



# City of Palo Alto

(ID # 5870)

## Council Appointed Officers Committee Staff Report

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**Report Type: Action Items**

**Meeting Date: 6/4/2015**

**Summary Title: Review of RFP for CAO Evaluation**

**Title: Review of RFP Responses for CAO Evaluation and possible recommendation to Council for Contract**

**From: City Manager**

**Lead Department: Human Resources**

### **Executive Summary**

The contract for CAO evaluations provided by Sherry Lund ends on June 30, 2015 and the CAO Committee Chair requested a search for a new provider. The CAO Committee will review Request for Proposal (RFP) results and interview Municipal Resource Group, who responded and is able to provide CAO evaluations for the City.

### **Background**

An RFP was circulated March 6, 2015 and received one complete response, from Municipal Resource Group (MRG).

### **Discussion**

The Committee will review MRG's proposal for completing CAO evaluations for Fiscal Year 2016. MRG is available to present to the CAO Committee their proposed evaluation methodology. Principal Mary Eagan and consultant Debra Figone will answer questions from the Committee. If the Committee approves moving forward with MRG, the Committee will recommend a contract to full Council.

### **Timeline**

A contract with the CAO evaluation provider should be in place by July 1, 2015.

### **Resource Impact**

The contract for CAO evaluations provided by MRG will cost not to exceed \$41,000 per year. Funds are available in the City Council Fiscal Year 2016 budget pending City Council appropriation of funds.

### **Policy Implications**

It is the policy of City Council to conduct annual evaluations and mid-year check-in

reviews for Council Appointed Officers.

**Attachments:**

- Municipal Resources Group Proposal(DOC)
- FW Request for proposals (MSG)
- S15159225 Municipal Resource Group Contract (PDF)



March 16, 2015

Kathy Shen  
City of Palo Alto  
250 Hamilton Ave.  
Palo Alto, CA 94301

RE: City of Palo Alto Assessment

Dear Ms. Shen:

Thank you for requesting a proposal to assist the Palo Alto City Council with developing a performance evaluation process and conducting the 2015 evaluation for four Council appointed officials - City Manager, City Clerk, City Attorney and City Auditor. We have reviewed your RFP and have some recommendations and suggested modifications based upon our experience conducting process intensive evaluations. We believe that we could assist and complete this process by the end of August 2015.

As you know, Municipal Resource Group (MRG) has extensive experience with Council evaluation processes. The MRG Human Resources team regularly conducts chief appointed official evaluations for cities, counties and school districts, most recently for the cities of Roseville, Los Altos, Sunnyvale, Walnut Creek, San Luis Obispo, Salinas, Lincoln, and Lathrop as well as Solano County Transit Agency and the Fresno Unified School District. Debra Figone will be the consultant on site to assist the City of Palo Alto.

Also attached for your review are recommended process summary documents. When we begin working with the Council, we seek to understand each Councilmember's perspective of the appointed official's performance for the past year and prepare an evaluation that accurately and concisely documents areas of consensus as well as areas of divergent opinions where there is not a Council majority. It is important for the appointed official to have an accurate view of those differing opinions so that they are not ignored.

We understand that Palo Alto typically incorporates a "360 Degree" process to gather input from Department Directors on each appointed official. MRG uses an on-line survey to seek this input and then we compile the responses without names attributed. This fosters authentic feedback. The professional fee estimate for conducting these evaluations is projected not to exceed \$41,000 for the four appointed officials evaluations and related goal setting, plus minor expenses.

I have attached a summary of our methodology and related costs. I would be pleased to assist with an analysis of compensation as a second phase of this initiative and will provide additional proposals for that phase of work should the Council wish to begin this initiative.

