



**REQUEST FOR PROPOSALS FOR SLPD
STAFFING NEEDS ASSESSMENT**

RFP NO. 59371

**RFP Issue Date:
January 27, 2022**

**Proposal Submittal Due Date:
5:00 p.m., Thursday, February 17, 2022
Electronically to sperez@sanleandro.org**

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REQUEST FOR PROPOSALS FOR SLPD STAFFING ASSESSMENT SERVICES

I. INTRODUCTION

The City of San Leandro desires to solicit qualified proposals for professional firms to conduct a staffing needs assessment of the San Leandro Police Department. The purpose of this study is to assess the whole department staff current and future needs and to make recommendations that will help them to resolve the challenges. The City intends to award a one-year contract to the Consultant selected as the most responsive proposal conforming to the RFP and City's requirements.

II. BACKGROUND

The San Leandro Police Department consists of ninety sworn members and forty-four professional members. The department is organized into two Bureaus – Bureau of Operations and Bureau of Services. Operations consist of Patrol, Traffic, and Investigations divisions while Services has Professional Standards and Support Services.

III. PROJECT OVERVIEW AND OBJECTIVES

The consultant will work alongside members of the San Leandro Police Department to identify the City's challenges of policing; to explore alternative approaches in responding to calls for service, especially crisis calls. The expectation is that all communities will be engaged and queried. This assessment will involve police and community input as their full participation and collaboration are essential in creating a staffing model which meets current, and anticipated community needs. The primary outcome of this assessment will be to recommend a staffing complement, which reflects stakeholders' desires and creatively allocates resources to align with the precepts of the City's policing.

IV. SCOPE OF SERVICES

The City of San Leandro is seeking a qualified consultant to perform a staffing needs assessment by assessing the whole Police Department.

1. Consultants shall have the following experience:

- a) Consultant shall have experience engaging with communities to build strong ties and explore ways to meet their needs. This must be verifiable through community interviews and conversations that highlight community needs and expectations for SLPD.
- b) Consultant shall have the ability to perform departmental reviews – the nature of work, work demand, current staffing based on community expectations. Conducting a workload and public safety resource allocation assessment to help department to explore alternative options to allocate their limited resources.

- c) Consultant shall have the ability to collect data, to develop findings, make recommendations, and suggest practical solutions.
- d) Consultant shall have the ability to use different approaches to involve all stakeholders through virtual focus group interviews, explore best practices, etc.
- e) Consultant shall have experience building an interactive dashboard to help the department perform staff reviews moving forward to adjust and reallocate resources based on clearly identified criteria
- f) Consultant shall have the ability to demonstrate a strong project management background.

2. The Consultant's work to be completed includes, but is not limited to:

- a) Using software applications that will assess both Bureaus and identify service delivery challenges.
- b) For the Bureau of Operations – use calls for service to provide a baseline understanding of what calls are generated from the public or are self-initiated by officers.
- c) For the Bureau of Services – analyze information related to “use of force” data.
- d) Additional assessment to help identify which calls can be answered through alternative responses and how that can impact the potential future call volume, workload and staffing estimates.
- e) Explore calls at repeat addresses to identify long-term solutions which can reduce future calls for service.
- f) Identify effective metrics to evaluate investigative caseloads and closure rates.
- g) Review work for sworn personnel and explore whether technology and professional staff may help improve service performance.
- h) Make recommendations on how work and staffing might be adjusted.
- i) Implement a plan to perform routine staffing reviews by developing an interactive dashboard to help visualize changes in deployment, resource allocation, assumptions or forecast police department staffing.
- j) Provide the interactive dashboard documentation and training for PD personnel.

- k) Conduct community outreach to understand the community needs and expectations. Specifically.
- l) Must provide a written report reflecting the staff reviews, community assumptions, recommendations and solutions.

