

Request for Qualifications (RFQ)

Transportation Demand Management Program Administrator



March 11, 2022

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1. Introduction

The City of East Palo Alto (“City”) invites qualified firms/candidates to submit statements of qualifications for managing the City’s newly adopted Transportation Demand Management (TDM) Program. Adopted on June 1, 2021 by the City Council, the TDM ordinance to be effective immediately. However, the program is scheduled to be implemented in 2022. The City is seeking to contract with an individual or firm that specializes in the administration/management of the TDM Programs and can assist the City to maximize the benefits of TDM strategies. The TDM program applies to all new development projects as well as a limited application to existing development. See chapter 10.32 of the City’s Municipal Code: https://library.municode.com/ca/east_palo_alto/codes/code_of_ordinances?nodeId=TIT10VETR_CH10.32TRDEMAPR

The City established this TDM program for the following purposes:

- A. To improve mobility in the city, county and surrounding region by reducing up to 40 percent of vehicle trips;
- B. To reduce vehicle emissions, energy use and ambient noise levels as a result of fewer vehicle trips, fewer vehicle miles travelled and reduced traffic congestion; and
- C. The City will periodically reevaluate its program in conjunction with any countywide TDM program and will revise it when warranted by traffic conditions and demonstrated results of the TDM program.

a. City General Information and Governance

The following sections provide general information regarding the City governance structure and financial reporting requirements:

The City of East Palo Alto, incorporated in 1983, is the newest city in San Mateo County with a population of approximately 30,545 people. East Palo Alto is one of California’s most vibrant and diverse communities located in the San Francisco Peninsula and nestled within the heart of Silicon Valley. East Palo Alto is centrally located to international travel and is a central location to major neighboring tech companies and employers. Priding itself on its unique and multi-cultural community, East Palo Alto consists of youthful, diverse, and hard-working individuals.

The City of East Palo Alto operates under a Council/Manager form of government. Its mission is to provide responsive, respectful, and efficient public services to enhance the quality of life and safety for its multi-cultural community. The City fiscal year begins on July 1 and ends on June 30. City Hall is located at 2415 University Avenue., East Palo Alto, CA 94303.

b. Background and City Intention

The City is seeking an experience consulting firm to help implement and manage a TDM program consistent with the newly adopted TDM ordinance and program guidelines.

Implementation of the TDM Ordinance will involve the establishment and management of fees and/or penalties to accomplish the following goals and objectives:

- Mitigate the cost of monitoring and administering the TDM Ordinance;
- Influence a real change in transit behavior; and
- Engage property owners in a long-term solution.

The TDM Program will consist of the following components.

- Review TDM plans for compliance with the ordinance for:
 - Existing employers with 100 or more employees
 - New nonresidential developments
 - New residential developments
- Coordinate and advise City staff on TDM plans during planning application review
- Advise City staff on new trends and resources for TDM programs
- Annual review of TDM plans and onsite evaluations for compliance
- Provide commute guidance and resources for applicants/employees
- Develop and maintain robust TDM database
- Coordinate with San Mateo County on TDM requirements
- Implement and update Residential and Non-residential TDM Program Guidelines as needed

Desired Qualifications

Respondents must have demonstrated experience with the administration of TDM programs, including the following:

- Expertise in TDM planning, promotion, and implementation
- Knowledge of various current and innovative TDM strategies and programs
- Familiarity with TDM resources and programs in the Bay Area
- Experience in website and media management
- At least five years of experience in TDM Program management, preferably in the Bay Area.
- Knowledge, skills and experience in stakeholder identification and engagement.
- At least five years of experience in designing, implementing and evaluating successful TDM projects and programs, preferably in the Bay Area.
- Ability to communicate effectively with the objective of positively influencing behavior change.
- Expertise in the use of outreach, communication tools, incentives and events to reach targeted audiences.
- Understanding of the local context in East Palo Alto, commuting patterns/demographics/needs/resources, and the larger Bay Area.
- Experience working with government, private, and non-profit stakeholders (such as transit agencies, transportation providers, and employers) and developing community partnerships.

The term of this contract will be three years.

2. Scope of Work

The following are typical services and/or items that the successful consultant will be required to provide the City if it is awarded the contract and should be addressed in each proposal.

