

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NEW CITY AMERICA, INC.**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and New City America, Inc. ("Consultant") (together referred to as the "Parties") as of July 1, 2012 (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, and incorporated herein, 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 July 1, 2012 and shall end no later than July 31, 2013. 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 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 Section 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 **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 City's Municipal Code, Title 1, Article 6, Chapter 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 Sixty-Five-thousand (\$65,000) 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 quarterly during the term of this Agreement, based on the cost for services performed 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;
- 2.2 Quarterly Payment.** City shall make quarterly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

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

- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are included as part of the cost per task. Additional reimbursable expenses are not chargeable to City.
- 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 beginning any work under 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. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), 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 occurrence basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as 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. 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.
- d. Each insurance policy required by this clause 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.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five 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 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 policies delivered to Consultant by the insurer, including complete copies of all endorsements attached

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

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. 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.

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.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and 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.

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, 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 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.

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, unless this time has been extended 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.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

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.

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

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 Subparagraph 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 applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which 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 any time and without cause upon 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.
- 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 Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the

state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

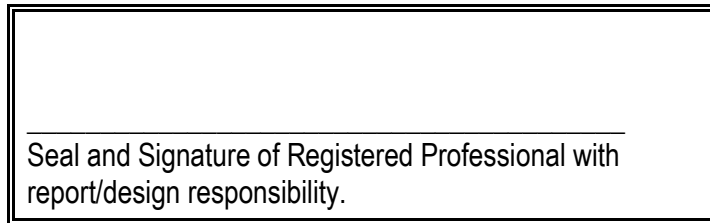
Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the 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 Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Cynthia Battenberg ("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:
New City America, Inc.
Attn: Marco Li Mandri, President
710 W. Ivy Street
San Diego, CA 92101

Any written notice to City shall be sent to:
City of San Leandro
Attn: Cynthia Battenberg, Business Development Manager
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, and B, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Reimbursable expenses and hourly fees

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.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF SAN LEANDRO

CONSULTANT

Chris Zapata, City Manager
Attest:

Marco Li Mandri, President, New City America

Marian Handa, City Clerk

Approved as to Fiscal Authority

David Baum, Finance Director

Account Number

Approved as to Form:

Jayne Williams, City Attorney

EXHIBIT A



May 10, 2012

Ms. Cynthia Battenburg
Business and Development Manager
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Sent via E-Mail: cbattenburg@sanleandro.org
tricard@sanleandro.org

SUBJECT: Response to RFP for CBD/PBID for Downtown San Leandro

Dear Ms. Battenburg:

New City America is pleased to submit this proposal to the Redevelopment Agency and City of San Leandro to establish a PBID or Community Benefit District (CBD) in Downtown San Leandro. One of the best examples of where a property assessment has made a demonstrative and rapid change in a Downtown business district in California can be found in the Little Italy District of Downtown San Diego. This is a CBD that New City America formed and has managed since the late 1990s.

New City America has formed and managed the Little Italy district in the past 12 years making Little Italy, (according to CNN Money Magazine), one of the best examples of neighborhood revitalization in the US today. Little Italy was also designated in April 2010 as the "Smart Growth Community of the Decade" by the Urban Land Institute San Diego/Tijuana Chapter.

The Supreme Court decision on Redevelopment and the State assault on tax increment financing makes creation of an independent, stakeholder controlled financing mechanism for the Downtown San Leandro imperative. This RFP is timely and responsive to the radically changing political conditions in the state.

New City America is the only company outside of New York City that has demonstrated its knowledge of "A to Z" in conceptualizing a program, developed a strategy and created the end



710 W. Ivy Street ■ San Diego, CA 92101 ■ 888-356-2726 ■ 619-233-5009 ■ Fax 619-239-7105
mail@newcityamerica.com ■ www.newcityamerica.com ■ Facebook: New City America, Inc.

result through a new financing mechanism and organization to achieve equivalent urban business district goals.

Our strategy for the Downtown San Leandro would be as follows:

1. Commence working with all of the key players for a property/business owners and stakeholders Downtown CBD/PBID Steering Committee (just after the contract has been awarded);
2. Create a new San Leandro Downtown PBID or Community Benefit District (CBD), Steering Committee to oversee a mail survey to all property owners in the Downtown ascertaining their conceptual support for the creation of a special benefits district in the Downtown;
3. Use the survey to reveal the levels of survey support and/or opposition to the creation of this new financing mechanism district;
4. If there is demonstrable support for the new PBID or CBD, propose to the City Manager and the City Attorney that a new enabling ordinance be adopted based upon the Streets and Highway Code sections 22500 and 36600, Prop 218 and the Charter City authority of the City of San Leandro;
5. Write a “management district plan” under the new enabling ordinance and work with the San Leandro Downtown Stakeholders group to adopt the plan in some form and submit to an assessment engineer for review and approval;
6. Circulate petitions in support of the plan as per the management plan and submit the petitions to the City Manager to trigger an assessment ballot proceeding for the new Special Benefits’ District ;
7. Work with the stakeholders to prepare for the balloting and communicate to all interested parties, in support or opposition, to the proposed new special benefits district;
8. Work with the City on preparing the rolls for the balloting response;
9. When the district has been approved, ensure that the proper data has been submitted to the County in time for the FY 2013-4 property tax billing;
10. If needed, work with the Downtown Stakeholders group to create a new CBD district management corporation which will oversee the new special benefits district under contract with the City;
11. If needed, work with the Stakeholders and City on the transfer of funds to the new district management corporation;
12. If needed, advise the new district management corporation during its first year of operation on issues such as Board selection, Committee structure, policy development, creation of a brand for the Downtown, creating dynamic public rights of way, marketing and special events.

