

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
FREEDMAN TUNG + SASAKI**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Freedman Tung + Sasaki ("Consultant") (together sometimes referred to as the "Parties") as of June 17, 2013 (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 November 30, 2013, 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 **Reserved**
- 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.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$90,000.00 (NINETY THOUSAND DOLLARS AND NO CENTS), 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 final invoice 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 A, and shall not exceed \$5,000.00 (FIVE THOUSAND DOLLARS AND NO CENTS). Expenses not listed in Exhibit A 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. 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.

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 \$1,000,000.00 (ONE MILLION DOLLARS AND NO CENTS) 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 \$1,000,000.00 (ONE MILLION DOLLARS AND NO CENTS) and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 (ONE MILLION DOLLARS AND NO CENTS) 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 there from, 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 \$1,000,000.00 (ONE MILLION DOLLARS AND NO CENTS) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim. The City demands dedicated limits of \$1,000,000 in professional liability.

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, but only to the extent insurable.

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 and sole cost, 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 Reserved

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. 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.

The City agrees that Consultant and Spinnaker Strategies may use, for educational and promotional purposes, finished project work products that the City has publicly released without written consent of the City. However, the City does not consent to the use or publication of any raw GIS or proprietary data.

- 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. If the prevailing party payment is found to be uninsurable, the maximum payment shall not be greater than \$25,000.
- 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.

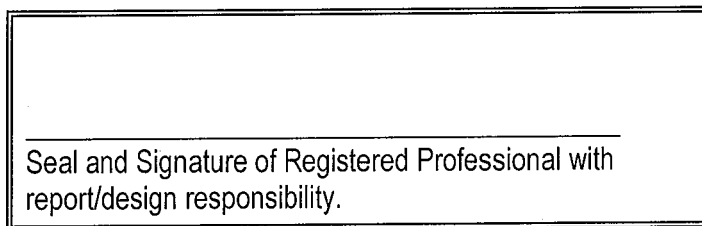
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Tom Liao, Planning and Housing Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:
Gregory Tung, Principal
Freedman Tung + Sasaki
625 Second Street, Suite 280
San Francisco, CA 94107-2014

gregoryt@ftscities.com

Any written notice to City shall be sent to:
Tom Liao, Planning and Housing Manager
City of San Leandro Community Development Dept.
835 East 14th St.
San Leandro, CA 94577
e-mail: tliao@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, and C 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
<u>Exhibit C</u>	Indemnification

- 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

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

Gregory Tung, Principal
FREEDMAN TUNG + SASAKI

Attest:

Marian Handa, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

010-41-001-5120

Account Number

Approved as to Form:

Richard Pio Roda, City Attorney

1969630.1

EXHIBIT A
SCOPE OF SERVICES

(See attached)

City of San Leandro

NEXT GENERATION WORKPLACE DISTRICT STUDY: Central San Leandro Industrial Area

Scope of Services

June 3, 2013; v.1.1

FOCUS AND CONTEXT: Within San Leandro's industrial areas, the Merced Street corridor (roughly from Williams Street to Burroughs Avenue, map attached) is where two transformational developments overlap – the Kaiser Permanente San Leandro Medical Center's first phase at Merced Street and Fairway Drive (slated for Fall 2014 completion), and a segment of the newly activated LIT San Leandro fiber optic loop. The Kaiser facility will infill a major new employment and activity anchor that will bring a stream of new visitors and greater regional visibility to the industrial area west of I-880, while the fiber loop introduces cutting-edge digital infrastructure unavailable even in much of the Silicon Valley. The area is accessed by I-880's Marina Blvd. exit and from BART via the LINKS shuttle. The two projects are potentially the industrial areas' most impactful in years and are drivers in San Leandro's embrace of the innovation-driven economy. But beyond the Kaiser site itself, little change has been evident to date in the industrial areas. They are still characterized by a mid-20th Century "superblock" pattern, aging building stock, auto-oriented access, scarcity of talent-magnet amenities for firms and employees, and low-activity and poorly imageable "look and feel." Older East Bay industrial areas to the north in Emeryville and West Berkeley have undergone use, investment and character transformations to support a dynamic mix of knowledge-oriented, advanced manufacturing and emerging sector businesses as well as talent-magnet activity centers and amenities, while those to the south in Fremont and Union City have become the northeastern reaches of Silicon Valley business parks. But San Leandro's workplace areas have not similarly evolved, due to a variety of real and perceived obstacles to investment and change.