In order to carry out the transportation demand management program, the City Council authorized the city manager to designate a City TDM Program Administrator. The City is seeking a TDM program administrator to provide expertise and to assist the City with the development, promotion, operation, monitoring and improvement of the TDM Program. This includes:

- Review TDM plans for compliance with the ordinance for:
 - Existing employers with 100 or more employees
 - New nonresidential developments
 - New residential developments
- Coordinate and advise City staff on TDM plans during planning application review
- Advise City staff on new trends and resources for TDM programs
- Annual review of TDM plans and onsite evaluations for compliance
- Provide commute guidance and resources for applicants/employees
- Develop and maintain robust TDM database
- Coordinate with San Mateo County on TDM requirements
- Implement and update Residential and Non-residential TDM Program Guidelines as needed
- The implementation of a successful TDM program will be accomplished through the following tasks:
 - Provide a TDM program administrator with the appropriate experience to serve as the primary point of contact for the City and the public.
 - Clear understanding of the City's TDM Ordinance, fees, penalties and program guidelines.
 - Lead the development of an implementation plan for the TDM Program, beginning with the refinement of the TDM Program Guidelines, including a timeline and a detailed budget.
 - Develop a comprehensive TDM Program Database for tracking purposes to enable assessment of programs. The administrator shall utilize the database to gather and analyze data to show, among others, the effectiveness of TDM programs and strategies.
 - Provide regular reports on the effectiveness of the TDM Program, including budget, statistics, surveys, and customer and stakeholder feedback.
 - Provide monthly reports summarizing the amount of time expended and describe activities undertaken during the previous month.
 - Research and advise the City on new trends, technologies, policies and resources for TDM programs that could benefit the East Palo Alto
 - Assist City staff on the assessing the annual fees required to support the TDM program and the implementation.
 - Assist City staff on the enforcement of the TDM ordinance, including the collection of penalties in accordance with the TDM Ordinance.
 - Lead audits of sites subject to the TDM ordinance to confirm compliance. This can

include various measures, such as on-site counts and surveys.

- Review TDM plans proposed for new residential projects for conformance to the TDM Ordinance and Residential TDM Program Guidelines. Work with applicants to develop compliant and implementable plans.
- Review TDM plans proposed for new nonresidential projects for conformance to the TDM Ordinance and Nonresidential TDM Program Guidelines. Work with applicants to develop compliant and implementable plans.
- Review TDM plans for existing Nonresidential Uses for conformance to the TDM Ordinance and Nonresidential TDM Program Guidelines. Work with applicants to develop compliant and implementable plans.
- Provide assistance to employers to provide commute alternative information. Information shall include commute alternative information on ridesharing, transit, bicycling and other commute alternatives.
- Perform annual monitoring of TDM plans for to ensure compliance by developers and employers
- Implement an outreach plan to communicate with the various stakeholders.
- Facilitate coordination where appropriate with other regional agencies, especially where it would be beneficial to leverage the additional resources and so TDM programs can have the most impact possible on a regional scale.
- Other tasks as needed, to develop, maintain and improve the TDM Program.

Cost and Fees

The City will pay the selected TDM Consultant based on the costs contained in the submitted cost proposal, or the cost proposal from a best and final offer, or subsequent negotiation between the City and the selected TDM Consultant, but not to exceed the budget approved by the City, for the complete and satisfactory performance of the terms and conditions of this Request for Proposal and subsequent Agreement for the period agreed upon.

3. Proposal & Project Timeline and Contacts

a. Key Dates

RFP Issued	March 11, 2022
Proposals Due	March 28, 2022 Noon (12pm)
<i>Questions may be submitted at any time. There is no pre-bidders conference.</i>	
Anticipated Selection to be complete	April 1, 2022
<i>There may be follow up requested. At this time, interviews are not anticipated.</i>	
Contract awarded by City Council	April 19, 2022

b. Contacts

Inquiries concerning the RFQ and proposals should be submitted via email to Elena Lee, Planning Manager(elee@cityofepa.org) prior to the deadline referenced above.

Submissions must be received, in full, by the City at or before the stated time to be considered.

4. Proposal Guidelines

a. General Guidelines

Failure to comply with the requirements set forth in this RFQ may result in disqualification. Proposals and/or modifications received after the hour and date specified above will not be accepted. Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFQ, provided notification is received in writing before the submittal deadline. No handwritten notations or corrections will be allowed. The responding Consultant is solely responsible for all costs related to the preparation of the proposal.

The City reserves the right to reject all proposals and to waive any minor informalities or irregularities contained in any proposal. Acceptance of any proposal submitted pursuant to this RFQ shall not constitute any implied intent to enter into a contract.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City, vendors submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any idea(s) in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the vendor of the conditions contained in the request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the vendor selected.

Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be on conforming to the RFQ instructions, responding to the RFQ requirements, and providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected.

b. Proposal Sections

The following proposal sections are to be included in the Proposer's response:

I. Letter of Transmittal

Proposals shall have a 10-page limit and must be complete with a table of contents and respondents shall adhere to the following order and content for proposal sections. Each section should be labeled for ease of reference:

A. Cover Sheet with Contact Information

The cover sheet should have the primary contact information including name, organization, phone number, email, and address.

B. Transmittal Letter

The transmittal letter should state the firm's interest and commitment to the project and summarize the unique qualities and approach to the implementation and administration of new TDM program, anticipated interaction and involvement with City staff, approach to community outreach, and understanding of the East Palo Alto community. The letter should identify processes and procedures that will be implemented to manage and coordinate between various entities, including involved and informed stakeholders.

The response to the RFQ should provide the qualifications and experience of the entire team that will be available to provide the requested services. Please emphasize the specific qualifications and experience for similar projects for the key team members.

This section should also discuss the approach to managing a budget for a new program. Provide any other information that may be relevant.

A signed letter of transmittal briefly stating the vendor's understanding of the work to be completed, the commitment to perform the work within the time period, a statement why the vendor believes itself to be the best qualified to perform the engagement and a statement that the proposal is a vendor and irrevocable offer. List all subcontractors, if any.

The letter shall make a declarative statement that the Respondent has reviewed all aspects of the City's Contractor and Professional Services Agreement, including the City's insurance requirements, and is in agreement with these documents. If the Respondent has concerns about the City's standard forms, those concerns shall be identified in the letter.

II. Technical

The Technical Proposal shall address all points outlined in the request for proposals (excluding any cost information, which should only be included in a separate Cost Proposal). The proposal shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this request for proposals. While additional data may be presented, the following subjects must be included and shall represent the criteria against which the proposal will be evaluated:

A. Vendor Qualifications and Experience - To qualify **the vendor must have experience in TDM program administration**. The Proposer shall state the size of

the vendor, range of service performed and include a list of all current clients.

- B. References - Provide a list of not less than three (3) client references for whom services like those outlined in the RFQ are currently being provided. For each reference listed provide the name of the organization, dates for which the service(s) are being provided, type of service(s) being provided and the name, title, address, telephone number, and e-mail address of the responsible person within the reference's organization. The City reserves the right to contact the listed references regarding the audit services performed by the Proposer.
- C. Proposed Methodology - The proposal should set forth a work plan, including an explanation of the services required in Section II "Scope of Work" of this request for proposal. Include:
 - a. The philosophy and approach with detail specific to each area for providing the full scope of service.
 - b. Proposer's ideas for maintaining open communication with the client.
 - c. A project schedule for initial implementation, identifying high-level meeting content and participation, milestones, and deliverables.

III. **Proposed Changes to Contract Template**

The proposal should include requested changes (if any) to the standard City professional services contract.

IV. **Fee Proposal and Cost Estimates**

The fee proposal shall be separately submitted, physically, and contain all pricing information relative to performing the scope of services as described in this RFQ.

- a. The first page of the sealed dollar cost proposal shall include the following information:
 - i. Name of Vendor.
 - ii. Certification that the person signing the proposal is entitled to represent the vendor, empowered to submit the proposal, and authorized to sign a contract with the City.
- b. Manner of Payment – Describe the proposed manner of payment.
- c. The cost proposal shall be submitted in following format:
 - i. ESTIMATE OF COST

Position	Hours	Hourly Rate

5. Selection Criteria and Evaluation Process

The project's core implementation team, comprised of City staff, will be responsible for the bid evaluations. This team, in accordance with the criteria listed below, will evaluate all proposals received as specified. The City team members, in applying the major criteria to the proposals, may consider additional criteria beyond those listed.

The final selection will be the vendor which, in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and is in the City's best interest. The skill and ability of the entity performing the services is a key component of the selection criteria. Consultants will be objectively evaluated based on their responses to the project scope outlined in the RFQ. The written proposal should clearly demonstrate how the vendor could best satisfy the requirements of City.