V. PROPOSAL REQUIREMENTS

Successful proposals shall include:

1. Company Background (over view of company, including history, size, location and ownership structure);
2. Three detailed examples of staff studies conducted at municipal law enforcement agencies;
3. Detailed Scope of Work;
4. Cost Proposal (Compensation—Provide the proposed hourly fee schedule or flat-fee schedule for services related to RFP).
5. References (minimum of three public sector agencies required with preference for California municipalities of similar size to the City of San Leandro)
6. Answer the following questions regarding legal proceedings in connection with any offering of municipal securities:
 - Are there any pending legal actions alleging violations of law in connection with an offering of municipal securities against the firm, any partner of the firm, or any employee of the firm? Describe each such pending action.
 - Have there been any settlements or judgements involving such actions within the last five years? Describe each such settlement or judgment, including the nature of the action and the amount of recovery.
 - Are there any pending legal or disciplinary matters involving such actions against the firm, any partner of the firm, or any employee of the firm by any Federal or State regulatory agency? Describe each such action.
 - Disclose all contractual or informal financial arrangements/agreements, including joint accounts, fee-splitting, profit sharing and consulting agreements of your firm that could impact the City. The disclosure must be complete, accurate, and in sufficient detail to permit the City to make an informed decision as to with whom business is being conducted.

Non-Collusion Affidavit

The Consultant declares, by signing and submitting a proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not directly or indirectly induced or solicited any other Consultant to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement,

communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

VI. SUBMITTAL REQUIREMENTS

Consultants shall submit Items 1-6 as stated in *Section V. - PROPOSAL REQUIREMENTS*. Consultant is required to indicate the *Designated Contact* in the proposal package. Include the designated contact individual's name, address, phone number(s) and email address.

Proposals are to be submitted electronically to Sally M. Perez, Purchasing Technician, at sperez@sanleandro.org. The subject line of the email is to clearly state, **RFP 59371 SLPD Staffing Needs Assessment**. Proposals shall be received by the City of San Leandro's Purchasing Office no later than **5:00 p.m. on Thursday, February 17, 2022**.

The email date/time stamp will be proof of receipt. Late proposals will not be considered under any circumstances.

Pricing/Compensation information is considered confidential and must be received in a sealed envelope. Because this proposal is negotiable, all pricing data will remain confidential until after award is made, and there will be no public opening and reading of proposals. Please make sure that the envelope is clearly marked: RFP 59371 SLPD Staffing Needs Assessment. **Sealed envelopes must be postmarked by the due date of Thursday, February 17, 2022.**

Failure to provide all required submittals in completed form and/or a clearly marked original with original signatures may result in a proposal being found non-responsive and given no consideration. Proposals must be neat, complete, and fully address all information specified in **Section V**.

For information concerning RFP questions, procedures and regulations (i.e., submission deadline, forms required, etc.) interested parties must contact the City's Purchasing Agent. All questions shall be submitted via email.

CITY OF SAN LEANDRO
Sally M. Perez
Purchasing Technician
Email: sperez@sanleandro.org

VII. ESTIMATED SCHEDULE

RFP Issue Date	Thursday, January 27, 2022
Deadline to Submit Questions	Tuesday, February 8, 2022
Proposal Submittal Due Date	Thursday, February 17, 2022
Selection and Notification (Tentative)	February 22, 2022
Award of Contract (Tentative)	March 7, 2022

VIII. EVALUATION OF PROPOSALS

Proposals must fully address the evaluation factors, contain complete technical submittals, references and data to verify qualifications and experience and include a statement that the City contract can be executed, listing any exceptions. Proposals without sufficient submittal data to provide a complete evaluation will be considered non-responsive. As part of the technical proposal, Consultants must evaluate the City’s proposal terms and conditions. Any exceptions taken to the proposal specifications and/or the City’s Consulting Services Agreement must be listed as a separate item as *Exceptions to Specifications*.

