

**CONSULTING SERVICES AGREEMENT BETWEEN
THE HAYWARD AREA RECREATION AND PARK DISTRICT AND
‘CONSULTANT’ ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the Hayward Area Recreation and Park District (“District”) and Kier & Wright Civil Engineers and Surveyors, Inc. (“Consultant”) as of November 18, 2019 for the topographic survey services for the **Valley View Park** project.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on *December 31, 2020* the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the District’s right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant’s profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. District hereby agrees to pay Consultant a sum not to exceed \$36,300 (*thirty six thousand and three hundred dollars*), notwithstanding any contrary indications that may be contained in Consultant’s proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. District shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to District in the manner specified herein.

Except as specifically authorized by District, Consultant shall not bill District for duplicate services performed by more than one person.

Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. District shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. District shall pay for the services to be rendered by Consultant pursuant to this Agreement. District shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

District shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule:
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified below and shall not exceed (\$600 included in the total fee). Expenses not listed below are not chargeable to District. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the District or Consultant terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to District of such insurance that meets the requirements of this

section and under forms of insurance satisfactory in all respects to the District. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to District. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from District's insurance or self-insurance and shall be at least as broad as CG 20 01 04 12. In the event Consultant fails to maintain coverage as required by this Agreement, District at its sole discretion may purchase the coverage required and the cost will be paid by Consultant. Failure to exercise this right shall not constitute a waiver of right to exercise later. Each insurance policy shall include an endorsement providing that it shall not be cancelled, changed, or allowed to lapse without at least thirty (30) days' prior written notice to District of such cancellation, change, or lapse.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District. Consultant shall notify District within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used,

either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 1 ("any auto").

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. District and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to District or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the District and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the District shall be called upon to contribute to a loss under the coverage.
- e. Any failure of the CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to DISTRICT and its officers, employees, agents, and volunteers.
- f. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District. Consultant shall notify District within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for

licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District.

4.3.3 The policy must contain a cross liability or severability of interest clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish District with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The District reserves the right to require complete, certified copies of all required insurance policies and

endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

4.4.3 Subcontractors. Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the Indemnification and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Consultant agree to be bound to Consultant and the District in the same manner and to the same extent as Consultant is bound to the District under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the District.

4.4.4 Variation. The District may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the District's interests are otherwise fully protected.

4.4.5 Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) and/or deductibles must be disclosed to the District for approval and shall not reduce the limits of liability. Policies containing any self-insured retention provision and/or deductibles shall provide or be endorsed to provide that the SIR and/or deductibles may be satisfied by either the named insured or the District.

4.4.6 Excess Insurance. 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 District (if agreed to in a written contract or agreement) before District's own insurance or self-insurance shall be called upon to protect District as a named insured.

4.4.7 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to District at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. To the maximum extent allowed by law and except for the negligence or willful misconduct of District, Consultant shall indemnify, keep and save harmless the District, and District Board of Directors, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property, including death, that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement, by reason of a negligent act or omission or wrongful misconduct of the Consultant or its employees, subcontractors or agents. Consultant further agrees to defend District (with counsel reasonably acceptable to District) for all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the District or any of the other individuals enumerated above in any such action, Consultant shall, except for portions of the judgment attributable to the negligence or willful misconduct of District, at its expense, satisfy and discharge the same. Consultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Consultant shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.

Consultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of District. District shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary,

Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.

- 6.2 Consultant No Agent.** Except as District may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to District that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to District that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from District.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** District may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon thirty (30) days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Consultant delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the District in connection with this Agreement.

- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if District grants such an extension, District shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, District's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Consultant agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the District. If Consultant was an employee, agent, appointee, or official of the District in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including

reimbursement of expenses, and Consultant will be required to reimburse the District for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the District General Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Jimmy Vigil, Associate
Kier & Wright Civil Engineers and Surveyors, Inc.
2850 Collier Canyon Road
Livermore, CA 94551

Any written notice to District shall be sent to:

General Manager
Hayward Area Recreation and Park District
1099 'E' Street
Hayward, CA 94541

10.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

HAYWARD AREA RECREATION AND PARK DISTRICT

CONSULTANT

Paul McCreary,
General Manager

Jimmy Vigil, Associate
Kier & Wright Civil Engineers and Surveyors, Inc.