The City maintains the sole and exclusive right to evaluate the merits of the proposals received. The City will consider the ability, capacity, skill, character, integrity, reputation, judgment, and expertise in the award of the project. Cost will be only one factor in determining the selection, and as such, the contract might not be awarded to the lowest responsible Proposer.

The City will undertake the following evaluation process:

- The City will review and evaluate all submitted documents received in response to the RFQ.
- After the submittals are evaluated and ranked, the City, at its sole discretion, may elect to interview (including a demonstration of capabilities) one or more respondents. Please note that respondents may be asked to submit additional documentation. In addition, the City reserves the right to select a proposal without conducting interviews.
- If a commitment is made, it will be to the most qualified with whom City is able to successfully negotiate the compensation and terms and conditions of all agreements.
- Once a contractor is selected, staff will make a recommendation to the City Council. Final selection of a Contractor and authority to proceed with these services shall be at the sole discretion of the City Council.

The Attachment is the City's standard consulting services agreement. Consultants interested in proposing on this RFQ should be prepared to enter into the agreement under the standard terms and should be able to provide the required insurance. If the City is unable to

negotiate a satisfactory agreement, with terms and conditions the City determines, in its sole judgment, to be fair and reasonable, the City may then commence negotiations with the next most qualified vendor in sequence, until a vendor is selected, or a determination is made to reject all submittals.

Evaluation Criteria

Element	Maximum Points	Description
Experience	50	Respondent shall demonstrate experience providing the services outlined in this RFQ with successful results.
Capacity to Perform	35	Respondent shall demonstrate the capacity to provide the services described in this RFQ and to respond to the public, the City, and other stakeholders in a timely manner. Defined expectations for timeliness of service delivery and stakeholder communication should be outlined with the submittal.
Estimate of Cost	10	The City is not required to select the firm with the lowest bid, however, as with any contract, cost is important and will be considered.
Bonus Points	5	Respondents with demonstrated experience working in East Palo Alto will receive up to 5 additional points.
Confirmation Respondent Can Meet City's Contracting/Insurance/Business License Requirements	Pass/Fail	This is required to avoid lengthy contract delays in the future.

6. General Conditions

Consultants are advised to become familiar with all conditions, instructions, and specifications of this RFQ. By submitting a proposal, Contractor represents and warrants that it has thoroughly examined and is familiar with work required under this RFQ, that Contractor has conducted such additional investigation as it deems necessary and convenient, that Contractor is capable of providing the services requested by the City in a manner that meets the City's objectives and specifications as outlined in this RFQ, and that Contractor has reviewed and inspected all materials submitted in response to this RFQ. Once the contractor has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for Contractor to request additional compensation.

a. Non-Discrimination Requirement

By submitting a proposal, the Contractor represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliations or opinion, age, or medical condition and will comply with the City of East Palo Alto's Policy Against Discrimination, Harassment, and Retaliation adopted by the East Palo Alto City Council on December 21, 2004.

Contractor and its subsidiaries shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap. Contractor agrees to abide by the City of East Palo Alto's Policy Against Discrimination, Harassment, and Retaliation adopted by the East Palo Alto City Council on December 21, 2004.

b. Indemnification

Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, for the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City.

c. Insurance

1. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor 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 Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor 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 Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
2. Automobile Liability Insurance: Contractor shall take out and maintain during the life of this Agreement such Automobile Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) for each occurrence 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. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
3. Worker's Compensation and Employer's Liability Insurance: Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor 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 Worker's 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".
4. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. The

professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

5. Broader Insurance Coverage: If Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.
6. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors, and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.
7. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
8. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause). All certificates and endorsements are to be received and approved by the City Attorney's Office at least five days before Contractor commences work to be performed pursuant to the agreement.

d. Conditions of Proposal Acceptance

This RFQ does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this RFQ, or to procure or contract for any services. The City reserves the right to: waive any minor irregularities or informalities contained within an RFQ, and/or reject any or all proposals received as a result of this request, and negotiate with any qualified contractor, or to cancel the RFQ in part or whole. All proposals and material submitted will become the property of the City and will not be deemed confidential or proprietary. The

City reserves the right to award in whole or in part, by item or group of items, by section or geographic area, when such action serves the best interests of the City. The City and Contractor may agree to add additional areas to the contract (Attachment) by mutual agreement later. The City may elect to stop work at any time in the contract and will pay for work completed to that point on a time and material basis.

CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

This Contractor and Professional Services Agreement ("Agreement") is made at East Palo Alto, California, dated for reference this [] day of [], 20[], by and between the City of East Palo Alto, a municipal corporation ("City"), and [type in name], [type in the type of entity], hereinafter referred to as "Contractor", who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
2. **Payment.** City shall pay Contractor for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement.
3. **Term.** The term of this Agreement shall commence on [type in start date] and shall continue in full force and effect until [type in end date]. The contract may be administratively extended [].
4. **Facilities and Equipment.** Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
5. **Indemnification.** Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, for the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City.

The provisions of this section shall survive the expiration or termination of this Agreement and are not limited by any provisions relating to insurance in this Agreement.

6. **Insurance Requirements.** Contractor agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Contractor." Failure to maintain required insurance at all times shall constitute

a default and material breach.

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

8. Conflict of Interest. Contractor warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Contractor's family, business, real property or financial interests and the services to be provided under this Agreement. Contractor shall comply with the City of East Palo Alto Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Contractor's family, business, real property or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Contractor shall disclose such conflict in writing to City.

9. Independent Contractor. Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes services pursuant to this Agreement.

10. Licenses, Permits, Etc. Contractor represents and warrants to City that all Contractor services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Contractor has all the permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession.

Business License. Contractor, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Contractor until such business license(s) has been obtained.

11. Standard of Performance. Contractor shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Contractor's profession currently practicing in California.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Contractor's responsibilities under this section shall not be delegated. Contractor shall be responsible to City for acts, errors, or omissions of Contractor's subcontractors.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred or, beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Contractor is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor.

12. Force Majeure. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause by circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Contractor is unable to meet the completion date or schedule of services, Contractor shall inform the City Representative of the additional time required to perform the work and the City Representative may adjust the schedule.

13. Time is of the Essence. Time is of the essence in this Agreement. Any

reference to days means calendar days, unless otherwise specifically stated.

14. Personnel. Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

15. Prevailing Wages for Public Works Projects. For public works projects, Contractor shall comply with all provisions of California laws dealing with prevailing wages, apprentices, and hours of work. Contractor shall also comply with provisions of Labor Code section 1720 as applicable. Contractor shall maintain certified payroll records evidencing such payment of prevailing wages as required by law.

16. Contractor Not Agent. Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Contractor shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

17. Termination or Abandonment by City. The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Contractor. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Contractor for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of

a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Contractor for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

18. Products of Consulting Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Contractor resulting from services rendered pursuant to this Agreement, shall become the property of City. Contractor agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office format as appropriate for the particular work product or, if directed by the City Representative in Adobe Acrobat PDF format.

19. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Contractor in the performance of Contractor's services hereunder.

20. Assignment and Subcontracting. Contractor shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Contractor shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Contractor. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Contractor to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Contractor's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

21. Successors and Assigns. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

22. Non-Discrimination/Fair Employment Practices.

Contractor shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap. Contractor agrees to abide by the City's Policy Against Discrimination, Harassment and Retaliation as set out in attached Exhibit D.

23. Official Notices. All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City:

[insert name]
[insert title]
[insert Department name]
2415 University Avenue
East Palo Alto, CA 94303

If to Contractor:

[insert name]
[insert title]
[insert company name]
[insert street name and suite #, if any]
[insert city, state and zip code]

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

24. Integration Clause. This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This

Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

25. Severability Clause. Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

26. Law Governing. This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of San Mateo County in the State of California or in the United States District Court, Northern District of California, San Francisco/Oakland Division, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

27. Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

28. Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

29. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neutral, singular or plural, as the identifications of the person or persons, vendor or vendors, corporation or corporations may require.

30. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

31. Compliance with Laws. Contractor will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

32. Confidentiality. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this Agreement as confidential and shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City records on information to any third party, other than its own employees, agents or subcontractors who have a need for the City records or information for the performance of services under this Agreement. A violation by Contractor of this section shall be a material violation of this

Agreement and will justify legal and/or equitable relief.

Contractor agrees and acknowledges that this confidentiality provision does not limit the City's disclosure as required by law, pursuant to a subpoena, the California Public Records Act, or Order of the Court.

33. News and Information Release. Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

34. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

35. Authority. The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor.

36. Exhibits. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Scope of Work," including any attachments.

Exhibit B, entitled "Compensation," including any attachments.