STUDY: This study proposes to look at how the City (and potential partners) may leverage these two initiatives with near-term measures to stimulate private investment, place-based activity, firm attraction and incubation, and job creation in their immediate vicinity. While our focus is to respond to imminent opportunities, we will incorporate a perspective toward longer-term workplace district transformation, given emerging trends for 21st Century Workplace Districts, Firms, and Employees. It will include a focused examination of market, policy and urban conditions and identify a set of tactical opportunities and actions for mutually reinforcing public, private, and institutional initiatives in the project area. From a private investment perspective, measures may include adaptive concepts for parcels and/or buildings, desirable mix and positioning of business or institution types and tenants, and harnessing or linkage of available programs – as well as an investment rationale basis. Public sector side actions may include focused enhancements to public right-of-ways or spaces (placemaking), policy and regulatory updating, and local changes to the district pattern – with the awareness that City funding is constrained. Both will incorporate the growing role of institutions (educational, non-profit, etc.) that are increasingly playing roles as anchors and catalysts in workplace districts. The objective will be to identify where and how the City should focus its effort to get something happening today – especially in telling the market where the public commitment will be, and where the private sector should focus in tandem with that. The study will not go as far as an area or Specific Plan, but it may serve as a first step that can

be extended to other parts of the industrial areas, or it may help to introduce a more comprehensive district visioning and restructuring process.

PROCESS: Gregory Tung, Principal of Freedman Tung + Sasaki, will serve as Prime Consultant for urban design and planning, teamed with Rod Stevens, Principal of Spinnaker Strategies, for economic analysis and development consulting. To maximize the project's effectiveness, we recommend the formation of a "Core Team" of key City departmental heads and their designated staff to consistently attend the 3 meetings through the project. These should include (but not be limited to) the following: the Community Development Director, Public Works Director, Chief Innovation Officer, and (if available) City Manager. This will ensure sharing of information, synergy opportunities, and facilitated decision-making as we proceed. The schedule and completion of the team's products and meetings will be subject to elements potentially beyond the control of the Project Consultant team, such as the timely provision of review comments and availability of project participants for meetings and consultations. As such, they are estimated conservatively for contract purposes. With those in mind, an anticipated project start date on or around June 17, 2013 will be followed by an approximately 4 week period of research and mapping. Core Team Meeting #1 to present those findings and discuss preliminary opportunities is envisioned during the week of July 15, 2013. Concept development and refinement would be presented in Core Team Meeting #2 during the week of July 29, 2013, to again be followed by a cycle of product development and revision. A third and final Core Team Meeting will be held to present the final concepts within a 2 week period from August 26 to September 6; this period would also include the Community Presentation (we suggest a two-week window for flexibility, and in anticipation of the possibility that the City may want to schedule the Presentation after the Labor Day holiday). All project work would be targeted for completion by September 16, 2013.

DELIVERABLES: The project will proceed through three "Core Team" meetings at the City of San Leandro or other designated location. In addition, one Community Presentation will be provided. Gregory Tung will attend all meetings and presentations. Rod Stevens will attend meetings in person as may be scheduled within 3 total trips from his Seattle area office base, and will provide assistance and materials for the presentation or other meeting if not schedulable within the 3 trips. Draft existing conditions analysis graphics and a PowerPoint presentation file will be prepared and provided for the second meeting. Draft opportunities Concepts including a list of targeted types of businesses, a Vulnerability to Change and opportunities sites map, preliminary project area workplace district concepts, and revitalization strategy graphics and a PowerPoint presentation file will be prepared and provided for the third meeting. A summary memorandum will be prepared and submitted following the third meeting.

Task Outline – Freedman Tung + Sasaki

The following outline of tasks is for Freedman Tung + Sasaki.

1. Start-up
 - a. Confirm work program and contract management
 - b. Prepare goals for discussion (coordinate with market/development Subconsultant)
 - c. **Start up meeting with City's Project Manager/Team**
 - i. Schedule & protocols
 - ii. Confirm base information availability and requests
 - iii. Updates on special areas

- iv. Discuss goals
- 2. Existing Conditions Inventory and Base Map Preparation

(Note – City Staff will assist and provide the indicated digital map and database information from the City's GIS database in AutoCad or other usable graphic format, as well as available statistical information to the degree possible, in order to enable the team's provision of the Task 11 Community Presentation as requested by City Staff.)