Sincerely

Mary Egan  
Municipal Resource Group LLC



## Summary of Proposed Process for City of Palo Alto Appointed Official Evaluation Process

### I. PROJECT SCOPE

- Facilitation of City Manager, City Clerk, City Attorney and City Auditor Evaluation Processes
- Develop forms/format/documentation/process and questionnaires with subcommittee
- Gather input from each Councilmember; 360 Degree Feedback Survey; request self-evaluation from each appointed official
- Interview each Councilmember individually to discuss each of the four appointed official evaluations
- Compile all input into a draft evaluation for review with sub committee
- Review draft evaluation in Closed Session with City Council and/or City Council subcommittee
- Make final edits; prepare Council for issuing the final evaluations
- Participate in Closed Session for each appointed official

### II. WORK PLAN

#### TASK 1: GATHER AND REVIEW RELEVANT INFORMATION

Information provided by the City will be reviewed prior to the evaluation process, and includes:

1. Schedule for Council availability;
2. Confirm timeline of evaluation period and status of Council and appointed official calendar and appointment information (2014, fiscal year, calendar year, etc.);
3. Confirm Council goal setting and performance measurement documentation/preferences;
4. Obtain Current employment agreements and contact information for all appointed officials;
5. Obtain current and prior evaluations and related performance measures, rating scale used in last year's evaluation;
6. Obtain Council contact information;
7. Confirm which staff/Department Directors will be included in "360" process
8. Obtain other related documents.

Obtain any historic process from appointed officials to identify elements that should be included, and input concerning process and timelines.

Schedule introductory meeting with Appointed Officials. Recommend method for informing Department Directors of their role and methodology for receiving that input. Review how that input will be communicated and expectations of confidentiality.

TASK 2: DEVELOP AND REVIEW PROPOSED PROCESS AND TIMELINE WITH CITY COUNCIL IN CLOSED SESSION – REVIEW PROPOSED EVALUATION FRAMEWORK

Develop a proposed process and timeline. Confirm with sub committee as needed. Meet with Council in closed session to discuss:

1. Review framework (confidential employee evaluations – expectation of privacy and expectations for communication and transmittal of documents);
2. Recommended competencies;
3. Attributes that describe each competency;
4. Recommended rating scale;
5. Expectations for and definitions of managerial excellence;
6. Format of proposed evaluation “questionnaire”;
7. Method for conducting interviews, and proposed interview dates; and
8. Review timing for Councilmember receipt of packet including Draft process, Draft evaluation, Department Director feedback and employee self-evaluation, typically sent directly from Consultant to Councilmembers’ home addresses and electronically.

TASK 3: MEET WITH APPOINTED OFFICIALS/STAKEHOLDERS TO REVIEW PROCESS

Summarize Department Director input into document that identifies theme and general strengths and areas of development.

TASK 4: MEET WITH COUNCIL IN INDIVIDUAL MEETINGS TO DISCUSS EACH APPOINTED OFFICIAL

Meet with elected officials in person, when possible and via telephone if necessary for approximately 60-90 minute meetings. Review responses to questionnaires, ratings in each category, input from Department Directors, and self-evaluation from Appointed Officials. Obtain input and perspective. Develop summary of input for inclusion in draft evaluation.

Prepare summary document based upon this input.

**TASK 5: PREPARE DRAFT DOCUMENTS AND REVIEW DRAFT DOCUMENTS IN CLOSED SESSION**

Review confidential draft evaluations to confirm each Councilmember's perspectives are appropriately included and reach consensus where possible. Seek to produce a document that provides clear summary of majority perspective and minority concerns where possible to allow change in approach by appointed official.

Draft evaluation is often circulated to City Council in advance or shared prior to the closed session for early review - depending upon circumstances and interest of Council.

**TASK 6: FINALIZE DOCUMENTS**

Develop confidential final draft of evaluation, which includes, by reference, employee self-evaluation. This can be circulated in advance or shared prior to the closed session for early review depending upon circumstances and interest of Council.

**TASK 7: PREPARE COUNCIL TO DELIVER EVALUATION TO ITS EMPLOYEE**

Develop agenda and work with Mayor to prepare for closed session discussion with Appointed Officials.

**TASK 8: DEBRIEF AND FINE TUNE PROCESS**

Debrief with City Council and Appointed Officials as appropriate to identify strengths and concerns with 2014 process. Identify proposed plan for 2015. Identify method for ongoing communication. Finalize all templates for City of Palo Alto.

### **III. TIMELINE**

Timeline begins once agreement is finalized. The Project is anticipated to take 6-8 weeks to complete.

This timeline is subject to the availability of City Council for closed session, individual interviews and the provision of relevant documents by the City.

	<b>TASK</b>	<b>DATE</b>
1	<p>GATHER, RECEIVE AND REVIEW RELEVANT INFORMATION OUTLINED ABOVE –</p> <ul style="list-style-type: none"> <li>REVIEW PRIOR PROCESSES, PRIOR EVALATIONS AND DEVELOP REVISED FINAL PLAN AND TIMELINE WITH AUTOMATED STEPS WHERE POSSIBLE</li> </ul>	WEEKS 1-2
2	<p>DEVELOP AND REVIEW (a) PROPOSED PROCESS AND (b) TIMELINE WITH CITY COUNCIL SUB COMMITTEE.</p> <p>SAME VISIT - MEET WITH EACH APPOINTED OFFICIAL TO REVIEW PROCESS.</p> <ul style="list-style-type: none"> <li>PROPOSE AUTOMATED 360 PROCESS FOR DEPARTMENT HEAD INPUT</li> <li>PROPOSE SELF EVALUATION FROM EACH APPOINTED OFFICIAL</li> <li>PROPOSE ON LINE COUNCIL FEEDBACK FOLLOWED BY TELEPHONE OR IN PERSON INTERVIEWS</li> </ul>	WEEKS 3-4
3	<p>SEND COMMUNICATION AND PACKETS TO DEPARTMENT DIRECTORS FOR 360 FEEDBACK ON EACH MEMBER. SUMMARIZE FEEDBACK</p> <ul style="list-style-type: none"> <li>SURVEY MONKEY</li> <li>ONE FOR EACH OFFICIAL</li> <li>ESTIMATE ABOUT 10 DAYS TO PROCESS</li> </ul>	WEEKS 4-5
4	<p>SEND PACKET TO EACH COUNCIL MEMBER (9) TO HOME ADDRESS WITH</p> <ul style="list-style-type: none"> <li>COVER LETTER WITH PROCESS REMINDER</li> <li>360 DEPARTMENT HEAD INPUT SUMMARIES (4)</li> <li>SELF EVALUATIONS FROM EACH APPOINTED OFFICIAL (4)</li> <li>QUESTIONS FOR PENDING TELEPHONE CALL OR IN PERSON MEETING WITH EACH MEMBER</li> </ul>	WEEKS 7

5	<p>DRAFT DOCUMENTS</p> <p>TELECONFERENCE AND/OR IN PERSON MEETING WITH EACH APPOINTED OFFICIAL TO PREPARE FOR CLOSED SESSION AND OBTAIN RELEVANT INFORMATION</p> <p>REVIEW DRAFT DOCUMENTS WITH CITY COUNCIL SUB COMMITTEE IN CLOSED SESSIONS</p>	WEEKS 8
6	FINALIZE ALL FOUR EVALUATION DOCUMENTS	WEEKS 9
7	PREPARE COUNCIL TO DELIVER EVALUATIONS TO ITS EMPLOYEES	WEEKS 10-12
8	DEBRIEF PROCESS FOR NEXT YEAR AND CONDUCT IN PERSON MEETING WITH EACH APPOINTED OFFICIAL TO PREPARE FOR CLOSED SESSION AND OBTAIN RELEVANT INFORMATION	WEEKS 11-12

#### **IV. FEES**

This engagement will be performed at a rate of \$10,000 per evaluation – fixed fee \$40,000 for the scope of work identified above, to be performed by Debra Figone with the support of the MRG team. In addition, the project will include reimbursable expenses not to exceed \$1000.

Additional tasks identified in process will be discussed as they occur and not initiated without a separate scope of work. This extra work will be performed at a rate of \$300 per hour.



**CITY OF PALO ALTO CONTRACT NO. S15159225  
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND  
MUNICIPAL RESOURCE GROUP, LLC FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this \_\_\_ day of \_\_\_\_\_, 2015, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and MUNICIPAL RESOURCE GROUP, LLC, a California Limited Liability Company, located at 675 Hartz Avenue, Suite 300, Danville, California, 94526 (“CONSULTANT”).

**RECITALS**

The following recitals are a substantive portion of this Agreement.

A. CITY intends to development of a performance evaluation process and to conduct a 2015 evaluation for four Council appointed officials (“Project”) and desires to engage a consultant to provide services in connection with the Project (“Services”).

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

**AGREEMENT**

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described at Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

**SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through April 28, 2018 unless terminated earlier pursuant to Section 19 of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed Forty One Thousand Dollars (\$41,000.00). The applicable rates and schedule of payment are set out at Exhibit “C-1”, entitled “RATE SCHEDULE,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit “A”.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or

other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

**SECTION 9. COST ESTIMATES.** If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of CITY's stated construction budget, CONSULTANT shall make recommendations to CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

**SECTION 10. INDEPENDENT CONTRACTOR.** It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

**SECTION 11. ASSIGNMENT.** The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

**SECTION 12. SUBCONTRACTING.** CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Mary Egan as the Principal in Charge to have supervisory responsibility for the performance, progress, and execution of the Services and Debra Figone as the project manager to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

CITY's project manager is Kathryn Shen, Human Resources Department, 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone: (650)329-2124. The project manager will be

CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate project manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**SECTION 15. AUDITS.** CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

## **SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

## **SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the

City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

**SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
   City of Palo Alto  
   Post Office Box 10250  
   Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director  
   at the address of CONSULTANT recited above

**SECTION 21. CONFLICT OF INTEREST.**

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant"

as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

**SECTION 22. NONDISCRIMINATION.** As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONSULTANT shall comply with the following zero waste requirements:

- All printed materials provided by CCONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.
- Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**SECTION 24. NON-APPROPRIATION**

24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

**SECTION 25. MISCELLANEOUS PROVISIONS.**

25.1. This Agreement will be governed by the laws of the State of California.

25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

25.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

25.9 All unchecked boxes do not apply to this agreement.

25.10 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

25.11 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement



IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

**MUNICIPAL RESOURCE GROUP, LLC**

APPROVED AS TO FORM:

Attachments:

EXHIBIT "A": SCOPE OF WORK  
EXHIBIT "B": SCHEDULE OF PERFORMANCE  
EXHIBIT "C": COMPENSATION  
EXHIBIT "C-1": SCHEDULE OF RATES  
EXHIBIT "D": INSURANCE REQUIREMENTS

## **EXHIBIT “A” SCOPE OF SERVICES**

### **Project Introduction:**

The City of Palo Alto is seeking to engage a consultant working directly for the City Council to facilitate the annual performance evaluations and compensation adjustment process for its four Council appointed officials (CAO’s), City Manager, City Attorney, City Clerk and City Auditor.

### **Project Background:**

The City Manager, City Clerk, City Attorney and City Auditor are appointed directly by the City Council and, as such, are reviewed by the City Council on an annual basis in accordance with their individual employment agreements. Such review is necessary in order for Council members to ensure the efficiency of the appointed offices, to provide general feedback on their performance, to set goals for the coming year, and to identify areas of improvement. It is also necessary to review compensation to ensure that the positions are paid appropriately in comparison to the market and their performances.

### **Scope of Work:**

#### **A. Preparation of Questionnaire:**

Working with the Council CAO Committee (four members of the City Council) and the CAO’s, Consultant will prepare a questionnaire to be used for interviews. The questionnaires will be distributed to Council Members to fill out a week in advance of their scheduled interview/meeting with the Consultant. The questionnaires shall be designed to be a tool to summarize Council Members’ estimation of the CAO’s attainment of specific goals, as well as their performance in general areas such as communication; key relationships between the CAO and the Council, staff, public, CITY committees and commissions and other government agencies; as appropriate; specific work priorities such as budget, public relations, program management and employee relations; as well as general comment on the CAO’s performance of their duties.