Attest:

Shakiyla Maxwell,
Executive Assistant

EXHIBIT A

SCOPE OF SERVICES



KIER+WRIGHT

October 21, 2019

HAYWARD AREA RECREATION & PARK DISTRICT

Attn: Meghan Tiernan
Capital Planning and Development Director
1099 E Street
Hayward, CA, 94541

**SUBJECT: Surveying Services Proposal for
Valley View Park, Castro Valley**

Dear Meghan,

We are pleased to submit the following proposal to provide land surveying services for the above-referenced property in Castro Valley. Our proposed contract includes not-to-exceed fees to complete a topographic and utility survey. As a local firm headquartered in Livermore, Kier & Wright has extensive local experience, and often provide similar topographic surveying services for other Bay Area public agencies. In the pages that follow, you will find the requested qualifications and resumes for key project leadership, following by our fee proposal, the required form, and our hourly rates.

Thank you for inviting Kier & Wright to submit a proposal for this project. If you have any questions or comments regarding the information outlined herein, please feel free to contact me directly.

Sincerely,

KIER & WRIGHT

Jimmy Vigil, PLS

ASSOCIATE

jvigil@kierwright.com, (925) 245-8788

Qualifications

Firm Profile

Kier & Wright has been committed to providing both public and private sector clients with high-quality, cost-effective, and efficient civil engineering and land surveying services since 1972. Services offered include street and highway design, municipal consultation, utility engineering, and the preparation of civil engineering plans for residential, commercial and industrial site developments. Kier & Wright is a California corporation, headquartered in Livermore with additional offices located in Santa Clara, Irvine, Camarillo, Sacramento, Manteca, and Gilroy.

Kier & Wright is currently staffed by 185 employees, including 22 registered civil engineers and 15 licensed land surveyors. Additional staff includes approximately 75 civil engineering and land surveying technical personnel and, depending on construction staking demands throughout the year, 30-42 field survey personnel.

Kier & Wright has extensive experience in the following categories of civil engineering and land surveying services:

- Topographic, A.D.A. and boundary surveys.
- ALTA property surveys.
- "Due Diligence" site investigations.
- Street and highway design.
- Civil engineering for site development of virtually all types of land development projects. Types of projects designed include corporate campus developments, retail shopping centers, apartment complexes, airports, schools, medical facilities, housing developments, parks and automotive dealerships.
- Construction staking.

Kier & Wright is committed to providing efficient, cost-effective services to our clients. Growth of the firm has been due to referrals, repeat business, and the firm's underlying philosophy that demands the highest quality professional service, responsibility to client needs, timeliness and efficiency. Kier & Wright's principals review plans and project schedules continually and are actively involved in the design of all projects prepared by the firm. Our principals and senior staff are well-known in city and county public works departments throughout the San Francisco Bay Area and strive to maintain cooperative and friendly working relationships with public staff.

Our Resources

Kier & Wright civil and survey staff are experts in CAD drafting and design and have extensive experience with AutoCAD Civil3D applications. Our civil and survey technicians and staff run Autodesk Civil 3D 2019 on custom-built Dell Workstation computers with Intel Xeon Processors. All files and data are stored and backed up to secure, off-site data servers.

Kier & Wright field survey crews have the training, experience and the gear necessary to accurately, efficiently and safely perform all types of field surveying, including boundary and topographic surveys, ALTA surveys and construction staking. Each crew is equipped with a fully stocked truck, digital levels, rods, layout staffs and a Trimble S-series Robotic Total Station with a Trimble TSC3 Data Collector running the latest Trimble Access software. Our crews use Trimble R-8 and r-10 GNSS receivers and Trimble Business Center Software to adjust traverses by both conventional and GPS methods.

Representative Project Experience

Heritage Park, Mountain View | Topographic, Utility & Tree Survey, Stormwater Plans 2015 – 2016

As a subconsultant to Callander Associates, Kier & Wright prepared a topographic, utility and tree survey and stormwater management plans to support the City of Mountain View's Heritage Park project. Kier & Wright surveyed the 1.22-acre park and a portion of N. Rengstorff (a total area of 1.317 acres).

The new public park was dedicated in December of 2016.

Cost: \$24,452.57

Client: City of Mountain View c/o Callander Associates

Client Contact: Dave Rubin, Callander Associates
2025 Gateway Place, Suite 285, San Jose, CA 95110
drubin@callanderassociates.com; (408) 275-0565

Robert Livermore Park Solar Canopy Project, Livermore | Topographic Survey 07/2019 – 08/2019

In 2019, Kier & Wright provided the Livermore Area Recreation and Park District with a topographic survey of a solar easement area for the solar canopy project at Robert Livermore Park in Livermore. This survey covered a total area of 2.04 acres.

