

REQUEST FOR PROPOSAL (RFP)

City of Millbrae

Finance Department
621 Magnolia Avenue
Millbrae, CA 94030

RFP DUE

Date: February 28, 2025

Time: 4:30 pm

Send the submittal to: msung@ci.millbrae.ca.us

Mike Sung
Finance Director
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030
Phone: (650) 259-2433
Email: msung@ci.millbrae.ca.us

AUDIT PERFORMANCE PROPOSAL – SCOPE OF WORK

I. INTRODUCTION

The City of Millbrae (“the City”) is a General Law City with a Council-Manager form of government. The City was incorporated in 1948, has a population of approximately 23,000, employs approximately 100 persons on a permanent, full-time basis, and offers a full array of municipal services. The Total Budget for FY 2024-2025 is \$101.4 million for all funds.

II. PURPOSE

The City is requesting proposals from qualified certified public accounting firms to audit the financial statements of the City of Millbrae for the fiscal years ending June 30, 2025, 2026 and 2027. An option to extend the audit contract for an additional two fiscal years ending June 30, 2028 and 2029 may be considered at the sole discretion of the City. The scope of the audit is as follows:

- A. To perform financial audits of the City of Millbrae in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The audits shall include such tests of the accounting records and other auditing procedures considered necessary to express an opinion on the financial statements.
- B. To prepare and audit the City’s Annual Comprehensive Financial Report (“ACFR”) for compliance with all applicable issued GASB pronouncements, or as they become effective.
- C. To issue a report regarding the City’s internal control over financial reporting and tests of its compliance with certain provisions of laws, regulations, contracts and grants in accordance with Government Auditing Standards.
- D. To perform the required tests of compliance under Measure A and W of San Mateo County and issue the applicable report as required.
- E. To perform a single audit or compliance audit (if applicable), in accordance with the Uniform Guidance at 2 CFR 200 subpart F (200.500), formerly OMB Circular A-133.
- F. To perform a Transportation Development Act (TDA) compliance audit (if applicable) in accordance with CCR Title 21, Section 6662 with a public accountant pursuant to Sections 6505 and 26909 of the Government Code.
- G. To perform a test of compliance on the Appropriations Limit Schedule of the City/District in accordance with the requirements of article XIII B of the California Constitution known as the GANN limit.

III. TERM

The audit contract period shall cover the three fiscal years ending June 30, 2025, 2026 and 2027. An option to extend the audit contract for an additional two fiscal years ending June 30, 2028 and 2029 may be considered at the sole discretion of the City.

IV. DUTIES OF THE AUDITOR

Auditor shall perform the following tasks within the time frame established as part of its audit each fiscal year:

- A. Examination of all funds and account groups under the jurisdiction and control of the City. The examination will also include single audit or compliance audit if applicable, in accordance with the requirements of the Uniform Guidance at 2 CFR 200 subpart F (200.500), formerly OMB Circular A-133.
- B. Compilation and preparation of the ACFR, including the Basic Financial Statements, Required Supplemental Information, Other Supplemental Information, and the following analyses for the last ten fiscal years in the Statistical Section of the ACFR: Net Position by Component, Changes in Net Position, Fund Balances of Governmental Funds, and Changes in Fund Balance of Governmental Funds.
- C. Preparation of the Report of Compliance on Measure A & W Funds for the County of San Mateo.
- D. Preparation of the Appropriations Limit Schedule of the City/District in accordance with the requirements of article XIIIB of the California Constitution known as the GANN limit.
- E. Evaluation of computer systems controls and conducts testing of detailed transactions.
- F. To provide a timeline schedule of the audit, which will include auditor's staff assigned to perform the audit.
- G. Preparation of a Memorandum on Internal Control and Required Communications ("MOIC") in accordance with auditing standards generally accepted in the United States of America:
- H. Attendance at City meetings for the purpose of discussing the audit or the management letter and its conclusions and a final report before the City Council, if requested.
- I. Word processing and reproduction of ACFR and all other reports indicated herein. Auditor shall provide a digital copy of the complete ACFR in PDF format, and provide unbound reproducible masters and bound copies for:

Document	Unbound Master	Bound Copies
Comprehensive Annual Financial Report (ACFR)	1	Up to 15
Memorandum on Internal Control and Required Communications	1	Up to 5
Measure A, Measure W Compliance Report	1	Up to 5
Single Audit or Compliance Audit- Federal Assistance	1	Up to 5
Appropriation Limits	1	Up to 5

V. DUTIES OF THE CITY

City Staff will:

- A. Prepare a Letter of Transmittal and Management’s Discussion and Analysis for the ACFR.
- B. Provide a directory of City Officials.
- C. Provide an Organizational Chart.
- D. Provide Our Values and Our Purposes.
- E. Prepare the Statistical Information except as indicated under “Duties of the Auditor” above.
- F. Provide detail accounting records and prepare requested audit schedules.
- G. Prepare confirmation letters as requested by the auditor.
- H. Provide computerized financial reports such as balance sheet, revenues and expenditures for all funds.

VI. PROPOSAL ELIGIBILITY QUALIFICATIONS (Selection Criteria)

The following evaluation criteria are used to qualify all RFP’s submitted as being eligible for consideration:

- A. Experience – The auditor’s recent experience (within the last five years) in governmental auditing of cities with full municipal services in the State of California.
- B. Creative / Expanded Services – Innovation in approach in identifying and making recommendations for improving a City’s financial accounting system. Demonstrated accounting experience in being able to apply computerized audit techniques to a client’s existing computerized system for the purpose of internal control evaluation.
- C. Competence / Education – The qualifications of personnel who will be actually working on and coordinating the audit including but not limited to the engagement

partner, manager, senior accountant, and the firm's on-going efforts to keep its staff current and knowledgeable in accounting procedures.

- D. Personnel Policies – Auditor's experience in complying with applicable Federal, State, and City regulations, relating to non-discrimination and affirmative action programs for equal employment opportunity.
- E. References – The firm's general experience and reputation in the local government auditing / accounting field.
- F. Price

NOTE: The City reserves the right to reject any and all proposals that are deemed to be considered non-responsive or incomplete as to the required elements as indicated in this Request for Proposals.

VII. TENTATIVE Schedule

A. Audit RFP Schedule (Schedule may change at the sole discretion of the City):

Jan. 27 Mon	Emailing RFP to auditing firms and Posting online
Feb. 28 Fri (4:30 PM)	Deadline for RFP submission 4:30 PM. RFP's must be received at City Hall by this time.
Mar. 13 Thur	Screening of applicants and selection of finalists by City Staff
Mar. 17 Mon	Finalist firms interview with City Staff
Apr. 22 Tue	Staff Report to City Council and Approval

B. Schedule of Audit

(NOTE: Time frame is tentative only. A final time schedule will be worked out between the City staff and the selected auditors during each audit year).

May 5 Mon	Scoping meeting with selected auditing team
May 19-23	Interim Audit Fieldwork
Sept. 29-Oct 3	Final Audit Fieldwork
Oct. 20 Mon	1st draft of ACFR for Management review
Nov.10 Mon	2 nd draft of ACFR for Management review 1 st draft of MOIC and Other Reports

Nov. 17 Mon

Final draft of ACFR, MOIC and Other Reports for final Management review

Dec. 1 Mon

Printed ACFR, MOIC and Other Reports issued

VIII. PAYMENT

All RFP's shall set forth the hourly rates of those persons conducting the audit and the maximum total amount of hours and compensation for reviewing all financial records outlined in this scope of work. Fees shall be estimated for a three-year engagement where applicable (with an option to extend an additional two years) beginning with the fiscal year ending June 30, 2025. A cost breakdown by year and individual audit is requested for the first three years, indicating the cost allocation for the issuance of the ACFR, Measure A and W reports, Gann Limit report, Single Audit report, and MOIC. Firms should also indicate the factors upon which any increase would be based for the two optional years in annual fees. The City desires that total cost estimates be stated as a flat fee or on a "not to exceed" basis. Firms are free to propose whatever methods of compensation would be to the best material advantage of the City and the firm. Attendance at all meetings of the City relating to matters concerning the audit shall be considered part of the proposal amount.

IX. EXTRAORDINARY SERVICES

All proposals shall contain provisions to the effect that in the event that extraordinary circumstances warrant more intensive and detailed services beyond those in the contractual agreement, the firm shall provide, in writing and in advance, the reasons for the additional services together with the firm's estimate of costs. Please also indicate how your costs are derived (e.g., rates are discounted in accordance with your proposed audit rates).

X. PERSONNEL CHANGES

Proposals shall include a statement by the firm as to its plans and commitments relative to providing a continuity of personnel. The City reserves the right to request replacement of any members of the firm's auditing team prior to and during the course of the audit if circumstances warrant, and similarly, the City requests that it be notified, in advance, of any changes made by the auditing firm concerning the make-up of the auditing team after work has begun.

XI. SUBMITTAL FORMAT

All firms shall submit four (4) copies of their proposal, plus a digital copy of the proposal in PDF format, in the following order and outline them in the following manner:

A. Title page

Show the RFP subject, firm name, local address, telephone number, name of the contact person, e-mail address, and the date of the submittal.

B. Proposal Data Sheet – (In addition to your formal response, all firms must enclose a data sheet. Refer to the attached example and complete the enclosed form.)

C. Introduction / General Information / Types of Clients

Briefly introduce your firm, indicating whether your firm is local, regional, national or international. Identify the location of the office from which the work is to be done. Provide a short profile of the firm and staff levels. Indicate the name of the persons who will be authorized to make representations for and to bind the firm, their titles, addresses and telephone numbers. Indicate your firm's types of clients and any other useful information.

D. Proposal Criteria

Explain fully your firm's ability to deal with the following subject matter giving special attention to specifics given throughout this scope of work.
(Review Section VI: Proposal Eligibility Qualifications.)

1. Experience
2. Creativity / Expanded Services
3. Competence / Education
4. Personnel Policies
5. References
6. Price (A complete estimation / explanation of fees is to appear in the text of your response in addition to the estimates contained on the Proposal Data Sheet.)

E. Resumes of Those Individuals Conducting the Audit

XII. INFORMATION / IMPORTANT DATES

Audit Proposal Deadline: **February 28, 2025 @ 4:30 PM**

City Council approval of audit firm: **April 22, 2025 @ 7:00 PM**

Deliver Proposals to:

Mike Sung
Finance Director
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030

(All firms shall complete a proposal data sheet similar to the enclosed. Please follow the example provided.)

PROPOSAL DATA SHEET (EXAMPLE)

Firm name: Jones and Jones
Contact: Bob Jones
Phone: (415) 888-7777

QUALIFICATIONS

Jones and Jones is an international firm with 100 offices in the world including a San Francisco office with a staff of 100 professionals and ten partners.

PAST GOVERNMENTAL CLIENTS / CONTACT PERSON (3)

<u>Client</u>	<u>Most Recent Audit</u>	<u>Contact</u>	<u>Phone</u>
City of Happytown	2024	Jim Johnson	(650) 123-4567
City of Green Acres	2024	John Jones	(650) 234-5678
City of Paradise	2024	Mary Baker	(650) 456-7890

AUDITING PERSONNEL PROVIDED

<u>Name</u>	<u>Accounting Function</u>	<u>Years Experience</u>	<u>Cert./Degree</u>	<u>Last Public Audit</u>
Jim Jackson	Partner	20	C.P.A., M.B.A	City of Happytown, 2024
John Smith	Manager	10	C.P.A., M.B.A	City of Happytown, 2024
Kate White	Senior Accountant	5	C.P.A	City of Green Acres, 2024
Joe Carson	Staff Accountant	2	B.S.B.A	City of Paradise, 2024

SCOPE

The examination of the City's accounting records would be designed to express an opinion on the financial statements in accordance with the generally accepted accounting principals and their consistent application.

The firm places great emphasis on conducting auditing engagements in a manner designed to permit them to produce significant and relevant letters for management containing suggestions for improving the efficiency and effectiveness of operation. The management letter would state findings and recommendations concerning accounting, reporting, and internal control procedures. It would be organized to identify major problem areas, to highlight those which they believe are in need of further in-depth review and to suggest indicated priorities.

Proposal Data Sheet (Example)

HOURLY RATES OF AUDITING PERSONNEL

Jim Jackson, Partner	-	\$_____ per hour
John Smith, Manager	-	\$_____ per hour
Kate White, Senior Accountant	-	\$_____ per hour
Joe Carson, Staff Accountant	-	\$_____ per hour

FEES AND BILLING SEQUENCE*

<u>Audit Services</u>	<u>Anticipate Hours Expended</u>	<u>Fees 2024-25</u>	<u>Fees 2025-26</u>	<u>Fees 2026-27</u>
1. City/District Audit/Mgt Letter	XXXX	XXXX	XXXX	XXX
2. Community Devel Audit/Mgt Letter	XXXX	XXXX	XXXX	XXX
3. Measure A Compliance Report	XXXX	XXXX	XXXX	XXX
4. Measure W Compliance Report	XXXX	XXXX	XXXX	XXX
5. Appropriation Limit	XXXX	XXXX	XXXX	XXX
Total ("Not to Exceed")	XXXX	XXXX	XXXX	XXX

Optional Services

1. Single Audit – Federal Assistance	XXXX	XXXX	XXXX	XXX
2. Compliance Audit – Fed. Assistance	XXXX	XXXX	XXXX	XXX
3. TDA Audit	XXXX	XXXX	XXXX	XXX

Please state briefly any qualifications you need to make regarding your proposed fees (e.g., out of pocket expenses, fee increases, extraordinary services, etc.).

We estimate our audit time charges for the 2024-25 audit to be \$XXXXXXX. Our proposed fees for fiscal year June 30, 2026 and 2027 would only increase to the extent of an increase in the cost of living. Proposed fees include out-of-pocket expenses. Extraordinary services will be billed at the prevailing hourly rates.

Billing Sequence

It has been the practice of this firm to submit progress billings as the audit develops. Bills are payable within 30 days upon receipt.

OTHER SERVICES OFFERED

1. Administrative reconnaissance and recommendations
2. Systems study – analysis – design – implementation
3. Computer organization, application of hardware and software packages

(Note: your firm may create a similar form to the data sheet shown herein at your discretion, but ensure that all components included herein are covered and in the same order.)

RFP PROPOSAL DATA SHEET

FIRM NAME: _____

CONTACT
PERSON: _____

PHONE: _____

QUALIFICATIONS STATEMENT

PAST GOVERNMENTAL CLIENTS / CONTACT PERSON

<u>CLIENT</u>	<u>MOST RECENT AUDIT</u>	<u>CONTACT</u>	<u>PHONE</u>
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1. _____

2. _____

3. _____

AUDITING PERSONNEL PROVIDED*

<u>ACCOUNTING FUNCTION</u>	<u>YEARS OF EXPERIENCE</u>	<u>CERT / DEGREE</u>	<u>LAST PUBLIC AUDIT</u>
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1. _____

2. _____

3. _____

4. _____

5. _____

*Please remember to include resumes with your RFP response.