Exhibit C, entitled "Insurance Requirements," including any attachments.

Exhibit D, entitled "Policy Against Discrimination, Harassment and Retaliation"

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

[INSERT CONTRACTOR NAME] CITY OF EAST PALO ALTO,
a municipal corporation

[INSERT TYPE OF ENTITY]

By: _____
[insert name]
[insert title]

By: _____
[NAME]
City Manager

DATE: _____

DATE: _____

East Palo Alto Business License No.

ATTEST:

By: _____
[NAME]
City Clerk

APPROVED AS TO CONTENT:

[Insert Department Head Name]
[Insert Department Head Title]

APPROVED AS TO FORM:

[NAME]
City Attorney

EXHIBIT A
SCOPE OF WORK

1. Representatives.

City Representative:

[insert name]
[insert title]
[insert Department name]
2415 University Avenue
East Palo Alto CA 94303
[insert telephone number]
[insert facsimile number]

Contractor's Representative:

[insert name]
[insert title]
[insert company name]
[insert street name and suite #, if any]
[insert City, state and zip code]
[insert telephone number]
[insert facsimile number]

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor Representative and City's Representative.

2. Services and Schedule.

The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference and performed according to the schedule set forth therein. Contractor will complete all services by [insert date].

3. Phased Performance.

If the schedule calls for the services to be performed in phases or discrete increments, Contractor shall not proceed from one phase or increment to the next without written authorization from the City's Representative.

4. Additional Services. Additional services are those services related to the scope of Services of Contractor as set forth in Exhibit A but not anticipated at the time of execution of this Agreement ("Additional Services"). Additional Services shall be provided only when authorized by an amendment to this Agreement and approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Contractors to perform said Additional Services. Any costs incurred due to the performance of Additional Services prior to the execution of an amendment will not be reimbursed

under this Agreement or an amendment.

Contractor's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established below. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual agreement between City and Contractor, compensation to Contractor shall not exceed the fixed fee amount.

5. Key Personnel. All of the individuals identified below are necessary for the successful prosecution of the services due to their unique expertise and depth and breadth of experience. There shall be no change in the personnel listed below, without written approval of the City Representative. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination.

Key personnel: [**INSERT LIST OF EMPLOYEES NAMES** – If the project does not require assignment of specific personnel, delete "Key Personnel" section]

EXHIBIT B
COMPENSATION

1. Contractor's Compensation.

A. City agrees to pay Contractor, at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total not to exceed [insert dollar amount in words - e.g. Two Thousand Five Hundred Fifty Dollars and 13 Cents] [insert dollar amount in number- e.g., \$2,550.13].

Contractor shall notify City in writing no later than thirty (30) days prior to the estimated date when Contractor will have billed City the maximum payment amount permitted under this Agreement, and Contractor shall provide City with an estimate of the additional compensation required to complete the project.

2. Appropriate Billable Hourly Rates for Services and Additional Services.

Contractor's billable hourly rates shall be:

[Insert Name, Title and Hourly Rate]

or

["Contractor will perform the services according to the schedule contained in Attachment [insert number] of [insert letter]."]

3. Contractor's Reimbursable Expenses.

Reimbursable Expenses shall be limited to actual reasonable expenditures of Contractor for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

4. Payments to Contractor.

A. Payments to Contractor shall be made within a reasonable time after receipt of Contractor's invoice, said payments to be made in proportion to services performed. Contractor may request payment on a monthly basis. Contractor shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Contractor shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Contractor for correction. City shall not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

5. Accounting Records of Contractor.

Contractor shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Contractor's direct salary costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Contractor shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours notice.

The obligations of Contractor under this section shall survive this Agreement.

6. Taxes.

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request. Contractor hereby agrees to indemnify and defend City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section pursuant to the Indemnification provisions of this Agreement.

7. **Taxpayer Identification Number.** Contractor shall provide City with an IRS Form W-9, Request for Taxpayer Identification Number and Certification, containing an original signature and any other State or local tax identification number requested by City.

EXHIBIT C

INSURANCE REQUIREMENTS

I. TYPES OF INSURANCE

- A. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor 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 Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor 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 Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
- B. Automobile Liability Insurance: Contractor shall take out and maintain during the life of this Agreement such Automobile Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) for each occurrence 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. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
- C. Worker's Compensation and Employer's Liability Insurance: Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor 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 Worker's 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".

