

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
CAROLLO ENGINEERS, INC.**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Carollo Engineers, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2014 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City 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 Effective Date and shall end on June 30, 2015 the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before 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 City's right to terminate the Agreement, as referenced 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.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, 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 City of such desire of City, 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 Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit D.
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

- 1.7 **Construction Cost and Schedule Estimates.** Consultant has no control over the cost of labor, materials, equipment, services or schedules furnished by others, or over the construction contractor's methods of determining prices, or other competitive bidding or market conditions, practices, bidding strategies or scheduling methodologies. Cost estimates and construction schedule estimates are based on Consultant's opinion based on experience and judgment. Consultant cannot and does not guarantee that, bids or actual Project construction costs and/or schedules will not vary from cost estimates and construction schedule estimates prepared by Consultant.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed One Hundred Thirty Thousand Seven Hundred Ninety Nine Dollars and Zero Cents (\$130,799.00), 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. City 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 City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City 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. City 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 City'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;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City 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. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City 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 compensation schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed \$5,000. Expenses not listed in Exhibit B are not chargeable to City. 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 City or Consultant terminates this Agreement pursuant to Section 8, the City 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 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, INFORMATION, AND ACCESS.

- 3.1 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. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City 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.

- 3.2 City-Provided Information and Services.** The City shall furnish Consultant available studies, reports and other data pertinent to Consultant's services; obtain or authorize Consultant to obtain or provide additional reports and data as required; furnish to Consultant services of others required for the performance of Consultant's services hereunder, and Consultant shall be entitled to use and rely upon all such information and services provided by the City or others in performing Consultant's services under this Agreement. Data and reports that are 10 years old shall be considered historical information, and shall not be representative of current conditions.

- 3.3 Access.** The City shall arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services hereunder.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below 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. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City.

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 that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. 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 \$1,000,000 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 California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agendas, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 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 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

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

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. 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 \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is 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 5 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 shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

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 City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

- 4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 **Wasting Policies.** No policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 **Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.
- 4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City 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. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

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 City. City 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 Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant

accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, 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 City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City 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 and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 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 City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City 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 City 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 City.
- 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. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City 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; City, however, may condition payment of such compensation upon Consultant delivering to City 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 City in connection with this Agreement.

8.2 Extension. City 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 City grants such an extension, City 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, City 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. City 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 City 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 City 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, City'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 City 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 City. Consultant hereby agrees to deliver those documents to the City 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 City and are not necessarily suitable for any future or other use. Any reuse of completed documents or use of partially completed documents without written verification or concurrence by Consultant for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Consultant. City and Consultant agree that, until final approval by City, 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.

Consultant's instruments of service hereunder are the printed hard copy drawings and specifications issued for the Project, whereas electronic media, including CAD files, are tools for their preparation. As a convenience to the City, Consultant shall furnish to the City both printed hard copies and electronic media. In the event of a conflict in their content, the printed hard copies shall take precedence over the electronic media. Because data stored in electronic media form can be altered, inadvertently, it is agreed that the City shall hold Consultant harmless from liability arising out of changes or modifications to Consultant's data in electronic media form in the City's possession or released to others by the City.

- 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 City under this Agreement for a minimum of 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 Subsection 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 City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 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 City 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 City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 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 California Government Code Section 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 City 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 California Government Code Section 1090 *et seq.*, 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 Yinkuei Lin ("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:

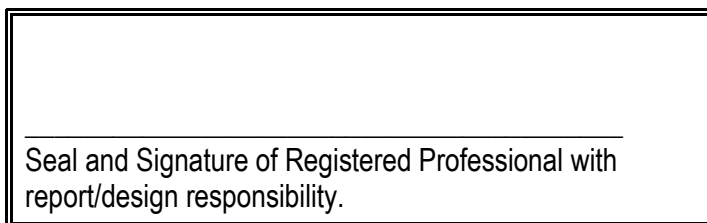
Rick L. Chan /Zaheer Shaikh
Carollo Engineers, Inc.
2700 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94598

Any written notice to City shall be sent to:
City of San Leandro
Engineering & Transportation Department
Attn: Yinkuei Lin
835 East 14th Street
San Leandro, CA 94577
Telephone: (510) 577-3411
Email: ilin@sanleandro.org

With a copy to:
City of San Leandro

Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

- 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 Exhibits A, B, C, and D represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	California Labor Code Section 1720 Information

- 10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 Certification per Iran Contracting Act of 2010.** In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.
- 10.15 Third Parties.** The services to be performed by Consultant are intended solely for the benefit of the City. No person or entity not a signatory to this Agreement shall be entitled to rely on Consultant's performance of its services hereunder, and no right to assert a claim against Consultant by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of Consultant's services hereunder.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

