

REQUEST FOR PROPOSAL FOR ENVIRONMENTAL IMPACT REPORT PREPARATION



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<p>Purpose</p>
<p>This request for proposal (RFP) is issued by the City of Menlo Park (City) to seek proposals from qualified environmental consulting firms with experience in preparation of an environmental impact report (EIR) pursuant to the requirements of the California Environmental Quality Act (CEQA) for a mixed nonresidential and residential development (Project) proposed by Willow Project LLC (Applicant) at 80 Willow Road (APN 062423040) in Menlo Park, California.</p>
<p>Background</p>
<p>The City of Menlo Park is a general law municipality located at the eastern edge of San Mateo County within the San Francisco Bay Area of California. Menlo Park is bordered by San Francisco Bay to the north, East Palo Alto, Palo Alto and Stanford, to the east, Atherton, North Fair Oaks, and Redwood City to the west, and Woodside and Portola Valley to the South. Menlo Park was incorporated in 1927 and is home to approximately 36,000 residents in its 19 square miles.</p> <p>On May 24, 2024, the Applicant submitted a formal development application for a Project requesting the demolition of the existing one-story commercial building on an approximately 6.68-acre site (commonly referred to as the former <i>Sunset</i> magazine headquarters) to construct a new mixed nonresidential and residential development with the following approximate programming:</p> <ul style="list-style-type: none"> • Building 1: 336,065 square feet office and 11,700 square feet retail; 301 feet tall • Building 2: 231 residential units and 130 hotel rooms (190,534 square feet hotel); 461 feet tall • Building 3: 434 residential units and 17,540 square feet retail; 397 feet tall • Building 4: 2,670 square feet Montessori private preschool; 22 feet tall • Total residential: 665 units (99.5 dwelling units per acre density) and 959,644 square feet (3.30 floor area ratio) • Total non-residential: 336,065 square feet office, 29,240 square feet retail, 190,534 square feet hotel, and 2,670 square feet Montessori private preschool, for an overall total of 558,509 square feet (1.92 floor area ratio) <p>The application asserts to have been filed under the so-called “builder’s remedy” provision of California Government Code § 65589.5(d)(5) of the Housing Accountability Act (HAA). Refer to the project webpage at menlopark.gov/80willow for more information, including the site plan and massing diagrams. A vicinity map is provided as Attachment A. Pursuant to State law, the City is limited in its availability to publicly post architectural drawings without architect permission. Members of the public, including interested RFP respondents, may view the application materials, including architectural drawings, in person at City Hall. Appointments are encouraged to view the materials in person and can be made at menlopark.gov/appointment.</p>
<p>RFP schedule</p>
<p>The RFP is issued with the following schedule for responses:</p> <ul style="list-style-type: none"> • RFP issuance: January 24, 2025 • Deadline to submit questions: February 14, 2025 by 5 p.m. • Proposals due: February 28, 2025 by 5 p.m. <p>The City reserves the right to modify the schedule at any time.</p>
<p>Scope of services</p>
<p>The City is seeking to review the qualifications and proposals of environmental firms who wish to assist the City in the preparation of an EIR and associated documentation for the aforementioned Project that includes the contents specified in CEQA Guidelines § 15120 through 15132 and that is prepared to the standards specified in CEQA Guidelines § 15151. The consultant will be required to determine whether there is substantial evidence that any aspect of the Project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the Project is adverse or beneficial.</p>

After selection of a qualified firm, the City intends to enter into a contract for the duration of the Project's discretionary review or until the City decides to terminate the contract. The environmental review work and documentation will need to comply with CEQA requirements, other state laws, and the ordinances and regulations of the City of Menlo Park. The City of Menlo Park will serve as the lead agency for the purposes of CEQA and will administer the Project contract.

The Project application contains the following components (subject to change): Request for Use Permit, Architectural Control, Tentative Map, Below Market Rate Housing Agreement, and Environmental Review to demolish an existing commercial office building and construct three new mixed-use buildings ranging in height from approximately 301 feet to 461 feet tall, including 665 residential units of which 133 units (20 percent) would be designated below market rate housing affordable at the low-income level, approximately 336,000 square feet of office, approximately 29,000 square feet of retail space, and a hotel with 130 rooms. The Project also includes use permit requests for offices, multiple dwellings, and a private school use.