- D. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

II. ADDITIONAL REQUIREMENTS

- A. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.
- B. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.
- C. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause). All certificates and endorsements are to be received and

approved by the City Attorney's Office at least five days before Contractor commences work to be performed pursuant to the agreement.

- E. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 2415 University Avenue, East Palo Alto, CA 94303, of any pending change or cancellation of the policy.
- F. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.
- G. Breach: 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.

EXHIBIT D

CITY OF EAST PALO ALTO'S POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION

EFFECTIVE DATE: 12/21/2004

REVISED DATE: 1/12/07

ADOPTED BY CITY COUNCIL: 12/21/2004

I. PURPOSES

The purposes of this policy are to emphasize the City's commitment to keeping its workplace free of harassment, discrimination and retaliation, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted on City bulletin boards in all City facilities.

II. POLICY

All of the following are prohibited by this Policy:

- Discrimination or harassment in any aspect of City employment based on any legally protected characteristic or status, including sex, gender, sexual orientation, race, color, national origin, language, ancestry, religion, age, marital status, domestic partner, physical disability, mental disability, or medical condition.
- Retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment or discrimination.
- Aiding, abetting, inciting, compelling, or coercing or any such discrimination, harassment or retaliation, or attempting to do so.

The City will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrence. Any City employee, Council member, member of any advisory body, including any Commissioner, Committee member, or Board member found having engaged in any such misconduct will be subject to disciplinary action up to and including termination or censure or removal and will be deemed to have acted outside the course and scope of his or her employment.

This policy applies to all City employees, volunteers, interns, vendors, and contractors as well as to all applicants for City positions.

The policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable State or Federal law or regulation, or increase the legal liability of the City.

III. DESCRIPTION AND EXAMPLES OF PROHIBITED HARASSMENT

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- An individual's submission to such conduct is made explicitly or implicitly, a term or condition of that individual's employment; or,
- An individual's submission to or rejection of such conducts is used as the basis for an employment decision affecting that individual; or,
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility towards the victim's gender, or towards the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may either be the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it if he or she witnesses it.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, threatening, or intimidating comments, epithets, slurs or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.
- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.
- Physical harassment may consist of assault, battery, or unwelcome, unnecessary and offensive touching (kissing, hugging, patting, rubbing, pinching, brushing against), staring, leering, gesturing, whistling or making noises, impeding or blocking movement, or physical interfering with normal work or movement.

In addition to prohibiting harassment based on sex or gender, this policy also prohibits harassment based on sexual orientation, or upon any other legal protected characteristic or status, such as race, religion, creed, color, national origin, language, ancestry, physical disability, mental disability, medical condition, marital status, domestic partner, or age.

Harassment on the basis of such factors is subject to the principles applicable to sexual harassment, as stated above.

IV. REPORTING DISCRIMINATION, HARASSMENT OR RETALIATION

Any City employee, volunteer, intern, vendor, contractor, or applicant who becomes aware of any discrimination, harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, or higher ranking supervisor, or the Assistant City Manager. Under no circumstances shall such a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported.

Reports may be made orally or in writing, free of requirements as to form.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

V. INVESTIGATION AND RESOLUTION

The City of East Palo Alto will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and contractors, members of the City Council, or members of a City advisory body shall cooperate with any such investigation.

Any supervisor, manager department head, member of the City Council, or member of a City advisory body who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the Personnel Officer. Upon receiving the report, the Personnel Officer shall direct any report that accuses a City Council member or appointee to the City Council for investigation and resolution. The City Council shall delegate the responsibility to conduct a prompt, full, and fair investigation to the qualified private investigator. Upon receiving a report regarding a non-City Council member or appointee, the Personnel Officer shall conduct a prompt, full, and fair investigation, or delegate

that responsibility to a qualified City employee or private investigator. The person performing the investigation shall:

- Interview the complainant, the accused, and any other person the investigator believe to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

VI. OUTSIDE ADMINISTRATIVE AGENCIES

In addition to the remedies described in this Policy, the U.S. Equal Employment Commission and the California Department of Fair Employment and Housing provide administrative complaint and investigation processes as to harassment, discrimination or retaliation on the basis of a protected status. The toll free telephone number for such office is listed below:

California Department of Fair Employment and Housing 1.800.233.3212
U.S. Equal Employment Opportunity Commission 1.800.669.4000