CONSULTANT

Chris Zapata, City Manager

**Rick L. Chan, Professional Engineer
Vice President/Principal-in-Charge**

**Steve Swanback, Professional Engineer
Vice President/Principal-in-Charge**

Attest:

Marian Handa, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number

Approved as to Form:

Richard Pio Roda, City Attorney

2230039.1

EXHIBIT A

INTRODUCTION

The City plans to fill the western third of the former polishing pond to create a 1-acre equipment pad for the day to day operation and maintenance activities of the Water Pollution Control Plant (WPCP). Fill will comprise approximately 16,000 cubic yards of soil currently stockpiled at the WPCP drying bed area (spoils from the construction of the WPCP rehabilitation project). Chemical testing results indicate that the fill contains elevated concentration of lead, hydrocarbons, polychlorinated biphenyls (PCBs), and chlorinated pesticides. It is noted that no total lead concentrations exceeded 1,000 mg/kg, one of the criteria used to classify a material as hazardous. The City has conducted preliminary discussion with the Regional Water Quality Control Board (RWQCB) and received concurrence with the approach. However, the RWQCB requested a "50 percent design document" for their review prior to giving their final concurrence with the project.

SCOPE OF SERVICES

Scope of services for this design consists of the following tasks

Task 1 – Geotechnical Investigation:

Task 1.1 - Review the existing reports on the ponds and spoils

Consultant will review the following reports provided by the City:

- Evaluation of Effluent Pond Sludge Sampling Results, City of San Leandro Wastewater Treatment Plant report dated November 1995 by EOA Inc.
- Evaluation of Pond Closure Options, City of San Leandro Wastewater Treatment Plant report dated January 1997 by EOA Inc.
- Conceptual Design for Closure of Effluent Pond, City of San Leandro Wastewater Treatment Plant report dated November 1997 by EOA Inc.
- Geotechnical and Hydrogeological Investigations, San Leandro Water Pollution Control Plant report dated July 30, 1999 by SCI Inc.

Task 1.2 - Conduct a geotechnical investigation to evaluate subsurface conditions of the berms and pond bottom as well as the proposed fill material.

Based on the review of the above documents as well as in-house files and boring logs for the Site, Consultant will complete a geotechnical evaluation of fill and the proposed fill area. The investigation will include:

- A total of 3 exploratory borings to maximum depths of 50 feet. The berm surrounding the pond will be accessible to conventional truck-mounted drilling equipment. The borings will be advanced using a mud rotary drill rig.
- Subsurface exploration will be conducted under the direction of a field engineer of Consultant who will supervise, log, and collect samples from the borings. Standard penetration resistance will be determined in the borings at appropriate increments. Relatively undisturbed samples may also be recovered from various depths in the borings using the Modified California Sampler and or Shelby

Tubes, as appropriate, to help determine strength and compressibility characteristics of the subsurface materials, particularly in clayey soils.

- In accordance with the applicable permit requirements, all exploration borings will be backfilled with a lean cement grout mix. Soil cuttings and drilling fluid consisting of water and bentonite from the borings will spread on site at the locations of the exploration.
- City will provide the labor and equipment suitable for completing test pits within the. Consultant will select 4 test pit locations, log the test pits to evaluate the sludge thickness and underlying material, and collect bulk samples for geotechnical testing. Consultant will prepare a Site Plan showing the proposed sampling locations, and Consultant will confirm the sampling schedule with City at least 48 hours in advance.
- Soil strength and characterization data will be used to construct idealized soil models for static and seismic slope stability analyses using Slope/W software. In addition, the settlement of the equipment pad surface will be calculated for the weight of the proposed fill. The time frame for these settlements to occur will be part of the analysis.
- The results of the exploration, including boring logs, laboratory testing, slope stability and settlement analyses, and earthwork recommendations for construction of the equipment pad will be included in the final geotechnical report. Preliminary results will be available for review prior to report publication.

Task 2 – Chemical Testing and Stabilization Study:

Concurrent with our geotechnical investigation, Consultant will collect samples of fill and pond sludge for chemical analyses. The purpose of the testing will be to confirm the total and soluble fractions of chemicals in those materials. Up to 8 composite samples of the fill soil will be collected by hand and 4 discrete samples of the pond sludge will be collected from the test pit spoils generated during the geotechnical investigation. The City will provide the labor and backhoe or excavator equipment to assist with sampling within existing stockpile. Consultant will prepare a Site Plan showing the proposed sampling locations, and will confirm the sampling schedule with the City at least 48 hours in advance.