All proposals will be reviewed for compliance with specifications including documented capability to perform the prescribed work in a satisfactory manner. Proposals, which appear to be compliant, will be evaluated on a point system (0-100 points, with 100 being the best possible score) in accordance with the following:

CRITERIA	MAXIMUM POINTS
1. Adherence to City’s Scope of Work	50 points
2. Price	30 points
3. Information Supplied in response to Section V.	5 points
4. References	15 points

The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue the RFP at its sole discretion. Additionally, the City may seek clarification or additional information from Consultants. All Consultants shall verify if any addendum for this project has been issued by the City and shall respond to the final written RFP and any exhibits, attachments and amendments. It is the Consultant’s responsibility to ensure that all requirements of contract addendum are included in their submittal. This RFP does not commit the City of San Leandro to sign an agreement, award a contract, or to pay any costs incurred in the preparation of a response to this RFP. All documents, conversations, correspondence, etc. with the City are subject to the laws and regulations that govern the City. All Proposals submitted in response to this RFP become the property of the City and public records, and as such may be subject to public review.

The City reserves the right to reject any or all proposals and the right to waive minor irregularities in any proposals. Waiver of one irregularity does not constitute waiver of any other irregularities.

Because this proposal is negotiable, all pricing data will remain confidential until after award is made, and there will be no public opening and reading of proposals.

IX. DELIVERABLES REQUIRED OF SELECTED CONSULTANT

The selected Consultant(s) shall enter into a Consulting Services Agreement with the City of San Leandro and submit the following items ***within ten (10) days of notice of award:***

1. City of San Leandro business license; to be maintained throughout length of contract
2. Copy of Certificate(s) of Insurance and endorsements in compliance with the requirements of Section 4. of *Attachment A- Consulting Services Agreement* and naming the City of San Leandro as an additional insured.
3. Completed IRS W-9 tax form
4. Self-verification form which shows compliance with the City of San Leandro Living Wage Ordinance

X. CONDITIONS

Permits and Codes

The selected Consultant shall comply with all laws, codes, rules and regulations of the State, County, and City, applicable to the work to be performed at the City's location(s). The Consultant, who shall pay all lawful charges, shall obtain all permits lawfully required.

City of San Leandro Living Wage Ordinance

The San Leandro Municipal Code Title 1, Chapter 6, San Leandro's Living Wage Ordinance (LWO), provides that Consultants who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City during the City's fiscal year shall comply with all provisions of this ordinance. The LWO requires a City Consultant to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, the selected Consultant must submit a completed self-verification form. Please note that the LWO applies to those contracts where the Consultant has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, change orders to this contract or the entering into of subsequent contracts may make them subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Consultant's employees change (i.e. additional employees are hired) so that Consultant falls within the scope of the Ordinance.

Insurance Requirements

Requirements are incorporated in Section 4 of **Attachment A**, *Consulting Services Agreement (CSA)*.

Attachment A - DRAFT

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND [NAME OF PROFESSIONAL CONSULTANT] FOR SLPD STAFFING NEEDS ASSESSMENT

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and _____ (“Consultant”) (together sometimes referred to as the “Parties”) as of _____, 20__ (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 _____, 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 E.
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Consultant’s attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Consultant must submit completed self-certification form and comply with the LWO if covered.

Attachment A - DRAFT

- 1.7 **Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

[NOTE TO STAFF: IF THE SERVICES ARE NOT WITHIN THE STATUTORY DEFINITION OF A PUBLIC WORKS PROJECT, THEN SUBSECTION 1.5 AND EXHIBIT E MAY BE DELETED AND SUBSECTION 1.6 BE RENUMBERED TO 1.5. CHECK WITH THE CITY ATTORNEY IF THERE IS A QUESTION ABOUT WHETHER THE SERVICES CONSTITUTE A PUBLIC WORKS PROJECT.]

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed _____, 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 B, 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.

[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]

Attachment A - DRAFT

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.

[NOTE TO STAFF: THE 800-HOUR LIMIT HAS BEEN ADDED BECAUSE OF RECENT COURT DECISIONS THAT INDICATE THAT INDEPENDENT CONSULTANTS MAY BECOME ELIGIBLE FOR PERS AFTER 1000 HOURS OF WORK FOR A CITY WITHIN A 12-MONTH PERIOD, ENTITLING THE CONSULTANT TO AN EMPLOYER CONTRIBUTION FROM THE CITY.]

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.

Attachment A - DRAFT

- 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 \$_____. 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.

[NOTE TO STAFF: SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]

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. 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.