 - a. Field Reconnaissance and Photography
 - i. Field photography – existing conditions, set up project database
 - ii. Work session with Subconsultant
 - b. Patterns of Existing and Planned Development
 - i. Existing development: add building footprints to parcels map
 - ii. Ground floor uses & business inventory (by building) – as map layer
 - iii. Review/incorporate approved development not yet built
 - iv. Review/incorporate current development proposals
 - v. Block and Street pattern – receive information for diagram
 - vi. Large & small parcel pattern - diagram
 - c. Land Ownership & Control – add to database
 - d. Regulations & Programs review – obtain from City
 - i. Land Use, Zoning, Parking
 - ii. Economic Assistance programs (coordinate w/subconsultant)
 - iii. Other Economic Development entities, Chamber of Commerce, etc. (coordinate w/subconsultant)
 - e. Mobility, Access and Connectivity – obtain from City
 - i. Circulation & traffic info including Kaiser EIR traffic analysis
 - ii. Transit, bike routes, railroad right-of-ways
 - iii. Infrastructure, including digital – consult with City Engineer, review data
 - iv. Receive typical street configurations including Kaiser area/Merced Street improvements for use in section diagrams
 - f. Development propensity
 - i. Brownfields sites – from City
 - ii. Other constraints – flood zones, restrictive covenants, etc.
 - iii. Vulnerability to change – prepare map diagram with identification of areas of high, medium and low propensity to change, based on value data, visual assessment and market factors (in coordination w/subconsultant)
- 3. District Conditions Analysis
 - a. Define Workplace Development Types
 - i. Coordinate w/subconsultant re: targeted Interviews with tenants, brokers, et al
 - ii. Prepare draft list of targeted business types
- 4. Core Team Meeting #1
 - a. Prepare presentation
 - b. Meeting - present draft Task 2 and 3 findings & discuss preliminary opportunity directions (includes travel).

- i. Request follow-up City input on Vulnerability to Change diagram
- 5. Prepare revitalization strategy/investment rationale (in coordination with Subconsultant)
 - a. Prepare strategy, coordinate w/subconsultant, outline next step measures
 - b. Prepare "sketch diagram" of broad-brush revitalization strategy
- 6. **Core Team Meeting #2**
 - a. Prepare presentation
 - b. Meeting - present & discuss draft revitalization strategy concepts and preliminary recommendations (includes travel)**
- 7. Develop focused "Promising Opportunities"
 - a. Targeted Development Scenarios
 - i. Concept A – diagram/sketch, summary
 - ii. Concept B – diagram/sketch, summary
 - b. Strategic placemaking/infrastructure
 - i. Concept A – diagram/sketch, summary
 - ii. Concept B – diagram/sketch, summary
 - c. Identify targeted policy/regulation changes as needed
 - d. Identify near-term supportive program initiatives
 - e. Update list of targeted business types
 - f. Update Vulnerability to Change map diagram and opportunity sites
- 8. **Core Team Meeting #3**
 - a. Prepare presentation
 - b. Meeting - present refined Opportunity Concepts (as listed in Task 7), discuss next steps measures (includes travel)**
- 9. Refine products and message per City Staff comments
- 10. Prepare and submit summary memorandum and graphics
- 11. **Community Presentation**
 - a. Coordination with City Staff
 - b. Prepare presentation
 - c. Presentation - set up, deliver presentation, q + a (includes travel)**
- 12. Project management

Task Outline - Spinnaker Strategies

Spinnaker Strategies will collaborate with FTS and focus on a market study of competitive areas and user needs, identification of developable sites in and near the project area, and City actions to leverage its workplace assets and encourage desired investment and development.

- 1. Prepare Target Market and Competitive Analysis
 - a. Start up meeting or web conference with City's Project Manager.**
 - b. Perform a field survey of nearby comparable East Bay workplace areas such as in West Berkeley, Albany, El Cerrito, and Oakland to determine types of firms and institutions which might be drawn to the project area and San Leandro, and names of brokers and developers.**

- c. Contact the brokers and developers to discuss what kinds of firms and institutions are in the market, where they are locating, their primary needs and what it would take to draw them to San Leandro.
 - d. Prepare summary findings in a map of competing locations and a table describing different types of potential business and institutional users in San Leandro and their location and building needs.
2. Identify potential sites in the Project Area and nearby
- a. Drive the project area and adjacent workplace areas in San Leandro which offer proximity to Kaiser Permanente San Leandro, the Lit San Leandro fiber loop, and shuttle connection to BART (existing or potentially revised).
 - b. Examine building age, configuration (including but not limited to size, scale, height, improvement ratio, build-out, column spacing, and amenities), and surroundings.
 - c. Examine current use, type of user by industry and function, tenure, occupancy levels, and rent levels.
 - d. Determine building and site challenges as aligned with findings from the first task.
 - e. **Core Team Meeting #1 - present draft market findings & discuss preliminary opportunity directions (includes travel).**
3. Identify actions that the City can take
- a. Coordinate with City Staff to determine the range of actions (i.e. regulatory, infrastructure improvements, direct financial assistance, marketing, etc.) and financial magnitude of each.
 - b. **Core Team Meeting # 2 - Attend and present draft revitalization strategy concepts and preliminary recommendations (includes travel).**
 - c. Refine concepts, prioritize, identify cost and likely return on each, time period to carry out and get responses, and responsible parties.
 - d. **Core Team Meeting #3 - Attend and present draft Opportunity Concepts and discuss next step measures (includes travel)**
 - e. Condense the recommendations in the summary memorandum.
 - f. **Community Presentation - Provide presentation materials and/or attend/present via web link (or, web link participation may be applied to one of the Core Team Meetings, such that total air travel trips for the project does not exceed 3 trips).**
4. Project management