The environmental scope of work would include conducting analyses, investigations, surveys, and necessary technical studies (such as, but not limited to, a traffic impact analysis (TIA), biological resources assessment, and/or potentially others) related to the preparation of an EIR.

The consultant is expected to manage all aspects of the EIR development, including selection and supervision of qualified sub-consultants to develop a TIA for the project. Consistent with Senate Bill 743, the project level TIA must evaluate the vehicle miles traveled (VMT) associated with the Project for consistency with the City's VMT thresholds to ensure that a thorough transportation analysis occurs under CEQA and in conformance with the City's General Plan. Potential impacts to the City's existing transportation system and traffic, including cumulative impacts, will represent a key item for consideration associated with the proposed project. While the EIR must utilize VMT to assess potential transportation impacts and potential mitigation measures from a CEQA perspective, the TIA must also analyze non-CEQA factors such as level of service (LOS) in accordance with the City's TIA Guidelines for the purposes of determining whether the proposed project complies with the applicable general plan goals, policies and programs.

The consultant is also expected to prepare letters of consultation and identify tribal contacts pursuant to AB 52 in developing the analysis of the Cultural and Tribal Cultural Resources topic area to include questions related to potential impacts to tribal cultural resources.

Furthermore, the consultant is expected to calculate a scaled project-specific threshold for greenhouse gas (GHG) emissions. The Bay Area Air Quality Management District (BAAQMD) has adopted thresholds for analyzing GHG impacts that identify the use of natural gas within any new building as a significant and unavoidable impact. As part of the environmental analysis, the consultant will be required to analyze the following:

- On-site renewable energy to offset emissions of the estimated natural gas GHGs; compliance would be required for the life of the buildings; and/or
- Off-site renewable energy.

As part of preparation of the EIR, the environmental team and associated consultants may be asked to prepare Technical Memoranda for resource areas.

RFP respondents must submit a proposal that addresses the ability of the consultant to complete the tasks listed below. This scope of services is a general guide to the work the City expects to be performed and is not a complete listing of all services that may be required or desired.

A. Project Kick-Off Meeting and Site Visit

- The consultant will attend a project kick-off meeting with City staff. Following the meeting, the team will visit the Project site.

B. Review of City Documents and Data Collection

- The consultant will review the Municipal Code, General Plan, Zoning Ordinance, and other relevant documents required for environmental analysis. The consultant will coordinate with City staff and those of any other relevant agencies for data collection.

C. Preparation of Environmental Impact Report Documents

- The consultant will prepare all required CEQA notices, including the Notice of Preparation (NOP), Notice of Completion (NOC), Notice of Availability (NOA), and Notice of Determination (NOD) at the appropriate timeframe. The consultant shall coordinate with City staff for mailing and electronic posting of the CEQA Notices and

environmental document to public agencies and the State Clearinghouse, including filing any documents with the County Clerk's office.

- The consultant will perform any additional technical studies and analyses as may be necessary to support EIR preparation.
- D. Project Management
- The consultant will provide ongoing project management, including coordination with any associated consultants, City staff, other City consultants, consultants retained by the applicant for the Project, and outside regulatory agencies that would be involved throughout the process.
 - The consultant will prepare for, and attend, all meetings with City staff and other agencies, as well as prepare meeting agendas and minutes for City review.
- E. Technical Studies
- The consultant will perform Technical Surveys and prepare Technical Memoranda (e.g., traffic impact analysis, cultural and tribal cultural resources, air quality, noise, and greenhouse gas emissions) based on survey results and data collection for traffic and transportation, and perform any additional technical studies and analyses as may be necessary to support EIR preparation (e.g., historical resource evaluation).
 - The consultant shall coordinate with City staff for producing hardcopies of documents as needed.
- F. Traffic Impact Analysis and Tribal Consultation
- The consultant will be required to prepare a traffic impact analysis (TIA) based on survey results and data collection for traffic and transportation, and perform any additional technical studies and analyses as may be necessary to support EIR preparation.
 - The consultant will be required to participate in the CEQA consultation with Native American Tribes and include the evaluation of potential impacts to tribal cultural resources, in addition to the development of mitigation measures, if any, in the EIR. If a California Native American Tribe requests consultation regarding alternatives to the Project, recommended mitigation measures, or significant effects, the consultant will be required to include those topics as part of the CEQA review. The report may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the Project's impacts on the tribal cultural resources, and/or the appropriate measures for preservation or mitigation.
- G. Initial Study (IS)
- The consultant shall prepare an IS for review by the City, incorporating appropriate technical studies, pursuant to the requirements of the Public Resources Code and State CEQA Guidelines.
 - The IS will serve as a tool to determine what significant environmental factors need to be studied in greater detail under the EIR and which environmental factors may not be significant or potentially significant.
 - An electronic copy of the administrative draft IS, shall be provided and the consultant shall coordinate with City staff for producing hardcopies of documents (approximately 20 copies) as needed.
 - The consultant shall revise the administrative draft documents as necessary based on City staff review and comments.
- H. Environment Impact Report (EIR)
- The consultant shall prepare an EIR (Draft EIR and Final EIR) for review by the City, incorporating appropriate technical studies, pursuant to the requirements of the Public Resources Code and State CEQA Guidelines.
 - The EIR will identify the potentially significant impacts of the proposed Project on the environment; indicate the manner in which those significant impacts can be avoided or significantly lessened; identify any significant and unavoidable adverse impacts that cannot be mitigated; and identify reasonable and feasible alternatives to the proposed Project that would eliminate any significant adverse environmental impacts or reduce the impacts to a less-than-significant level.
 - An electronic copy of the administrative draft EIR (Draft EIR and Final EIR) shall be provided and the consultant shall coordinate with City staff for producing hardcopies of documents (approximately 20 copies) as needed.
 - The consultant shall revise the administrative draft documents as necessary based on City staff review and comments.
- I. Public and Agency Review
- The consultant will assist City staff in identifying any responsible and trustee agencies. The consultant will distribute the document to any identified responsible and trustee agencies, and any other agencies that may be appropriate. If submittal to the State Clearinghouse is required based on the identified responsible or trustee agencies, the consultant will submit the document to the State Clearinghouse.

- J. Attend and present at public meetings
- The consultant will attend public meetings in person to answer any questions regarding the environmental document and the impacts analysis. Public meetings may include, but are not limited to, a scoping meeting, a study session during the public comment period, and multiple Planning Commission and City Council public hearings when certification of the EIR and final action on the project is considered.
 - The consultant will be expected to address any substantive comments or questions related to the environmental review that are submitted during the public comment period and/or raised at the public meeting.
 - Should there be any additional public meetings required, attendance will be necessary.

- K. Invoices
- The consultant will submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed prior to the invoice date.
 - Invoices will contain the following information:
 - The beginning and ending dates of the billing period;
 - Serial progress identification on each invoice; i.e., Progress Bill No. 1 for the first invoice, etc.; and
 - A Task Summary containing, for each work task, the name of the person doing the work, the time spent by each person, and a brief description of the work.

General requirements

- The City reserves the right to reject any or all responses, to waive any informality in any responses, and to select the consulting firm that best meets the City's needs.
- Responses must be submitted no later than the date and time stated in this RFP. Responses shall be reviewed and rated as set forth in the selection process section of this RFP. The City will then determine which consulting firm best meets the City's requirements.
- The City reserves the right to negotiate final pricing with the most qualified consulting firm.
- Upon award of the contract, it is expected that the successful proposer will accept the agreement terms and conditions "as is" without modification. A professional services agreement template is provided as Attachment B.
- The proposer shall furnish the City with such additional information as the City may reasonably require.
- All data, documents and other products used or developed during performance of the services will remain the property of the City.

Submittal requirements

The City requests that responses be presented in an organized format that is relevant to the above listed scope of services. RFP responses shall be concise, excluding excessive or irrelevant material. All proposals submitted to the City must contain the following minimum information:

- A. Cover letter with contact information
- A description and statement of the firm's qualifications for this project, as well as those of any sub-consultants.
- B. Project team
- Organizational chart of the project team.
 - Names, qualifications, and resumes of all project team members who will directly participate in the project.
- C. A detailed statement regarding each of the following items:
- An explanation of the general approach to the project, and any suggested modifications to the project tasks.
 - A proposed work plan including a step-by-step breakdown of the tasks to be carried out, with estimates of personnel time allotted for each task.
 - A project schedule indicating the proposed timeframe in which specific tasks will be completed, including major milestones.
 - A rate schedule by position, including an explanation of the basis for billing.
 - Any proposed program components as perceived necessary by the consultant based upon understanding of the RFP, but not necessarily stated within.
 - Other pertinent information deemed appropriate by the firm.
- D. Pricing proposal – Respondents shall provide a minimum of two alternative pricing structures for consideration by the City as described in 1. and 2. below. Respondents are welcome to provide additional pricing structures that they believe are appropriate for the scope of services.

