insurers.

In the event that any coverage required under the Agreement is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to District at Contractor's earliest possible opportunity and in no case later than five days after Contractor is notified of the change in coverage.

In the case of the breach of any provision of this section, Authority may, at Authority's option: (1) take out and maintain, at the expense of Contractor, such types of insurance in the name of Contractor as Authority may deem; (2) order Contractor to stop work under the Agreement until Contractor complies with the insurance requirements required by this Agreement; or (3) terminate this Agreement.

- b. Other Insurance Provisions. The policies shall include or be endorsed to include, but not limited to, the following provisions:
- i) Authority, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor, or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to Authority, its officers, officials, employees or volunteers, and no endorsement shall be attached limiting the coverage. Contractor shall furnish Authority with certificates of insurance and with original endorsements effecting coverage required by this clause.

- ii) Contractor's insurance coverage shall be primary insurance as respects Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Authority, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute to it.
- iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Authority, its officers, officials, employees or volunteers.
- iv) Contractor'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.

10. Prevailing Wage and Labor Compliance

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

- a. **Wages.** As required by law, Contractor shall pay all workers not less than the general prevailing rate of per diem wages for each trade or classification for the job during the term of this Agreement. These rates include, but are not limited to, employer payments for health and welfare, pension, vacation, travel time, subsistence pay and for apprenticeship and training obligations. The current issue of the Director of the Department of Industrial Relations for the State of California general prevailing wage rates for straight time, overtime, Saturday, Sunday, and Legal Holidays is herein incorporated as part of this Contract. Holiday wage rates shall apply to holidays recognized in the collective bargaining agreement of the particular craft or classification concerned. Any and all revisions to the general prevailing wage rates that take effect during the Contract shall be adopted as part of this Contract. Contractor shall post Prevailing Wage Rates on job site. Copies of the general prevailing wage rates are on file and available for review on request at Authority's principal office: 6980 Santa Teresa Blvd. Suite 100, San Jose, CA 95119. For those crafts or job classifications requiring special prevailing wage determinations, please contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 603, San Francisco, CA 94101, (415) 703-4281. The Contractor and any subcontractor under the contractor shall, as a penalty to the Authority, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or, except as provided in subdivision (b) of Labor Code § 1775, by any subcontractor under the Contractor pursuant to Labor Code § 1775.
- b. **Claims Against the Authority.** Authority will not recognize any claim for additional compensation because of payment by Contractor of any wage above the general prevailing wage rates. The possibility of wage increases is an element to be considered by Contractor in determining its bid, and may not under any circumstance form the basis of a claim against Authority. Contractor hereby agrees, on behalf of itself and any subcontractors, to indemnify, hold harmless and defend the Authority against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of the Contractor or any of its subcontractors to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with the Project.

- c. Skilled Workers. Contractor and all subcontractors shall only employ workers suitably skilled in the Work. Anyone employed by Contractor to work on the Project, or any subcontractor, who in the opinion of the Authority is incompetent, disorderly, or otherwise acts improperly, after written notification, shall be dismissed from the Project and not further employed on any part of the Work.
- d. Lawful Working Day. Work performed by workers more than eight (8) hours during any one (1) calendar day and more than forty (40) hours in any one (1) calendar week may only be permitted pursuant to the overtime provisions of Labor Code § 1815 and then only upon such terms, conditions and requirements as provided and fixed by law. The Contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the Labor Code §§ 1810-1815.
- e. Apprenticeship Standards. Contractor shall comply fully with the requirements of California Labor Code § 1777.5 regarding employment of registered apprentices. If Contractor willfully fails to comply with this code section, Contractor may be denied the right to bid on any Authority contract for a period of one (1) year from the date of non-compliance determined by the California Division of Apprenticeship Standards. When Authority receives from the Division notice that Contractor is not in compliance with apprenticeship standards, Authority shall withhold from Contract payments the amount of the civil penalty imposed by the Division, which funds may be released to Contractor upon order of the Administrator or upon completion of the Contract.
- f. Workers' Compensation. Each contractor to whom a public works contract is awarded shall sign and file with the Authority the following certification prior to performing the work of the contract: "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 shall execute such certificate, attached hereto and incorporated herein as Exhibit B, pursuant to Labor Code §1861.
- g. Payroll Record Requirements. Contractor and each subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed on the Project and each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury pursuant to the requirements set forth under California Labor Code § 1776. Payroll records shall be certified and shall be available for inspection at all reasonable hours by the Authority and a copy shall be made available for inspection or furnished to the employee, the employee's authorized representative, the Authority, the California Division of Labor Standards Enforcement and the California Division of Apprenticeship Standards upon request. Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a) of Labor Code § 1776.