Attachment A - DRAFT

[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT. PLEASE CONFIRM WITH RISK MANAGEMENT.]

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. 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 or proposal. 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 to City that such insurance is in effect. 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 \$_____ [**dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required**] per accident. In the alternative, Consultant may rely on a self-insurance program to meet these 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, agents, 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.

Attachment A - DRAFT

- 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 \$_____ and automobile liability insurance for the term of this Agreement in an amount not less than \$_____ **[dollar amounts to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required]** 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 effect this waiver of subrogation.
 - d. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance coverage 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.

Attachment A - DRAFT

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 \$ _____ [**dollar amount to be determined based on the nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required**] 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.

Attachment A - DRAFT

[NOTE TO STAFF: THE FOLLOWING PROVISION OF THIS SECTION MAY BE REMOVED IF NOTE REQUIRED – CHECK WITH RISK MANAGEMENT PRIOR TO REMOVAL.]

4.4 Cyber Liability Insurance.

4.4.1 General Requirements. Consultant, at its own cost and expense, shall maintain cyber liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress; invasion of privacy violations; information theft; damage to or destruction of electronic information; release of private information; alteration of electronic information; extortion; and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology services:

- Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential City information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems;
- Loss or denial of service;
- No cyber terrorism exclusion;

Such coverage must include technology/professional liability including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensic analysis, credit protection services, call center services, identity theft protection services, and crisis management/public relations services.

4.4.2 Claims-Made Limitations. The following provisions shall apply if the cyber 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

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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.

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

4.4.4 Submittal Requirements. To comply with Subsection 4.4, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.5 All Policies Requirements.

4.5.1 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.

4.5.2 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.

4.5.3 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.

4.5.4 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).

4.5.5 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.

4.5.6 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.

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4.6 **Submittal of Proof of Insurance Coverage.** All certificates of insurance and original endorsements effecting coverage required in this Section 4 must be electronically submitted through the City's online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

4.7 **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.

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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, Consultant 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 _____ days' written notice to City and shall include in such notice the reasons for cancellation.

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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 include, but are not 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

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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. 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.
- 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

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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.

At City’s sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant’s economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

- 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.

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

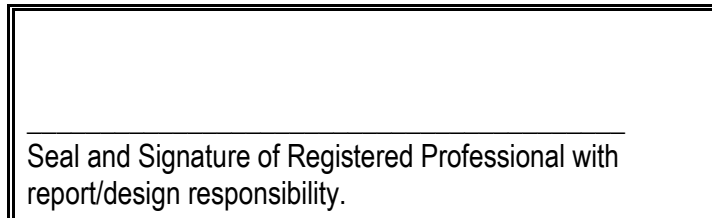
10.10 Notices. Any written notice to Consultant shall be sent to:

[EMAIL ADDRESS MUST BE INCLUDED] _____

Any written notice to City shall be sent to:

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.



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10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, C, and D [and E] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** 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 [NOTE TO STAFF: USE VERSION 1 OR 2]
<u>Exhibit D</u>	COVID-19 Compliance Requirements [NOTE TO STAFF: NOW REQUIRED ON ALL AGREEMENTS UNTIL FURTHER NOTICE]
<u>Exhibit E</u>	California Labor Code Section 1720 Information [DELETE IF NOT APPLICABLE]

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.

SIGNATURES ON FOLLOWING PAGE

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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

[NAME OF CONSULTANT]

Fran Robustelli, Interim City Manager

[NAME, TITLE]

Attest:

Consultant's DIR Registration Number
(if applicable)

Leticia I. Miguel, City Clerk

Budget Approved:

Approved as to Fiscal Authority:

Susan Hsieh, Finance Director

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7: Form 700 Required

[Name, Title of Department Head]

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EXHIBIT A

SCOPE OF SERVICES

Attachment A - DRAFT

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

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EXHIBIT C

INDEMNIFICATION

[NOTE TO STAFF: INDEMNIFICATION EXHIBIT VERSION 1, PROFESSIONAL USE THIS VERSION FOR ALL CONTRACTS WITH LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS ONLY. IF THIS VERSION 1 IS USED, DELETE VERSION 2 ON THE NEXT PAGE.]

- A. Consultant shall, to the extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, 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, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.
- 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. 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, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.
- E. 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, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

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EXHIBIT C

INDEMNIFICATION

[NOTE TO STAFF: INDEMNIFICATION EXHIBIT VERSION 2, TECHNICAL CONSULTANT USE THIS LANGUAGE FOR ALL OTHER TECHNICAL AND LICENSED CONSULTANTS THAT ARE NOT LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS. IF THIS VERSION 2 IS USED, DELETE VERSION 1 ON THE PREVIOUS PAGE.]

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

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, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

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EXHIBIT D

REQUIREMENTS RELATED TO THE COVID-19 PANDEMIC AND THE CITY OF SAN LEANDRO'S EMERGENCY DECLARATION

The novel coronavirus ("COVID-19") has been declared a worldwide pandemic by the World Health Organization. The City of San Leandro is currently in a local emergency and state of emergency due to the COVID-19 pandemic.

COVID-19 is extremely contagious, and is believed to spread mainly from person-to-person contact, through touched surfaces, and in airborne particles. As a result, federal, state, and local governments, including the City of San Leandro, and federal, state, county, and local health agencies recommend social distancing and additional cleaning protocols to limit the spread of the disease. The City has taken steps and put in place preventative measures recommended by federal, state, and local health agencies to reduce the spread of COVID-19. These measures include steps each person must take to prevent the spread of COVID-19 and include, but are not limited to, requiring face coverings, frequent hand washing and/or use of hand sanitizer, social distancing where possible, limiting of person-to-person contact, frequent cleanings of high-touch surfaces, and avoiding entering any building if they have COVID-19 symptoms.

Consultant shall obey all local orders and abide by all applicable preventative measures recommended by federal, state, county, and local health agencies and any preventative measures specifically implemented by the City. Consultant agrees that when entering any City buildings, Consultant will follow all COVID-19 related signage, wear a face covering, follow all social distancing protocols, and abide by any other COVID-19 preventative measure that are in place when performing the services described in this Agreement. Consultant shall also adhere to any subsequently communicated COVID-19 preventative measures as directed by City staff. The COVID-19 preventative measures are subject to change over time, and Consultant shall maintain knowledge of and adhere to the current COVID-19 preventative measures when interacting with City employees, officials, volunteers, agents, and representatives, and when entering City buildings.

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EXHIBIT E

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 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

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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 submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the

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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.

3525646.1

ATTACHMENT B

CITY OF SAN LEANDRO LIVING WAGE ORDINANCE (LWO)

Guidelines for Compliance & Frequently Asked Questions July 2021

Guidelines for Compliance with the Living Wage Ordinance (LWO)

Service Providers

For Profit Service Providers

Affects for-profit entities that provide services to the City valued at \$25,000 or greater within the City's fiscal year; and which has six (6) or more employees.

Any employee working on City services under contract with the City is covered by the LWO for the time spent performing said services.

Non-Profit Service Providers

Affects non-profit entities that provide services to the City valued at \$100,000 or more within the City's fiscal year; and which has six (6) or more employees

Any employee working more than 25% of their time on the City-contracted services being procured by the City under the contract with the employer is subject to.

Lessees

Affects lessee's of public property, licensees, concessionaires and franchises that generate \$350,000 or more in annual (calendar) gross receipts.

Any employee who spends more than 25% of their working time on the leased property or engaged in work directly related to the license, concession or franchise is subject to.

Financial Aid Recipients

Affects any entity receiving more than \$100,000 in City grants, loans, or other cash/non-cash assistance within the City's fiscal year. Compliance is required for the duration of one year for each \$100,000 of assistance, pro-rated up to a maximum duration of five (5) years after receiving said aide.

Any employees who spend more than 25% of their working time engaged in work directly related to the purposes for which the City's aid was provided are subject to.

Subcontractors/Sub-Lessees

Affects both for-profit and non-profit employers that enter into a subcontract with the primary employer/contractor and assumes some of the obligations of the primary employer/contractor.

ATTACHMENT B

Subcontractor's and sub-lessee's are also subject to the same living wage provisions and requirements as the primary employer or lessee. Employees who are or would be covered under the state prevailing wage rate requirement would only be covered by the Ordinance if their current prevailing wage rate was lower than the living wage rate.

Compensation

Covered businesses are required to pay no less than \$17.73 per hour or \$16.23 with health benefits valued at least \$1.50 per hour, subject to annual CPI adjustment.

Reporting and Compliance

Covered businesses self-verify compliance and are subject to periodic re-verification and audit of living wage related records.

ATTACHMENT B

Frequently Asked Questions

1. What is the City of San Leandro's Living Wage Ordinance?

“Living wage” is an hourly wage level that sets wages at a level higher than the Federal or State minimum wage. The City of San Leandro Ordinance specifies that an hourly wage and a health benefit dollar level be applied to certain contracts, agreements and leases between the City and for-profit and non-profit entities. It does not apply to every business in the City.

2. When does the Living Wage take effect and when do businesses have to start complying and provide higher wages to their employees?

September 1, 2007 is the effective date. Applicable businesses must comply with the Ordinance when they enter into a lease, contract or concessionaire or other agreement with the City of San Leandro, or when an existing agreement is amended to benefit the business.

For example, if a lease contract expires in two years, compliance would not be required for the two years the lease remains in effect and unchanged. New contracts entered into or amended thereto affecting financial aid or expending the term after the effective date are subject to the Ordinance. Covered employees would be entitled to the higher wage on the effective date of the new or modified contract or agreement.

All contracts and agreements with the City of San Leandro will include the requirement that the Living Wage Ordinance shall be complied with.

3. What is the required Living Wage rate?

Covered businesses are required to pay no less than \$17.73 per hour, which includes wages and employer health benefits. Health benefits must be valued at \$1.50 per hour in order to be counted towards the requirement. In other words, an employee not receiving any employer health benefits would receive an hourly wage of at least \$17.73, while one receiving health benefits would receive an hourly wage of at least \$16.23.

The living wage rate will be adjusted annually in July to reflect the consumer price index.

4. Are there any other required employee benefits specified?

Yes. It specifies that employees must receive at least 22 days off per year (calendar) for sick leave, vacation, holiday, or personal necessity. At least 12 of the required days off shall be compensated at the same rate as regular compensation while 10 of the required 22 days may be uncompensated days off. Part-time employees shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first 6 months of satisfactory employment or in accordance with the employer's policy, whichever is sooner.

5. What types of employee's are covered by the Ordinance? And does it cover full-time and part-time employees?

ATTACHMENT B

Employees spending at least 25% of their work time on a City of San Leandro contract are covered, as long as they work for a business applicable under the terms of a covered agreement or contract. Both part-time and full-time employees are covered if they meet those criteria. Employees who are or would be covered under the state prevailing wage rate requirement would only be covered by the Ordinance if their current prevailing wage rate was lower than the living wage rate.

Please see “Guidelines for Compliance” for additional detail.

6. What types of businesses are covered by the San Leandro Living Wage Ordinance?

The Living Wage Ordinance applies to entities providing services to the City of San Leandro via contract or agreement, lessees of the City and recipients of City financial aid. Please see “Guidelines for Compliance” for the thresholds and criteria for each type of employer, lessee, financial aid recipient, or subcontractor and lessee.

7. Does the Living Wage Ordinance apply to sub-contractors or sub-lessees?

Subcontractor’s and sub-lessee’s are also subject to the same living wage provisions and requirements as the primary employer or lessee. Employees who are or would be covered under the state prevailing wage rate requirement would only be covered by the Ordinance if their current prevailing wage rate was lower than the living wage rate. For example, employees of a firm hired to do building improvements for the contractor would be subject to the prevailing wage requirements under state law.

8. Does the Living Wage Rate affect tenants of a financial aid recipient?

It depends on the circumstances, for example, if a developer receives a \$500,000 city loan to rehab a commercial building and the tenants pay the market rate, they would not be subject to the LWO. However, the benefitting developer or business (and successors) would be subject to the LWO.