1. Time and materials – Please provide hourly rates for all employees of the proposer’s firm who would be providing services under this contract. Please list separately any additional costs or reimbursements that would be applicable to work performed under the contract scope. Terms: Invoiced monthly.
 2. Contingency fee – Please provide the fixed contingency fee applicable to the work proposed under this contract, and list separately any additional costs or reimbursements that would be applicable under the contract scope.
- E. Signature – The response shall be signed by an official authorized to bind the firm, and shall contain a statement to the effect that the proposal is valid for ninety (90) days.
- F. Recommendation – Please also provide information, as applicable, on topics of diversity, inclusion, and equity, and how these topics factor into your firm’s work. This information could involve explaining how the firm addresses these topics both within the organization and/or in the community through trainings, hiring policies, community volunteering, etc.

Selection process

The City will determine the process by which the proposals are reviewed. Proposed fee arrangements, experience, service delivery, and other qualifications will all be important selection factors. The top-ranked firms/individual may be requested for interviews. Interviews allow the designated firms or individuals an opportunity to answer any questions the City may have regarding their proposal. Participation in the interviews will be at no cost to the City. The City will make the final determination of the successful firm/individual.

- The City reserves the rights and options to:
- Reject any or all of the submittals
 - Waive any of the provisions in the RFP
 - Issue subsequent RFP
 - Cancel the RFP process
 - Waive any technical error in the responses it receives, and negotiate with any, all, or none of the RFP respondents with regard to statements or explanation of information that may reflect negatively on the consulting firm which the City may discover during the background process (e.g., disclosure of judgments or other findings against the firm or its personnel).

- The RFP is issued with the following schedule for responses:
- RFP issuance: January 24, 2025
 - Deadline to submit questions: February 14, 2025 by 5 p.m.
 - Proposals due: February 28, 2025 by 5 p.m.

The City reserves the right to modify the schedule at any time.

Communications and Questions

Interested firms shall submit their proposal by email, marked on the subject line as “80 Willow Road RFP Response” to Senior Planner Calvin Chan at cchan@menlopark.gov with copy to Principal Planner Tom Smith at tasmith@menlopark.gov. Any questions regarding the RFP can also be emailed to the staff noted.