RFP PROPOSAL DATA SHEET

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SCOPE

HOURLY RATES OF AUDITING PERSONNEL

NAME / FUNCTION

HOURLY / RATE

1. _____
2. _____
3. _____
4. _____
5. _____

FEES AND BILLING SEQUENCE

<u>Audit Services</u>	<u>ANTICIPATED HOURS EXPENDED</u>	<u>2024-25</u>	<u>2025-26</u>	<u>2026-27</u>
1. ACFR Audit/	_____	\$_____	\$_____	\$_____
2. Measure A Compliance Report	_____	\$_____	\$_____	\$_____
3. Measure W Compliance Report	_____	\$_____	\$_____	\$_____
4. Appropriation Limit	_____	\$_____	\$_____	\$_____
5. Auditor's Preparation of Worksheets (part IV, E)	_____	\$_____	\$_____	\$_____
6. Directed Study	_____	\$_____	\$_____	\$_____
TOTAL (NOT TO EXCEED)	_____	\$_____	\$_____	\$_____

RFP PROPOSAL DATA SHEET

Page 3

Optional Services

- | | | | |
|--|----------|----------|----------|
| 1. Single Audit - Federal Assistance _____ | \$ _____ | \$ _____ | \$ _____ |
| 2. Compliance Audit – Federal _____ | \$ _____ | \$ _____ | \$ _____ |
| 3. TDA Audit _____ | \$ _____ | \$ _____ | \$ _____ |

Please state any qualifications you need to make regarding your proposal fee (e.g., out-of-pocket expenses, fee increases, extraordinary services, etc.).

BILLING SEQUENCE

OTHER SERVICES OFFERED

1. _____
2. _____
3. _____

Signature of Individual Submitting Proposal on Behalf of Firm

By signing the RFP Proposal Data Sheet, your firm has read and will accept City of Millbrae's standard professional services agreement (PSA) (Exhibit A), attached to this RFP; or a redlined document which shows which sections the firm would require to be modified to enter into this engagement. Firms should contact Mike Sung at msung@ci.millbrae.ca.us via e-mail no later than February 26, 2025, to obtain an electronic version of Millbrae's professional services agreement if they wish to offer redlined changes.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the ____ day of _____, 20____, by and between the City of Millbrae ("CITY") and _____ ("CONSULTANT").

WHEREAS, the CITY desires to obtain professional services for _____ and has issued a Request for Proposals dated _____, 20____, a copy of which is attached and incorporated as Exhibit A; and **[Delete "and has issued a Request for Proposals. . ." to end of sentence if no RFP issued.]**

WHEREAS, the CONSULTANT desires to furnish such services and has submitted a Proposal dated _____, a copy of which is attached and incorporated as Exhibit B. **[Exhibit A if no RFP issued.]**

NOW, THEREFORE, the parties agree as follows:

1. **RENDITION OF SERVICES.** The CONSULTANT agrees to provide professional services to the CITY in accordance with the terms and conditions of this Agreement ("Services"). In the performance of its Services, CONSULTANT represents that it has and will exercise that degree of professional care, skill, efficiency and judgment ordinarily employed by consultants providing similar services. CONSULTANT further represents and warrants that it holds currently in effect all licenses, registrations, and certifications in good standing that may be required under applicable law or regulations to perform these services and agrees to retain such licenses, registrations, and certifications in active status throughout the duration of this engagement.

2. **SCOPE OF SERVICES.** The scope of the CONSULTANT's Services shall consist of the services set forth in Exhibit A, as supplemented by Exhibit B except when inconsistent with Exhibit A. **[Delete "as supplemented by..." to end of sentence if no RFP issued.]**

3. **TERM.** **[CUSTOMIZE AS NEEDED]**

The term of this Agreement will be for a term of ____ years commencing upon the Effective Date of the Agreement. The CONSULTANT shall furnish the CITY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Contract Specifications.

[USE THIS CLAUSE IF OPTIONS TO EXTEND TERM ARE DESIRED]

The CITY reserves the right, in its sole discretion, to exercise up to __ one- year option term(s) to extend the Agreement, pursuant to the terms of Section 4, Compensation. If the CITY determines to exercise the option term(s), the CITY will give the CONSULTANT at least 30 days' written notice of its determination.