All samples will be collected using standard industry practices.

Sludge samples will be tested for the following:

- Total Petroleum Hydrocarbons as gasoline (TPHg) in accordance with EPA Test Method 8015;
- Total Petroleum Hydrocarbons as diesel and motor oil (TPHd and TPHmo) with silica gel cleanup in accordance with EPA Test Method 8015;
- Volatile Organic Compounds (VOCs) in accordance with EPA Test Method 8260;
- 17 heavy metals in accordance with EPA Test Method 6000 and 7000 series;
- Polychlorinated bi-phenyls (PCBs) and organochlorine pesticides in accordance with EPA Test Methods 8081 and 8082;
- Soluble lead using the Waste Extraction Test;
- Soluble lead, TPH, PCBs, and pesticides using the Waste Extraction Test and de-ionized water as the solute.

For the fill samples, Consultant will conduct to complete a DI-WET extraction prior to conducting analyses for TPHd, TPHmo, 17 heavy metals, PCBs, and pesticides to evaluate leachability in an unstabilized condition. The laboratory will perform these analyses on a standard seven-day turnaround.

Consultant will compile the analytical and compare the results with background concentrations, Environmental Screening Levels (ESLs), and Water Quality Objectives established by the RWQCB. The RWQCB believes that soil concentrations below the ESLs do not pose a significant threat to human health and the environment. On the basis of the data, Consultant and City will determine the need and scope for a bench scale treatability study to evaluate stabilization of sludge and fill material to protect water quality at the project site.

Technical guidance prepared by the United States Environmental Protection Agency (USEPA), as well as other regulatory agencies, indicates that chemical stabilization using Portland cement or lime is a proven and suitable technology for the treatment of lead and other chemicals in soils. Stabilization refers to those techniques which reduce the hazard potential of a waste by converting the contaminants into less soluble, mobile, or toxic forms. Typically the ratio of binder material to dry weight soil ranges from 5-30% for Portland cement and 10-30% for lime. The feasibility of stabilizing the impacted sludge and fill material will be assessed using a bench-scale study. Consultant completed a similar study for lead-impacted fill and sludge at WPCP equalization pond. Results of that study confirmed that mixing soil with 10% Portland by weight would successfully stabilize soluble lead concentrations. Accordingly, Consultant will limit the bench-scale testing to Portland as an additive.

If needed and assuming that soluble lead is the chemical of concern, Consultant will conduct the following bench-scale test to confirm the chemical stabilization of the sludge and fill is appropriate:

- Obtain approximately 20 gallons of sludge and 20 gallons of fill for the treatability study. Samples will be collected by hand and will be stored in 5-gallon buckets pending homogenization and testing.
- Homogenize the sludge and the fill samples to create more uniform mix for each matrix.
- Perform Initial Sample Characterization testing on the homogenized soil. Tests will include some or all of the following:
 - Moisture Content
 - Grain size distribution
 - Atterberg limits
 - pH
 - Total Organic Carbon
 - Total Lead using EPA Method 6010
 - Soluble Lead using WET and TCLP methods
- Perform bench study to determine the feasibility of stabilizing the sludge and fill. Uniform weights of homogenized samples will be mixed with ratios of 5%, 7.5%, 10%, and 15% of Portland cement to total soil weight. Consultant will add tap water as needed to facilitate mixing. The amount of water added will be recorded.
- Stabilized soil samples will be cured for at least 7 days prior to any chemical testing.

- Consultant will submit up to 8 stabilized samples (4 for the fill and 4 for the sludge) to a certified laboratory for Contaminant Reduction Confirmation Testing, specifically:
 - Total Lead using EPA Method 6010
 - Soluble Lead using WET and TCLP methods
- Prepare letter report describing the findings of the chemical investigation and bench-scale feasibility study.

Task 3 – Prepare Plans and Specifications

Consultant will prepare plans and specifications for bidding based on the information from Tasks 1 and 2. Deliverables will include drawing and specification packages at 50 percent, 90 percent, and 100 percent completion for City’s review and comments.

Task 4 – Meetings and Consultation

Upon City’s request, Consultant will provide limited geotechnical and/or hazardous waste consultation as requested. Fee for this task has included costs to consult and strategize with the City, including accompanying the City to two 2-hour meetings at the RWQCB..