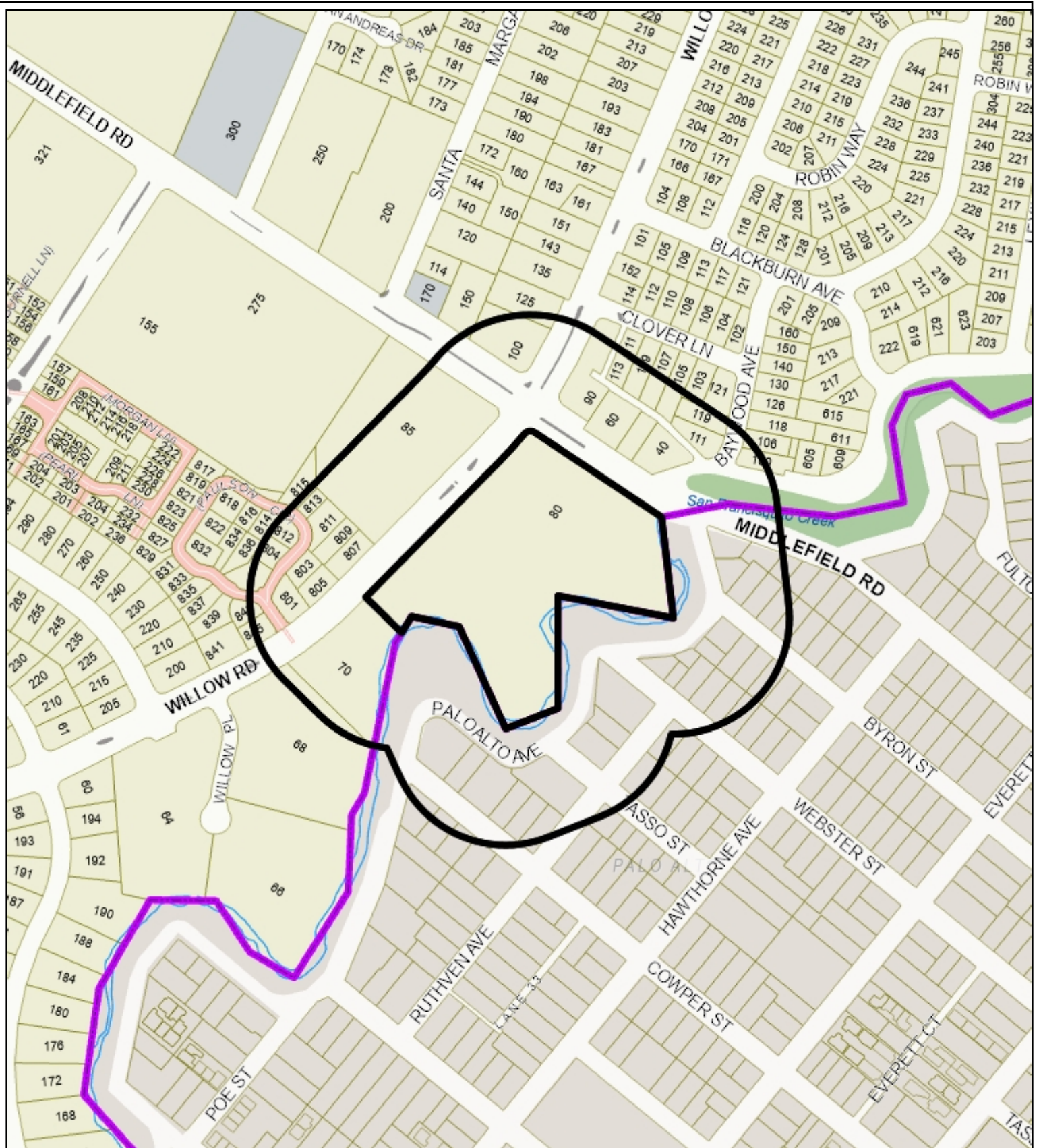
Compensation

All tasks within the scope of services shall be included within the proposal’s fee schedule and itemized according to required and optional tasks.

Proposals shall describe how the firm intends to bill for the services provided (including travel time charges, if any), special services subject to additional charges, and the rates that would be charged for those special services. If hourly billing rates would be charged and those rates would vary for different types of work, such as litigation, indicate what rates will be charged for each type of service.

Attachments

- A. Vicinity Map
- B. Professional Services Agreement Template



CITY OF
MENLO PARK

City of Menlo Park

Vicinity Map
80 Willow Road



Scale: 1:4,000

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FIRST PARTY
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and FIRST PARTY , hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: click here to enter text</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$**enter amount** as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.
- E. FIRST PARTY Shall bill each month to City an original invoice for all Services performed and expenses incurred during the preceding month. Each such invoice shall contain the total agreement amount subtracting the invoices paid and billing. By submitting an invoice for payment under this Agreement, FIRST PARTY is certifying compliance with all provisions of the Agreement. FIRST PARTY shall not invoice City for any duplicate Services performed by more than one person. City shall independently review each invoice submitted by FIRST PARTY to determine whether the Services performed and expenses incurred are in compliant with the provisions of this Agreement. City will use its best efforts to cause FIRST PARTY to be paid within thirty (30) days of receipt of FIRST PARTY's correct and undisputed invoice, except as to any charges for Services performed or expenses incurred by FIRST PARTY which are disputed by City, or as provided in Section 6.3. In the event any charges or expenses are in dispute by City, the original invoice shall be returned by City to FIRST PARTY for correction and resubmission. Review and payment by City of any invoice provided by FIRST PARTY shall not constitute waiver of any rights or remedies provided herein or any applicable law. Consultant shall bill the City as services are complete. City reserves the right to deny payment to FIRST PARTY for any invoice submitted is more than 90 days after performance of Services or expenses incurred by FIRST PARTY

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY 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 FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Department Head

Department

City of Menlo Park

701 Laurel St.

Menlo Park, CA 94025

650-330-xxxx

Email

Notices required to be given to FIRST PARTY shall be addressed as follows:

Name

Company

Address

City, State Zip

Phone

Email

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

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11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Automobile insurance:
FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 4. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and two million (\$2,000,000) in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.

F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of **Select start date** through **Select end date** unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant **Choose an item** required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Signature Authority, Title

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's **Department**. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the **Project Manager's title**.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT “B” - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.