Cost: \$9,595

Client: Livermore Area Recreation and Park District

Client Contact: Fred Haldeman, Livermore Area Recreation and Park
District 4444 East Avenue, Livermore CA 94550
fhaldeman@larpd.org; (916) 373-5711

Sportsfield Park, Newark | Topographic Survey 06/2018 – 09/2018

In 2018, as part of an on-call contract with the City of Newark, Kier & Wright prepared a topographic survey for the Sportsfield Park on Mowry Avenue and Cherry Street. This survey covered a total area of 15 acres.

Cost: \$19,900

Client: City of Newark

Client Contact: Jayson Imai, City of Newark
37101 Newark Boulevard, Newark, CA, 94560
Jayson.Imai@newark.org; (510) 578-4671

Project Team

In the pages that follow, please find resumes for the key Kier & Wright project leadership who will supervise services provided for this project. The District's primary point of contact will be Jimmy Vigil. Mr. Vigil will attend all meetings and manage services provided under any resulting contract. Mr. Thompson, the principal surveyor on the project, will be involved for survey QA/QC, contract review and general staffing, budgeting and supervisory purposes.

JOE THOMPSON, PLS

Principal Surveyor

Mr. Thompson has over 20 years of surveying experience for land development projects. He regularly oversees survey projects involving boundary resolution, mapping, ALTA surveys, legal descriptions, monitoring surveys, analysis and resolution of public and private title issues, construction setup, monumentation, and topographic surveys. Areas of expertise include right-of-way surveys, parcel maps, records of surveys, design-level topographic surveys, condominium maps, and processing and adjusting control data for GPS static surveys and conventional surveys.

While at Kier & Wright, Mr. Thompson has managed on-call surveying and/or map review contracts for over a dozen California public agencies

Mr. Thompson joined Kier & Wright in 2012. In late 2015, he became a principal and part-owner. He manages all land surveying personnel in Kier & Wright's Livermore and Manteca locations.

Mr. Thompson will be responsible for managing all land surveying work provided under this contract.

Representative Project Experience

Principal Surveyor or Senior Land Surveyor for:

- Rosita Park, Los Altos
- Sportsfield Park, Newark, CA
- International Park of Commerce 1,800-acre industrial development (various survey & mapping projects) --Tracy, CA
- Workday Headquarters – Dublin, CA
- Facebook MPK 22 Parking Structure – Menlo Park, CA
- Airport Flood Protection Project – Livermore, CA
- Zone 7 Water Agency – Del Valle Water Treatment Plant Superpulsator Rehabilitation Project
- Highway 101/Holly Street – San Carlos, CA
- I-580/Mountain House Parkway – Tracy, CA
- City of Pleasanton I-680 Sewer Project
- City of Pleasanton Vineyard Avenue Sewer Project
- City of Pleasanton Map Review for various Parcel Maps and Tract Maps
- Zone 7 Water Agency – Arroyo Mocho Topographic and Cross Section Survey
- Zone 7 Water Agency – UPRR Parcel Topographic Survey, Plat & Legal Desc., & Site Plan
- Zone 7 Water Agency – Cope Lake Water Transfer Survey Control, Topographic Survey, and Staking
- Alameda County Water District – Large Diameter Hayward Fault Pipeline Retrofit Project
- Various on-call projects for the Cities of Hayward and San Leandro

Registration

Professional Land Surveying License (PLS) State of California L 8121

Professional History

- Principal, Kier & Wright, Livermore, 2016 - Present
- Senior Surveyor, Kier & Wright, Livermore, 2012 - 2015
- Project Surveyor, Sandis, 2011 - 2012
- Mapping Department Manager, O'Dell Engineering, 2003-2011
- Land Surveyor, City of Modesto, 2001 - 2003
- Survey Party Chief, Thompson Hysell Engineers, 1997 – 2001

JIMMY VIGIL, PLS

Associate, Senior Land Surveyor

Mr. Vigil has more than 45 years of varied land surveying experience and has been a part of the Kier & Wright team for over 30 years. His specialties include mapping and subdivision work. Specific experience includes topographic surveys, benchmark level circuits, elevation monitoring surveys, tentative maps, parcel maps, final maps, condominium plans, plats and legal descriptions, lot line adjustments, lot combinations, reversion-to-acreage maps and ALTA/ASCM Land Title Surveys. Mr. Vigil is also well-versed in public land system surveys, including large section breakdowns and aliquot part surveys, including boundary surveys, corner records and Record of Survey maps. He is also experienced in compiling recorded documents to determine easement locations and resolve boundaries.