Task 5 – Topographic Survey

Consultant will survey topographic data for sludge drying beds 5 & 6 and the western portion of the pond. The survey data will be tied to the ground control established in 2008. The data for the beds will consist of breakline(s) around the “toe” of the pile(s) and significant terrain breaks on the surface of the material. For the pond, Consultant will survey a few points along the top of the adjoining roadway to verify the 2008 data, the top and toe of the slope, and a grid of points on the bottom.

DELIVERABLES

The following deliverables will be provided to City:

- Draft and final geotech report (Task 1). 3 hard copies and pdf will be provided.
- Letter report on chemical investigation and bench-scale feasibility study (task 2). 3 hard copies and pdf will be provided.
- 50 percent, 90 percent and final (bid) plans and specifications. Six hard copies (3 half size and 3 full size) of the 50% and 90% drawings will be provided. Three hard copies of the 50% and 90% specs will be provided. Pdfs and CAD files of the final drawings and pdfs and word files of the final specs will be provided.
- Construction cost estimates to accompany each progress submittal.
- AutoCAD drawing file containing the terrain data collected for beds 5 and 6 and the western end of the pond. The data set will be comprised of breaklines and mass points suitable for generation of a digital terrain model.
- MicroStation design file containing the terrain data collected for beds 5 and 6 and the western end of the pond. The data set will be comprised of breaklines and mass points suitable for generation of a digital terrain model.

SCHEDULE

Consultant shall complete Task 1 and 2 services within 8 weeks of receiving notice to proceed.

50% plans and specification shall be provided within 6 weeks of completing tasks 1 and 2.

Bid documents shall be submitted 8 weeks after RWQCB's review of the 50% submittal.

EXCEPTIONS

- City will coordinate with the Regional Water Quality Control Board and all other regulatory agencies regarding the environmental aspects of this project. City will conduct all correspondence and negotiations with the RWQCB and all other regulatory agencies regarding regulatory approvals for the reuse of fill and sludge at the Polishing Pond.
- Scope of Work does not include environmental compliance evaluation of the project.
- City will provide all existing reports on the ponds.
- City will provide all existing reports and existing test results on the spoils.
- City will provide written review comments to all progress submittals within 14 days after receipt of each submittal.
- City will coordinate any project review with the local building department and other appropriate agencies, and apply and pay for all required permits, if necessary.
- City will be responsible for the advertisement, printing, and distribution of bidding documents and addenda.
- Scope of Work does not include bid period services and engineering services during construction.

EXHIBIT B

COMPENSATION SCHEDULE ES

Task	Description	Budget
1.0	Geotechnical Investigation	\$38,292
2.0	Chemical Testing and Stabilization Study	\$30,174
3.0	Prepare Plans and Specifications	
	3.1 - Prepare 50% submittal	\$25,706
	3.2 - Prepare 90% submittal	\$20,565
	3.3 - Prepare Final submittal	\$5,141
4.0	Meetings	\$2,750
5.0	Topographic Survey	\$8,171
	Total	\$130,799

	Hourly Rate
<u>Engineers/Scientists</u>	
Assistant Professional	\$139.00
Professional	\$171.00
Project Professional	\$205.00
Lead Project Professional	\$221.00
Senior Professional	\$243.00
Senior Process Specialist	\$357.00
<u>Technicians</u>	
Technicians	\$99.00
Senior Technicians	\$148.00
<u>Support Staff</u>	
Document Processing / Clerical	\$94.00
Project Equipment Communication Expense (PECE)	\$9.4
Expert Witness Rate	2.0 x Hourly Rate
Subconsultant Fee	10% Markup
Other Direct Cost Fee	10% Markup

**REIMBURSABLE EXPENSE
FEE SCHEDULE**

<u>Other Direct Expenses</u>	
Travel and Subsistence	at cost
Mileage at IRS Reimbursement Rate Effective January 1, 2014	\$.56 per mile

This fee schedule is subject to annual revisions due to labor adjustments.

EXHIBIT C

INDEMNIFICATION

- A. Consultant shall, to the extent permitted by law, indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.
- B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant.
- C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the City.
- D. In the event that any action alleges negligence on the part of Consultant and/or the City, or any third parties not under contract with Consultant, Consultant's obligations regarding the City's defense under this exhibit include only the reimbursement of the City's reasonable defense costs incurred to the extent of Consultant's negligence as expressly determined by a final judgment, arbitration, award, order, settlement, or other final resolution.
- E. Consultant shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental or consequential damages to the City or any third party arising out of breach of contract, termination, or for any other reason whatsoever. Additionally, Consultant shall not be responsible for acts and decisions of third parties, including governmental agencies, other than Consultant's subconsultants, that impact project completion and/or success.
- F. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement.

EXHIBIT D

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the

Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.