It is understood that the term of the Agreement, and any option term granted thereto as specified herein are subject to the CITY's right to terminate the Agreement in accordance with Section 13 of this Agreement.

4. **COMPENSATION.** **[CUSTOMIZE AS NEEDED]**

[USE THIS CLAUSE FOR NOT-TO-EXCEED/LUMP SUM COMPENSATION]

The CONSULTANT agrees to perform all of the services included in Section 2 for a total all inclusive sum not-to-exceed fee of _____ (\$_____), in accordance with Exhibits A and B. The total all inclusive sum shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the CONSULTANT. The hourly rate by personnel category shall be as set forth in Exhibit B [and/or below if inserting payment schedule] **[or "as set forth in Exhibit ____ if attaching a separate payment schedule to this Agreement."].**

[USE THIS CLAUSE FOR TIME AND COST REIMBURSEMENT COMPENSATION]

The CONSULTANT agrees to perform all of the services included in Section 2, with compensation based upon the time devoted to the work by specified individuals at the hourly labor rates listed in this Section below: **[if inserting hourly rates directly into this section] [or "as stated in Exhibit ____."]**

The agreed upon hourly labor rates shall include all direct labor, taxes, overhead, insurance, employee benefits, and other costs and expenses incurred by the CONSULTANT necessary for the performance of all the services called for under this Agreement. The hourly labor rates shall remain firm during the entire ____-year term of this Agreement. **[Or "for _____ years. CONSULTANT may apply a cost of living adjustment to the rates in subsequent years of the term."]**

5. MANNER OF PAYMENT. CONSULTANT shall submit invoices to CITY on a monthly basis. Invoices shall itemize, by personnel, the number of hours devoted by CONSULTANT to work under this Agreement, applicable hourly rates in accordance with the fee schedule described in Exhibit B, and those out-of-pocket expenses incurred in the performance of work hereunder. CITY shall render payment within thirty (30) days of receipt of approved invoices.

All invoices should be sent to: City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030
Attn: _____

6. CONSULTANT'S KEY PERSONNEL. It is understood and agreed by the parties that at all times during the term of this Agreement that _____ shall serve as the primary staff person of CONSULTANT to undertake, render and oversee all of the services under this Agreement. Upon written notice by the Consultant and approval by the CITY, which will not be unreasonably withheld, the CONSULTANT may substitute this person with another person, who shall possess similar qualifications and experience for this position.

7. CITY REPRESENTATIVE. Except when approval or other action is required to be given or taken by the City Council, the CITY Manager, or such person or persons as he shall designate in writing from time to time, shall represent and act for the CITY.

8. CONSULTANT'S STATUS. Neither the CONSULTANT nor any party contracting with the CONSULTANT shall be deemed to be an agent or employee of the CITY. The

CONSULTANT is and shall be an independent contractor, and the legal relationship of any person performing services for the CONSULTANT's shall be one solely between said parties.

9. OWNERSHIP OF WORK. All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONSULTANT shall be and are the property of the CITY. The CITY shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to the CITY. If any materials are lost, damaged, or destroyed before final delivery to the CITY, the CONSULTANT shall replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the CITY. The CONSULTANT agrees to execute any additional documents which may be necessary to evidence such assignment.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

The CONSULTANT may retain a copy of all material produced under this agreement for its use in its general business activities.

10. CHANGES. The CITY may, at any time, by written order, make changes within the scope of work and Services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 4 or in the time of required performance as set forth in Section 3, or both. In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or Services and result in an adjustment in the amount of compensation specified herein, CONSULTANT shall so advise the CITY immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation. Such notice shall be given the CITY prior to the time that CONSULTANT performs work or services related to the proposed adjustment in compensation. Any and all pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes. Failure to provide written notice and receive CITY approval for extra work prior to performing extra work may, at the CITY's sole discretion, result in nonpayment of the invoices reflecting such work.

11. RESPONSIBILITY; INDEMNIFICATION. CONSULTANT shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the CITY and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action, losses, damages, costs, or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to (i) the negligence, recklessness, or willful misconduct of CONSULTANT or

CONSULTANT 's employees, officers, officials, agents or independent contractors; or (ii) infection of any person by COVID-19 that occurs, or is alleged to occur, during the performance of this agreement. Such losses, damages, and costs shall include reasonable attorneys' fees of counsel of CITY 's choice, expert fees and all other costs and fees of litigation. CONSULTANT shall not be obligated under this Agreement to indemnify City to the extent that a judge or jury determine that the damage is caused by the active negligence or willful misconduct of CITY, its agents or employees. To the fullest extent permitted by law, this indemnity shall survive the termination or expiration of this Agreement.

12. INSURANCE. The insurance requirements specified in this Section shall cover CONSULTANT's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONSULTANT authorizes to work under this Agreement. CONSULTANT is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that any Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

Workers' Compensation. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers. Prior to commencement of work under this Agreement by any such employee, CONSULTANT shall deliver to the CITY a Certificate of Insurance which shall stipulate that thirty (30) days advance written notice of cancellation, non-renewal or reduction in limits shall be given to the CITY.

Commercial General Liability. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability for liability arising out of the operations and activities of CONSULTANT and any subcontractors. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CONSULTANT's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.

Business Automobile Liability. CONSULTANT shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident for liability arising out of the operations and activities of CONSULTANT and any subcontractors.

The Commercial General Liability and Automobile Liability Insurance policies shall include a cross liability endorsement or separation of interest clause and shall stipulate that the inclusion of the City of Millbrae and its Councilmembers, officers, employees, engineer and agents as additional insureds shall not in any way affect their rights as respects to any claim, demand, suit or judgment made, brought or recovered against CONSULTANT. Said policies shall protect CONSULTANT and City in the same manner as if a separate policy had been issued to each, but nothing in said policy policies shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

Professional Liability Insurance. CONSULTANT shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement..

Evidence of Insurance. Prior to commencement of work hereunder, CONSULTANT shall deliver to City a Certificate of Insurance evidencing compliance with the insurance requirements of this Section. The Certificate shall stipulate that thirty (30) days advance written notice of cancellation, non-renewal or material reduction in limits of the required policy shall be given to the City.

General Insurance Conditions. All policies will be issued by insurers acceptable to the City. The insurance will be issued by an insurance company authorized to do business in the State of California with a minimum "Best's" rating of A-:VII, or equivalent, or as otherwise approved by the City. Worker's Compensation coverage requirements may be met with the California State Compensation Fund.

In the event a claim is made, the City reserves the right to request certified duplicate copies of all insurance policies required under this Section.

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- (a) Policy retroactive date coincides with or precedes the CONSULTANT's start of work (including subsequent policies purchased as renewals or replacements).
- (b) CONSULTANT shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.
- (c) If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- (d) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

13. TERMINATION. The CITY shall have the right to terminate this Agreement at any time by giving written notice to the CONSULTANT. In the event of termination for any reason other than the fault of the CONSULTANT, the CONSULTANT shall be compensated in accordance with the provisions of Sections 4 and 5 for the services performed and expenses incurred to the date of such termination, plus any reasonable costs and expenses which are

to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time. The CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the CITY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the CITY due written notice of a potential claim. The potential claim shall set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by the CITY, such notice shall be given to the CITY prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by the CITY, and shall be governed by all applicable provisions of the Agreement. The CONSULTANT shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves the CONSULTANT claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

17. REMEDIES. In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, the CITY reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

18. TEMPORARY SUSPENSION OF WORK. The CITY, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as the CITY may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT shall comply immediately with the written order of the CITY to suspend the work wholly or in part. The suspended work shall be resumed when the CONSULTANT is provided with written direction from the CITY to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by the CITY.

In the event of a suspension of the work, the CONSULTANT shall not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work which the CITY has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

19. AUDIT OF RECORDS. All CONSULTANT and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants shall permit the CITY, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall also provide such assistance as may be required in the course of such audit. The CONSULTANT shall retain these records and make them available for inspection hereunder for a period of three (3) years after expiration or termination of the Agreement. If, as a result of the audit, it is determined by the CITY's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse the CITY for those costs within sixty (60) days of written notification by the CITY.

20. CONFLICT OF INTEREST.

(i) General

Depending on the nature of the work performed, a CONSULTANT of the CITY may be subject to the same conflict of interest prohibitions established by California law that govern the CITY's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests pursuant to the CITY's Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by CITY.

(ii) Organizational Conflict of Interest

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the CITY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any Subconsultant or independent consultant on any work related to this Agreement if the Subconsultant or independent consultant, or any employee of the Subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT immediately shall provide the CITY with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, CITY becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, CITY shall similarly notify CONSULTANT.

In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by CITY, the CITY will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. The CITY's determination as to the manner in which to address the conflict shall be final.

During the term of this Agreement, CONSULTANT must maintain lists of its employees, and the Subconsultants and independent consultants used and their employees. CONSULTANT must provide this information to the CITY upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. CONSULTANT shall retain this record for five (5) years after the CITY makes final payment under this Agreement. Such lists may be published as part of future CITY solicitations.

CONSULTANT shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. CONSULTANT shall monitor and enforce these policies and shall require any subconsultants and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the CITY in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

21. EQUAL EMPLOYMENT OPPORTUNITY. In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

22. CITY WARRANTIES. The CITY makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

23. CONFIDENTIALITY. CONSULTANT shall not release any reports, information or promotional materials prepared in connection with this Agreement without the approval of the CITY Manager.

24. USE OF SUBCONTRACTORS. CONSULTANT shall not subcontract any Services to be performed by it under this Agreement without the prior written approval of the CITY, except for service firms engaged in drawing, reproduction, typing and printing. CONSULTANT shall be solely responsible for reimbursing any subcontractors and the CITY shall have no obligation to them.

25. NO ASSIGNMENT. CONSULTANT shall not assign any of the rights nor transfer any of its obligations under the Agreement without the prior written consent of the CITY.

26. ATTORNEY'S FEES. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

27. APPLICABLE LAW. This Agreement, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California.

28. COMPLIANCE WITH LAWS AND REGULATIONS

During the progress of the work, CONSULTANT shall fully adhere to all applicable State and Federal laws and county, municipal or CITY ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials and equipment used in work, or which in any way affect the conduct of the work. CONSULTANT, and any subcontractors performing any work under this Agreement, shall hold such licenses and certifications as may be required by the State of California or any local jurisdiction for the performance of the work specified in this Agreement. CONSULTANT agrees to provide the CITY evidence of compliance with any applicable law, ordinance, regulation, or order upon request, including, without limitation, Cal/OSHA Interim General Guidelines on Protecting Workers from COVID-19 within their written Injury & Illness Prevention Program.

29. BINDING ON SUCCESSORS. All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

30. WAIVER. Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

31. ENTIRE AGREEMENT; MODIFICATION. This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes any prior understanding or agreement, oral or written, with respect to such subject matter. It may not be amended or modified, except by a written amendment executed by authorized representatives by both parties. In no event will the Agreement be amended or modified by oral understandings reached by the parties or by the conduct of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.

CITY OF MILLBRAE:

CONSULTANT:

(See footnote below)*

By: _____
City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

City Attorney

By: _____
Name: _____
Title: _____

*Note: This Agreement must be executed by two Corporate Officers, consisting of:

- (1) the President, Vice President or Chair of the Board, and
- (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided that evidence satisfactory to the City is provided demonstrating that such individual is authorized to bind the Corporation (e.g. a copy of a certified resolution from the Corporation's Board or a copy of the Corporation's bylaws).