Except as provided in subdivision (f) of Labor Code § 1776, any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Authority or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an

individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

If a complaint is filed with Authority or the Division of Labor Standards Enforcement alleging that Contractor or subcontractor has paid less than prevailing wage on the Project, Authority shall withhold from payment to Contractor an amount equal to one hundred and twenty-five percent (125%) of the amount claimed until the allegation is settled.

11. Assignment

A substantial inducement to Authority for entering into this Agreement is the professional reputation and competence of Contractor. Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any persons or entities whatsoever without the prior written consent of Authority and any attempt to assign or transfer without such prior written consent shall be void and shall terminate this Agreement. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Subcontractor

- a. Contractor will perform the work personally or through Contractor's employees. Contractor may subcontract work only as specified in this Agreement or upon prior approval of Authority. If subcontracting of work is permitted, Contractor shall pay subcontractor within ten (10) days of receipt of payment by Authority for work performed by a subcontractor and billed by Contractor.
- b. Authority is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and Authority.

13. Conflict of Interest

Contractor warrants and covenants that Contractor presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Contractor shall promptly notify Authority of the existence of such conflict of interest so that Authority may determine whether to terminate this Agreement. Contractor further warrants its compliance with the Political Reform Act (Government Code § 81000 et seq.) respecting this Agreement.

14. Compliance with Laws

In the performance of this Agreement, Contractor shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances, regulations, and policies of Authority and other local agency with jurisdiction. Contractor warrants that all work done under this Agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations. If a license, permit, or registration of any kind is required by law of Contractor, its employees, agents, or subcontractors to practice Contractor's profession, Contractor represents and warrants that such license has been obtained, is valid and in good standing, and Contractor shall keep it in effect at all times during the term of this Agreement.

15. Changes in Work

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by Authority and the Parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work.

16. Accident Reports

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

17. Default

In the event that Contractor defaults in any obligation of Contractor under this Agreement, or Contractor defaults in the performance of any of the terms and conditions of this Agreement, Authority may, at its option, declare this Agreement to be in default and, at any time thereafter, may do any one or more of the following: (1) enforce performance of the Agreement by Contractor; (2) terminate this Agreement; or (3) perform the obligations of Contractor, whereupon Contractor shall reimburse Authority for any amounts paid or expenses incurred by Authority in the performance of such obligations. The above remedies are in addition to any other remedies at law or equity Authority may have. Contractor shall pay or reimburse Authority for all of Authority's costs and expenses, incurred in enforcing its rights hereunder.

18. Notices

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, and shall be: (1) personally delivered; (2) deposited in the United States mail, certified or registered, postage pre-paid, return receipt requested; or (3) sent electronically via email with a copy also deposited in the United States mail, First Class postage. Notice shall be addressed to the recipient as follows:

AUTHORITY: Santa Clara Valley Open Space Authority
6980 Santa Teresa Blvd., Suite 100
San Jose, CA 95119
Attention: **[INSERT]**
Email: **[INSERT]**

CONTRACTOR: Attention: **[INSERT]**
Email: **[INSERT]**

Either party may change its address by giving notice to the other in the manner provided herein.

Contractor shall mail invoices to Authority at the above referenced address, but shall make invoices to the attention of "Accountant," or Contractor may email invoices to accountant@openspaceauthority.org.

19. Entire Agreement

This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior, contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of all the parties.

20. Waiver

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

21. Severability

Should any part of this Agreement be declared by a final decision by a court to be unconstitutional, invalid, or beyond the authority of either of the Parties to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

22. Interpretation

Section headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement.

23. Governing Law and Venue

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Santa Clara, State of California.

24. Advice of Counsel

Both parties have had a full and complete opportunity to have the Agreement reviewed by legal counsel, and no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

25. Time Of The Essence

Time is hereby expressly declared to be of the essence in this Agreement and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

The signatories below warrant and represent that they have all legal authority and capacity to enter into this Agreement. **IN WITNESS WHEREOF**, Contractor and Authority hereby execute this Agreement.

**SANTA CLARA VALLEY
OPEN SPACE AUTHORITY**

Andrea Mackenzie
General Manager

Dated: _____

**[INSERT NAME OF
CONTRACTOR/BUSINESS]**

**[INSERT NAME]
[INSERT TITLE]**

Dated: _____

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