9. What types of employees are exempt?

The Ordinance shall not be applicable to employees under 18 years of age, volunteers, qualified temporary employees working for the City of San Leandro, other government employees, employees that participate in a job training program, qualified disabled employees covered by a sub-minimum wage certificate or equivalent, interns or employees receiving academic credit through a job training program, employees already subject to the State’s prevailing wage requirement (if living wage rate is higher than the prevailing wage rate, then the living wage rate would apply) , employees while working stand-by or on-call duty, and any other employee where the application of the Ordinance would be prohibited by State or Federal law.

10. Are any exemptions or waivers allowed for a business?

Following City Manager review and recommendation, the City Council may approve waivers with or without conditions to any of the Living Wage provisions, upon determination that such action is in the best interest of the City.

ATTACHMENT B

11. What other types of businesses are not covered by the City of San Leandro Living Wage Ordinance?

Commodity suppliers and suppliers of goods (paper, office supplies, equipment, etc.) and their employees are not covered.

12. What steps are in place to prevent discrimination or employer retaliation against the provisions of the Ordinance?

Retaliation and discrimination against any person on account of having inquired into or having claimed a violation of the Ordinance is unlawful. Any employee who alleges violation of any of the Living Wage requirements may report such acts to the City. The City may investigate such complaints and take appropriate action to enforce the Ordinance.

13. How do the worker retention provisions of the Ordinance work?

Briefly, any business that replaces another business in a lease, contract, subcontract, etc. is required to offer employment to the employees of the prior tenant or contractor for a period of 90 days. If the new business already has its own employees, then employment must be offered on the basis of seniority to its own and the prior employees. Managerial, supervisory, professional, paraprofessional, and confidential and office employees are exempted from this provision.

14. How is the Living Wage Ordinance enforced? Are there penalties against businesses found not to be complying?

Employers self-verify compliance. The City may also periodically require employer re-verification and review the businesses living wage related records. Each business is required to allow access to its workforce and living wage related records by authorized City of San Leandro representatives to ensure compliance.

Violations of the Living Wage Ordinance are subject to fines of up to \$5,000, and/or the City may terminate the violator's agreement. Any person may bring action against a business in the Superior Court of California to enforce the measure.

15. Who can answer more questions about the Ordinance; and where can I get a copy of it?

The Finance Department of the City currently administers the Living Wage Ordinance. Please contact the department at 510-577-3376 if you have any questions. You may obtain a copy of the Ordinance from the Finance Department; or it is available on the City's website at: <http://www.sanleandro.org/depts/finance/livwage/default.asp>

ATTACHMENT C

CITY OF SAN LEANDRO Living Wage Ordinance Self Verification Form for Providers of Personal Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR SERVICES WITH THE CITY OF SAN LEANDRO.

The San Leandro Municipal Code Title 1, Chapter 6, San Leandro's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City during the City's fiscal year shall comply with all provisions of this ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, change orders to this contract or the entering into of subsequent contracts may make them subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

SECTION I

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the period of July 1 -June 30 of the current city fiscal year, have you entered into contracts, including the present contract, bid, or proposal, with the City of San Leandro for a cumulative amount of \$25,000.00 or more?

YES ____ NO ____

If no, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees?

YES ____ NO ____

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the period of July 1 -June 30 of the current city fiscal year, have you entered into contracts, including the present contract, bid, or proposal, with the City of San Leandro for a cumulative amount of \$100,000.00 or more?

YES ____ NO ____

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

ATTACHMENT C

b. Do you have six (6) or more employees?

YES ____ NO ____

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II on the following page.

SECTION II

Please read, complete, and sign the following:

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of San Leandro's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the San Leandro Municipal Code, Title 1, Chapter 6.

If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this verification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and pursue any other legal remedies available to the city, including debarment. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name:

_____ Title: _____

—

Signature:

_____ Date: _____

—

Business Entity:

ATTACHMENT C

Contract Description/Specification No:

SECTION III

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* * FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY * * *

I have reviewed this Living Wage Ordinance Self Verification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to San Leandro's Living Wage Ordinance.

Department Name _____ Department Representative _____