STAFFING AND BUDGET

This section provides an estimated budget summary for the Scope of Services and associated Reimbursable Expenses. More detailed staffing and budget information for FTS is attached - the attached staffing and budget spreadsheet details estimated charges for each task and sub-task, as well as estimated hours for all levels of staff working on the project.

- **Professional Services:**

Freedman Tung + Sasaki	\$	56,339
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- **Reimbursable Expenses:**

Reimbursable Project Expenses – FTS only	\$	2,000
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- **Discount allowance**

Relative to requested presentation – FTS only	\$	- 1,339
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- **Subconsultant Fee:**

Spinnaker Strategies:	\$	30,000
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- **Reimbursable Expenses:**

Reimbursable Project Expenses – Spinnaker Strategies only	\$	3,000
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Total Not-to-Exceed Project Budget:	\$	<u>90,000</u>
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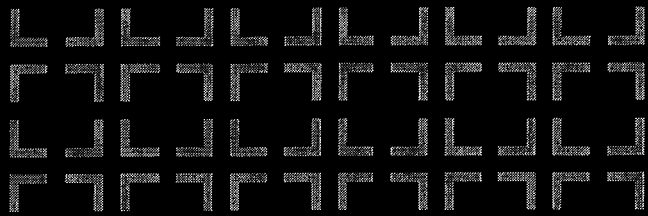
Professional Services for Spinnaker Strategies/Rod Stevens' time for Optional or Additional Services will be billed at Time and Materials at a rate of \$195/hour plus reimbursable expenses.

All other additional FTS services beyond this Scope of Services shall be billed on a time and materials basis upon authorization of Client's Project Manager by e-mail, fax or letter. A rate chart for FTS services is also attached

TERMS

This is a time and materials project with a guaranteed maximum fee for completion of the Work Tasks outlined above. Invoicing shall be monthly, based on time and materials costs accrued during the preceding month. The summary of task-by-task costs on the FTS Staffing & Budget spreadsheets (attached) is provided to indicate the relative proportion of budgeted resources that each FTS task is likely to require. It is provided for informational purposes only and is not intended as a basis for task-by-task contract provisions or invoicing.

EXHIBIT B
COMPENSATION SCHEDULE
(See attached)



FREEDMAN TUNG+ SASAKI URBAN DESIGN

FEE SCHEDULE

The following fee schedule is effective as of August 1, 2007. All new projects for both new and return clients will be budgeted using the following rates:

Hourly Fees for Professional Services:

Principal I	\$ 225 per hour
Principal II	\$ 165 per hour
Senior Associate	\$ 130 per hour
Associate	\$ 110 per hour
Graphic Artist	\$ 100 per hour
Project Urban Designer	\$ 85 per hour
Project Planner	\$ 80 per hour
Project Landscape Designer	\$ 80 per hour
AutoCAD Operator I	\$ 90 per hour
AutoCAD Operator II	\$ 75 per hour
GIS Operator I	\$ 90 per hour
GIS Operator II	\$ 75 per hour
Draftsman	\$ 70 per hour
Database Operator	\$ 70 per hour
Project Assistant I	\$ 65 per hour
Project Assistant II	\$ 55 per hour
Technical Secretary	\$ 55 per hour
Office Assistant	\$ 35 per hour

Speaking Fees (flat fee basis):

Principal	\$ 3,500 + travel expenses
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Miscellaneous Project Expenses:

In addition to hourly rates, project costs will be charged at our standard office rates for expenses incurred when performing professional services on the clients behalf, such as for the following items: document duplication, photography, messenger and courier services, special equipment charges, travel expense for out-of-office services, reimbursements for sub-consultant fees, governmental plan inspection fees, FTS digital image library usage, FTS office database usage, plus other out-of-pocket expenses encountered in the performance of services for the project.

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel reasonably acceptable to City, and hold harmless City and its officers, elected officials, and employees, from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, the reimbursement of 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 active 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.