Representative Project Experience

Senior Land Surveyor for:

- Heritage Park, Mountain View
- Blackberry Farm/Stevens Creek Topo & Creek Realignment Survey for the City of Cupertino (56 Acres)
- Los Gatos Creek Trail Cross-Sections, Callander & Associates
- Mary Ave. Interchange and Trail Project, City of Cupertino
- Our Lady of Guadalupe Church, San Jose – Topographic Surveying, Plat & Legal Descriptions, As-Built Survey
- Cisco Phase VI, San Jose
- Cisco Phase V, Milpitas
- 3com, Santa Clara
- Federal Express, Watsonville
- Lewis Road Landfill

Registration

Professional Land Surveying License - PLS 6256, State of California

Professional Land Surveying License -PLS 5370, State of Wyoming

Professional History

- 1988 – Present, Kier & Wright Civil Engineers & Surveyors, Inc.
- 1979 – 1988, Wind Rivers Engineers, Wyoming
- 1975-1978, Party Chief - Lucky Mac Mine, Gas Hills, Wyoming
- 1972-1974, Artillery Surveyor - U.S. Army, Nuremberg, Germany

Surveying Services Proposal

Approach

Initially, we will contact our photogrammetrist and determine the aerial ground photo control necessary to fly this site for 1.0 foot contours.

Once this is determined, we will dispatch a survey crew to photo identify (PID) the points required for the photo photogrammetry. They will run both horizontal and vertical control to these PID points. Meanwhile the site will be flown and once the PID's are surveyed, this information will be sent to the photogrammetrist for compiling their data. This generally takes approximately one week to complete.

While this is being done, our office survey personnel will be going through the easement documents, legal descriptions, record maps and miscellaneous record documents. They will compile all record information into one data file based on the same coordinate system as the PID points.

Our survey field crew will be continuously working locating items a-f and any street monument or property corners that may help us determine the boundary limits and street right of ways.

Once all information is compiled and gathered along with the aerial photogrammetry, the actual topographic and utility drawing will put together and ready for a full field check by the project surveyor.

Once the field check has been completed and all necessary field information edits are completed, the survey drawing will be given to the professional land surveyor in charge of the project. He will check for quality control and quality assurance and return it back to the project surveyor for final revisions.

Once these revisions have been completed and checked off, the PLS will stamp and sign the topographic and utility drawing and have it distributed in the proper format to Hayward Area Recreation and Park District.

Our field and office survey team will be available to start their work within two business days of receiving the notice to proceed on this project.

Proposed Fees

Topographic and Utility Survey \$ 28,000

We will perform a field survey to horizontally and vertically locate the general site features within the area shown on the Exhibit supplied with the RFP materials. The survey will generally include: 1-foot contours, spot elevations at a 50-foot grid, grade breaks, high-points, low-points, tree diameter & driplines, generally striping and parking stall stripes, hardscape, sidewalk, curbs, signs, walls, driveway aprons, curb ramps, fence type and height, gates and surface evident utilities. Invert elevations and pipe sizes will be provided for sanitary sewer and storm drain if structures are accessible at the time of our field survey. The locations for the water main, gas, electrical, telephone, and cable shall be shown per record plats as available at the public agency, as provided by client to Kier & Wright underground locating service or per field survey if they can be field verified.

Included within the above topographic and utility survey figure is the time for Kier & Wright services as shown in the breakdown of hours on the following page. This fee includes time for meeting attendance (7 hours budgeted).

Photogrammetry services \$ 3,500

Underground utility locating services	\$ 3,000
Printing, plotting and delivery	\$ 600
Utility map fees (i.e. AT&T, Comcast and PG&E)	\$ 1,200
TOTAL PROPOSED FEE	NTE: \$ 36,300

Breakdown of Fees for Kier & Wright Services

TOPOGRAPHIC & UTILITY SURVEY TASKS

<u>TASK</u>	<u>STAFF LEVEL</u>	<u>HOURS</u>	<u>RATE</u>		<u>AMOUNT</u>
1) Utility Research and Bench Mark	Senior Draftsman	4	\$ 129	/hr.	\$516
2) Map and Easement Research	Project Surveyor	4	\$ 184	/hr.	\$736
3) Field Instructions	Senior Surveyor	2	\$ 207	/hr.	\$414
4) Field Survey (Control & Boundary)	2-Man Survey Crew	44	\$ 292	/hr.	\$12,848
5) Calculate Control	Survey Coordinator	4	\$ 177	/hr.	\$708
6) Shoot/Dip & Topo	2-Man Survey Crew	4	\$ 292	/hr.	\$1,168
7) Resolve Boundary	Senior Surveyor	17	\$ 207	/hr.	\$3,519
8) Draft Survey	Senior Draftsman	40	\$ 129	/hr.	\$5,160
9) Field Check	Senior Draftsman	4	\$ 129	/hr.	\$516
10) Meetings (Senior Surveyor)	Senior Surveyor	7	\$ 207	/hr.	\$1,449
11) Survey Checking	Senior Surveyor	2	\$ 207	/hr.	\$414
12) Supervision	Principal Engineer	2	\$ 230	/hr.	\$460
TOTAL FOR KIER & WRIGHT SERVICES (additional fees apply - see "Proposed Fees"):					\$27,908