In order to have the San Leandro Downtown PBID or CBD formed in time for the desired completion of the 2013-14 fiscal year, the entire public hearing/assessment ballot proceeding will need to be completed by July 2013. In terms of qualifications, please consider the following relevant facts:

- New City America has formed 62 districts throughout the United States over the past 15 years, *perhaps more than any other company in the US.*
- Being based in Oakland allows for direct access to business and property owners on a moment's notice - as well as the ability to work closely with Downtown stakeholders and City officials in the adoption of this new PBID/CBD.
- New City America has excelled in district management, beautification of the public rights of way and development and management of new public spaces. New City America is ideally suited to form and perhaps even aid in the management of the new PBID/CBD in Downtown San Leandro.

Please call me at (888) 356-2726 should you have any questions or comments on the attached proposal.

I, Marco Li Mandri, President of New City America, will be the main point of contact for this contract throughout the entire process. I can be reached at 888 356-2726.

We hope that you find this proposal to be responsive to the RFP and look forward to being interviewed by the San Leandro Downtown Business Association and City officials for this critical proposal in Downtown.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marco Li Mandri', with a long horizontal flourish extending to the right.

Marco Li Mandri

President, New City America, Inc.

www.newcityamerica.com

Qualification Statement

New City America has been the only company in the state to be creative in the formation of special assessment districts, based upon the provision of Prop 218 of the State Constitution. San Leandro has a tremendous advantage in being a charter city. Your RFP mentions that many residential units could be included in the potential district, and I am sure many tax exempt properties would be included in the new PBID or CBD. We would strongly advise that you NOT use the Streets and Highway Code PBID law due to some fundamental flaws in the law. Those flaws include the following:

1. Your district will include many different land uses, however the PBID law is called the “Business Improvement District” Act of 1994. This makes many tax exempt, social service, residential and other land uses wonder why they would be paying into a special benefit district that is established to promote “business improvement”. Business improvement is a key component of the district, but not the only component of the district.
2. The PBID law has a maximum first year term of 5 years. That amount of time is hardly long enough to make an impact in the district. CBDs can be formed for as long a property owners think is necessary to start the “re-invention” process of the district.
3. The petition triggers the balloting for the district formation. The petition does NOT create the district, the balloting does. However, the petition threshold is higher than the vote needed to establish the district. This is backwards and the extremely high petition threshold prevents many districts from ever being formed. The CBD ordinance could make the petition threshold more reasonable and allow property owners to get to the balloting phase quicker.
4. The PBID law, NOT the state constitution, allows for exemption of tax exempt parcels, even though they will be receiving benefit. The CBD ordinance would have no such clause and would be consistent with Prop 218 in that it would allow for ALL parcels to be assessed as long as they were receiving benefit. The relevant clause in the PBID law is as follows:

36622. The management district plan shall contain all of the following:

(k) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance. The plan may provide that all or any class or category of real property which is exempt by law from real property taxation may nevertheless be included within the boundaries of the district but shall not be subject to assessment on real property.

5. Furthermore, residentially zoned parcels, even if found within, a commercial area, are specifically exempt from paying into the assessment district. The CBD ordinance would have no

such provision as long as those parcels were deriving benefit. Please see the following section of the PBID law.

36632.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

New City America has formed a wide variety of assessment districts in all types of areas and districts in the State of California. We have formed nearly 20 districts since 2000 in the Bay Area alone including the following key areas:

Rockridge/Oakland;

Montclair/Oakland;

Downtown/Oakland

Lake Merritt/Oakland

North Shattuck/Berkeley

Fishermans Wharf/San Francisco

Noe Valley/San Francisco

Yerba Buena/San Francisco

Castro-Upper Market/San Francisco

Willow Glen/San Jose

Also, the San Francisco Tourism Improvement District which was the largest single district ever formed in the US.

Every one of the districts mentioned above were formed under local Community Benefit District enabling ordinances, formed under their Charter City authority. New City America is the only company that gives cities and property owners alike such an option.

Detailed Scope of Work and Budget for Phase 1 and Phase 2 (including not to exceed amounts)

Phase 1 Tasks – District Investigation

<i>Task</i>	<i>Comment</i>	<i>Estimated Time Line and Not to Exceed Amount</i>
<i>Prepare a feasibility analysis for creating a successful PIBD or Community Benefit District to include various options and district boundaries</i>	The Feasibility analysis will be undertaken and submitted to the City and Steering committee upon approval of NCA as the contractor	June – July Meet with City officials to go over the process Estimated cost: \$ 5,000.00
<i>Working with a Steering Committee made up of Downtown Association members and property owners, conduct outreach meetings to obtain feedback from property owner, business owners and other key stakeholders on the PBID effort. Indicate the number of recommended outreach meetings</i>	NCA will work with the new CBD Steering Committee and will present a written survey for response by property owners. The survey will draw out support and opposition to the concept of a special assessments district and provide critical data for contacting property owners in the future. At least three meetings will be held to go over the CBD outreach concept, survey review and determination of the final fate of the investigation	July – September Database created based upon presumed boundaries Survey mailout out and tabulated on a parcel map Survey questions prioritized Recommendations made to the Steering Committee based upon past survey responses: Estimated Cost: \$ 20,000.00
<i>Consideration of a new CBD ordinance</i>	If survey response supports the creation of a new CBD, work with City Manager and City Attorney’s office on creation of new CBD enabling ordinance, as has been done by over 6 different Bay Area Charter cities	September – October Writing and submitting draft CBD ordinance for consideration by the City Attorney, City Manager and City Council
<i>Sub-Total Costs for Investigation of Downtown San Leandro CBD/PBID (including all expenses and travel)</i>		\$ 25,000.00

Phase 2 Tasks – District Formation

Task	Comment	Estimated Time Line and Not to Exceed Amount
<i>Develop a supportable work plan for the PBID</i>	NCA has formed over 60 management plans over the past 15 years in all types of districts and cities. We are fully aware of the PBID law, Prop 218 and court cases related to both. The survey results and the sentiments of the Steering Committee will shape the service levels and frequencies outlined in the plan	October – December Estimated cost: \$14,000.00
<i>Develop a work plan budget</i>	A maximum of four versions of the plan will be submitted to the Steering Committee	See above
<i>Finalize the work plan, recommend the budget and the assessments</i>	Work with the City Attorney and the Assessment Engineer to finalize the plan once the Steering Committee has approved it	December – January Estimated cost: \$5,000.00
<i>Determine the PIBD Board/Governance model/structure</i>	This will be articulated in the plan and presented to the Steering Committee	December - January Estimated cost: \$ 3,000.00
<i>Prepare legal documents including Prop 218 ballots, engineer report, etc.</i>	Will be submitted to the City	February Estimated cost: \$ 3,000.00
<i>Develop the outreach and educational plans, including fliers, brochures and other collateral material</i>	This will be done in conjunction with the Steering Committee, paid via the contract	March – June Estimated Cost: \$ 4,000.00
<i>Conduct a campaign to achieve the 50% support in order to move forward with adoption</i>	Petition campaign will be based upon whether it is a PBID or local enabling ordinance. NCA staff will coordinate with the Steering Committee to get signatures of weighted property owners and supporters	February Estimated Cost: \$ 5,000.00
<i>Lead and coordinate the process for adoption</i>	NCA will do this with the leadership of the Steering Committee	April – July March – June Estimated Cost: \$ 4,000.00
NCA formation costs		\$ 38,000.00
<i>Assessment Engineer Plan Review</i>		Estimated cost: \$ 2,000.00
<i>Sub-Total Costs for the Formation of Downtown San Leandro CBD/PBID (including all expenses and travel)</i>		\$ 40,000.00
<i>Total Not to Exceed Costs</i>	<i>Investigation and Formation plus all expenses</i>	\$ 65,000.00

EXHIBIT B

Hourly Rates for NCA Staff – San Leandro PBID/CBD

The hourly rates listed below are based upon the assumption that this is a time and materials contract, with deliverables expected at various stages of the process.

NEW CITY AMERICA PERSONNEL AND SUB-CONTRACTORS	HOURLY RATE	ESTIMATED TIME PER MONTH OR PROJECT
Marco Li Mandri, President, Project Manager	\$ 300.00 per hour	120 - 150 hours
Shirley Zawadzki, Assistant Project Manager	\$ 115.00 per hour	80 – 100 hours
Monica Montes, Database Survey Work	\$ 70.00 per hour	100 – 120 hours
Chris Gomez, Design and Research	\$ 80.00 per hour	10 hours
John Li Mandri, Mapping, Field work	\$ 60.00 per hour	40 - 60 hours
Laura Li Mandri, Administration	\$ 80.00 per hour	12 - 15 hours
Marlena Zawadzki, Clerical	\$ 40.00 per hour	To be determined
Ed Henning, EHA and Associates, Assessment Engineer	\$2,000 flat fee	

OTHER CONTRACT PROVISIONS:

- ❑ This is a professional services contract with anticipated work product milestones. This estimate includes the costs of an independent Assessment Engineer and possible legal related expenses. New City America, Inc. is an independent, private corporation established in the state of California, which specializes in business community assessment district formation, consulting and administration and will bear all payroll and personnel related costs.
- ❑ Billings will be submitted periodically as direct expenses are incurred. *Direct cost reimbursement payments shall be due upon receipt.* Billings shall be based upon delineated reimbursement of direct expenses, (postage, copies, layout, production, property database subscription services and administrative).
- ❑ The terms and conditions of this proposal shall be honored for 60 days commencing on the date of the cover letter.