#### **B. Conduct Interviews, Prepare Report, Facilitate Discussion, Prepare Summary:**

CONSULTANT will interview each of the (9) Council Members individually, using the interview questionnaire to gather input and evaluation of CAO performance. CONSULTANT will also interview each CAO to gather their estimation of their performance, achievements and ability to meet their established goals and performance objectives. CONSULTANT will consolidate information from all interviews and prepare a written evaluation/report, which will first be reviewed with the Council CAO Committee and then presented to the entire Council in closed session. After presentation of the evaluation/reports, CONSULTANT will facilitate Council discussion of the results of the interviews and input. CONSULTANT will then facilitate discussion of the evaluation report between each CAO and the Council.

#### **C. Review Options for Compensation:**

Prior to conducting the above performance evaluations, the CONSULTANT will research salary

survey information and comparisons with salaries in surrounding agencies for each of the CAO positions and review survey results with the CITY's Human Resource Director. The CONSULTANT will use this information to work with the Council CAO Committee on compensation options to be proposed to the Council and CAO's.

After facilitating the performance evaluation meetings with the Council, CONSULTANT will meet with each CAO to de-brief on Council discussion, and to discuss compensation considerations. The Council CAO Committee will make its salary adjustment recommendations to the full Council. The CONSULTANT will be available as a resource at the meeting with the full Council. The CONSULTANT will also be available as a resource for the Council CAO Committee in its negotiations with individual CAO's.

The CONSULTANT will prepare a complete file for each of the evaluations, including compensation recommendations and actions, for the permanent CITY record.

**EXHIBIT “B”  
SCHEDULE OF PERFORMANCE**

Project Timeline – Estimate of Required Hours:

The City Council desires to complete all the evaluations and compensation discussions by June 30th of each year. It is anticipated that the evaluation process will begin in May and be completed by the end of August

Est. Hours	Elements
5	Agreement on elements of evaluation and development of interview form
20	Council individual interviews (approx. 1 hour each) 1-2 weeks before meeting, write up report
5	CAO interviews (1-2 hours) 1-2 weeks before meeting; write up report
12	Prep for and conduct Closed sessions (approx. 2 hours per CAO)
4	Consultant draws up specific performance objectives for each CAO for the coming year.
4	Meet with CAO's to debrief and discuss compensation issues.
10	Research and prepare salary survey information and review with the Human Resources Director.
2	Prep for and Meet with Council CAO Committee on compensation options.
4	Serve as resource for Council discussion/Council CAO Committee salary negotiations
2	Consultant prepares final record of review and compensation

**EXHIBIT “C”  
COMPENSATION**

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed \$40,000.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s project manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed \$40,000.00.

<b>BUDGET SCHEDULE</b>	<b>NOT TO EXCEED AMOUNT</b>
Task 1 (City Manager Performance Evaluation)	\$10,000.00
Task 2 (City Clerk Performance Evaluation)	\$10,000.00
Task 3 (City Auditor Performance Evaluation)	\$10,000.00
Task 4 (City Attorney Performance Evaluation)	\$10,000.00
Sub-total Basic Services	<b>\$40,000.00</b>
Reimbursable Expenses	\$1,000.00
Total Basic Services and Reimbursable expenses	\$41,000.00
Maximum Total Compensation	\$41,000.00

## **REIMBURSABLE EXPENSES**

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$500.00 shall be approved in advance by the CITY's project manager.

## **ADDITIONAL SERVICES**

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's project manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

**EXHIBIT “C-1”  
RATE SCHEDULE**

This engagement will be performed at a rate of \$10,000 per evaluation – fixed fee \$40,000 for the scope of work identified in Exhibit “A” Scope of work, to be performed by Debra Figone with the support of the CONSULTANT’s team. In addition, the project will include reimbursable expenses not to exceed \$1000.

Additional tasks identified in process will be discussed as they occur and not initiated without prior written approval from the CITY. Additional work will be performed at a rate of \$300 per hour.

**EXHIBIT “D”  
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST’S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER’S COMPENSATION EMPLOYER’S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES		\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY’S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSURED”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY



THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
  
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**