Exclusions

1. Potholing or excavation of utilities.
2. Additional work necessary due to the revision of title reports.
3. Meetings in excess of the budgeted 7 hours of Senior Surveyor time will be billed hourly at the "Senior Surveyor" rate shown in the attached hourly rate sheet.

Obligation of Payment

The Entity identified in the attached Responsible Party Information Form will be responsible for payment of all services and reimbursable expenses (printing, plotting, delivery, overnight mail) rendered by Kier & Wright Civil Engineers and Surveyors, Inc. (Kier & Wright) in conjunction with the above-referenced project per the proposal dated October 21, 2019. If the project is terminated by the Entity, the Entity shall notify Kier & Wright, and Kier & Wright is entitled to payment by the Entity for all services and reimbursable expenses rendered up to the date of cancellation. If Kier & Wright is to be paid out of escrow and the project falls out of escrow or escrow does not close, the Entity is responsible for payment of all services and reimbursable expenses rendered by Kier & Wright.

Approval

If the terms of this proposal meet with your approval and you wish to have us proceed with the services described herein, please sign below, complete the project/billing information form on the next page and either email or mail a copy of the signed proposal to my attention.

Approved by: _____

Date: _____

Responsible Party Information Form

Company/Entity Name: _____

Agreement Authorized by (Name, Title) _____

PROJECT INFORMATION

Project Manager Name: _____

Phone Number: _____

Mobile Phone Number: _____

Email Address: _____

EMERGENCY CONTACT

Name: _____

Phone Number: _____

BILLING INFORMATION

Bill to the attention of (Name): _____

Address: _____

City, State, Zip: _____

Phone Number: _____

Fax Number: _____

Do you authorize us to send monthly invoices by email? _____ Yes _____ No

Billing Email Address: _____

P.O. # (if required): _____

S.O.W. # (if required): _____

Hourly Rate Schedule

Effective March 1, 2019 through February 28, 2020

Principal	\$ 253.00 / Hour
Principal Engineer	\$ 230.00 / Hour
Senior Engineer	\$ 200.00 / Hour
Project Engineer	\$ 186.00 / Hour
Engineer II	\$ 155.00 / Hour
Engineer I	\$ 129.00 / Hour
Senior Surveyor	\$ 207.00 / Hour
Project Surveyor	\$ 184.00 / Hour
Survey Coordinator	\$ 177.00 / Hour
Surveyor II	\$ 149.00 / Hour
Surveyor I	\$ 127.00 / Hour
Engineering Tech II	\$ 168.00 / Hour
Engineering Tech I	\$ 151.00 / Hour
Senior Draftsman	\$ 129.00 / Hour
Draftsman II	\$ 107.00 / Hour
Draftsman I	\$ 97.00 / Hour
Survey Tech	\$ 99.00 / Hour
1-Man Survey Crew	\$ 180.00 / Hour
2-Man Survey Crew	\$ 292.00 / Hour
3-Man Survey Crew	\$ 370.00 / Hour
Testimony (Trial or Deposition)	\$ 494.00 / Hour
Project Coordinator	\$ 106.00 / Hour
Engineering Coordinator	\$ 92.00 / Hour
Engineering / Survey Intern	\$ 53.00 / Hour

CERTIFICATION OF PRE-BID SITE VISIT

Valley View Park
("Project" or "Contract")

Check whichever option applies:

_____ I certify that I visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. I fully understand the facilities, difficulties, and restrictions attending the execution of the Work under contract.

X I certify that Jimmy R. Vigil, Associate (Bidder's representative) visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. The Bidder's representative fully understood the facilities, difficulties, and restrictions attending the execution of the Work under contract.

Bidder fully relieves and releases the Hayward Area Recreation and Park District, its Architect, its Engineer, its Construction Manager, and all of their respective officers, agents, employees, and consultants from any liability for any monetary or other damage(s), related to conditions that could have been identified during my visit and/or the Bidder's representative's visit to the Site.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT