

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
TRB + Associates
FOR
Plan Check Services**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and TRB + Associates ("Consultant") (together sometimes referred to as the "Parties") as of July 1, 2021 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2022, 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 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Consultant's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Consultant must submit completed self-certification form and comply with the LWO if covered.
- 1.6 **Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work,

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000), 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, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;

- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

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

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

2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

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

2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit A.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit A, and shall not exceed \$—. 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. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 **Workers' Compensation.**

4.1.1 **General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

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

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

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

4.2 **Commercial General and Automobile Liability Insurance.**

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

4.2.2 **Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

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

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

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

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

4.3 **Professional Liability Insurance.**

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

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

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

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

4.4 Cyber Liability Insurance.

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

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

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

4.4.2 Claims-Made Limitations. The following provisions shall apply if the cyber liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

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

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

4.5 All Policies Requirements.

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

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

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

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

4.5.5 **Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

4.5.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

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 include, but are not limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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

Section 10. MISCELLANEOUS PROVISIONS.

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

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

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

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

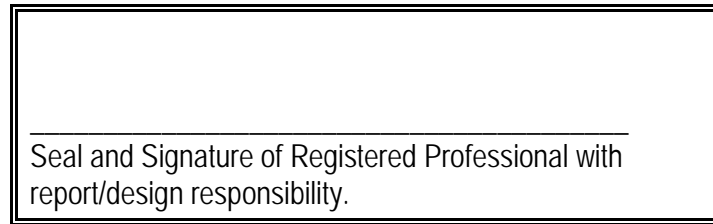
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Michael Jeffery ("Contract Administrator"). 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:

TRB + Associates, Inc.
3180 Crow Canyon Place Suite 216
San Ramon, CA 94583
tbailey@trbplus.com

Any written notice to City shall be sent to:
City of San Leandro, Building and Safety Services
Attn. Michael Jeffery, Chief Building Official
835 East 14th Street
San Leandro, CA 94577

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 9457

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



10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, C, and D [and E] 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/ Compensation Schedule & Reimbursable Expenses
<u>Exhibit B</u>	None
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	COVID-19 Compliance Requirements

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

TRB + Associates, Inc.

Frances Robustelli, City Manager

Todd Bailey, President

Attest:

Consultant's DIR Registration Number
(if applicable)

Leticia I. Miguel, City Clerk

Budget Approved:

Approved as to Fiscal Authority:

Susan Hsieh, Finance Director

010-42-002-5120
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7: Form 700 Required

Tom Liao, Community Development Director

EXHIBIT A

SCOPE OF SERVICES/ COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Scope of Services

Plan Review

TRB and Associates (TRB) is prepared to perform as-needed plan review services for residential, multi-family residential, commercial, and industrial projects encompassing building code, electrical, plumbing, mechanical, fire protection, Title-24 energy, accessibility, and green building standards; as well as grading, drainage, floodplain, wildland urban interface fire severity zone, stormwater, grading, hazardous materials, and State housing law Title-25 factory-built structure considerations, as applicable. Our reviews consider all relevant project documentation including plans, specifications, calculations, and other related correspondence to verify conformance to adopted local codes, ordinances, regulations, and standards, including the following California Building Standards Codes:

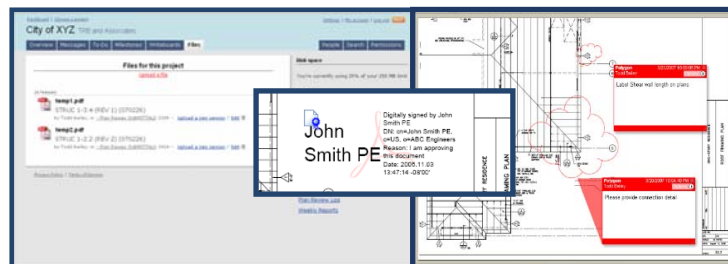
- 2019 California Building Code
- 2019 California Residential Code
- 2019 California Electrical Code
- 2019 California Plumbing Code
- 2019 California Mechanical Code
- 2019 California Fire Code
- 2019 California Energy Code
- 2019 California Green Building Standards Code

Alternate Material and Methods

TRB and Associates recognizes that there are alternate materials and methods of construction that can be used to satisfy and comply with the provisions of the code. Our experience with the use of alternate materials, alternate design and methods of construction enhances our ability to solve specific issues that arise in design and construction.

Electronic Plan Review

As an alternative to review hardcopy media, TRB is equipped to review electronic documents should it be the desire of the City to accept submittals electronically. The staff of TRB has been leaders in the field of digital plan review and workflow management; as such, we have the experience and know-how to efficiently manage the review of electronic documents. In addition to having our own system, our team has extensive experience working with several electronic plan review systems including DigEplan, Bluebeam and ProjectDox.



Plan Review Process

The following process represents an example plan review workflow. Please note that the plan review workflow utilized for the City would align with the City's specific workflow requirements and needs.

Step 1 - Preliminary Discussions:

Prior to beginning our initial plan review project, our Project Manager proposes to conduct a meeting or conference call the City to verify local code policies, documentation procedures, plan processing protocols, plan review checklist items, and scheduling.

Step 2 – Initial Review:

Once we receive a complete set of plan documents, we will perform our plan review in the agreed-upon timeframe, checking for compliance to all applicable code standards.

In general, plan review turnaround timeframe is ten (10) business days for initial reviews and five (5) business days for rechecks and revisions. Timeframes for large-size projects will be confirmed with the City staff prior to proceeding with the review.

All corrections are identified based on compliance with specified codes and regulations and worded so the designer will know what needs attention and how to respond to the issue stated. Generally, corrections are identified in two ways:

- Notes can be made on plans as appropriate and authorized to assist in locating the issue on the plans.
- A correction sheet is generated detailing what items need to be addressed before plans can be approved.

The client will receive a copy of each correction list, as well as a cover memo containing the following:

- The date plans were reviewed by TRB and Associates.
- The date that the applicant/applicant's designee was notified that the plan review was completed.

Step 3 – Transmittal of Plans and Comment Lists for Plan Review:

At the heart of our approach in delivering our services to you, is the recognition that there must be a coordinated effort to track and coordinate all submittals and requests received. To help assure that submittals are properly coordinated and tracked, TRB and Associates has established an internal plan review coordination process to ensure that each plan received for review is properly handled, processed, and returned on time. Our plan tracking procedures are computerized to track each submittal through the review process and maintain accurate and comprehensive records for each submittal.

Upon completion of our review, any comments generated are consolidated into a correction letter which is forwarded to the applicant; at the same time, an electronic copy is sent to the City for its reference.

Step 4 – Rechecks:

Upon receipt of the resubmittal package from the applicant, we will notify the City (via email) that we have received the package. Once we have verified that the resubmittal package is complete, we perform a recheck in the agreed-upon timeframe. This process is repeated until the project plan documents are ready to be recommended for approval.

Step 5 – Plan Approval:

When all review comments are satisfied, we will forward two sets of all relevant correspondence bearing our company's "Reviewed for Code Compliance" stamp (including plans, calculations, and specifications), along with a transmittal letter indicating our recommendation for project approval, and the project file to the City for processing.

Shipping and Delivery of Plans

TRB provides pre-printed overnight shipping labels and/or pickup services to facilitate the transport of plan submittals to our office. Please note that the pickup, shipment and delivery of plan documents and other relevant correspondence to the City is provided at no additional cost to the City.

Building Code Consultation and Code Instruction

TRB is prepared to offer general Building Code Consultation and Code Instruction support to the City and a range of technical subjects. Our staff includes subject-matter experts and award-winning instructors in construction code compliance. Of note, our team members are currently providing extensive training on the 2019 California Building and Residential Codes to TRB clients, local ICC Chapters, and CALBO Education Week attendees.

Building Inspection

TRB is prepared to perform inspection, referring to building plans, structural plans, and material specifications for structures located within the City limits, upon 24-hour notice. Our inspectors are proficient at verifying project conformance to model code standards (Building, Electrical, Mechanical, Plumbing, Green Building and 2019 California Energy Code Energy & Accessibility) and locally adopted ordinances.

TRB provides all labor and technical, administrative, professional, and other personnel; supplies, materials, equipment, and all other resources necessary to perform the specified work. TRB will use existing City forms or can develop correction sheets which meet with the approval of the City and shall maintain written lists of corrections needed to ensure conformance to codes and regulations.

Field Inspection Process

Our experienced team includes individuals with extensive field inspection experience on a range of project assignment types including municipality “Called Inspections,” “Clerk of the Works,” and “Inspector of Record” roles; our team can assist with a broad range of inspection responsibilities. Our scope of service areas includes residential, commercial, and industrial facilities, capital improvement projects, municipal agency services and infrastructure revitalization.

Our inspectors are careful to document all inspection activities, adhere to agency-adopted protocols, and follow field procedures and policies as dictated by the Building Official. TRB will maintain daily inspection records and all necessary documents on file for reference by the City. To confirm, TRB staff are available for applicant inquiries and/or conferences during normal City business hours.

Our inspections include those identified in the California Model Codes and would be amended or modified as directed by the City.

- Foundation Inspection
- Framing Inspection(s)
- Electrical, Mechanical and Plumbing systems inspection
- Lath and/or Gypsum Board Inspection
- Fire Code Inspection (if requested), e.g., fire suppression systems, alarms, etc.
- Concrete Slab or under-floor Inspection
- Energy Efficiency Measures Inspection
- Green Building Inspection
- Fire Resistive Rated Construction Inspection
- Floodplain Inspection
- Final Inspection



Remote Virtual Inspection (RVI) Option

Many public agencies are considering or have started using virtual programs to provide remote inspection services. Several of our clients have successfully implemented a virtual inspection program. The system allows staff to keep doing their jobs while abiding by social-distancing requirements. Programs such as Inspected.com (a teaming effort with the ICC) or Blitzz charge a per inspection fee as well as an annual lease of their software. Inexpensive tools like Facetime, Skype, Google Duo, Zoom and Microsoft Teams are also being used. It is important to note that TRB currently utilizes Microsoft Teams and Facetime for these services but can utilize other programs as requested.

Building Department Administration and Permit Processing

TRB is prepared to provide Administration and Permit Processing services support to the City on an as-needed basis. TRB staff are prepared to work at City offices as an extension of staff under the supervision of the Chief Building Official or their designee with the knowledge, skills, and abilities to perform the following functions:

Permit Technician / Administrative Assistant

- Enter permit and related data into the City permit tracking system.
- Research, compile and prepare various limited reports and presentation graphics.
- Assist inquiries regarding building, planning, and engineering permit requirements, application and permit fees, application filing procedures and processing, and permit status.
- Accept permit and related applications and collect fees.
- Screen plans and application materials for completeness and for conformance with City ordinances standards, policies, and guidelines.
- Review application materials for compliance with conditions of project approval; route plans to other City departments for review; approve and issue minor permits; research and respond to inquiries.

Civil Engineering Plan Review and Construction Inspection

The TRB team is equipped to perform civil engineering plan review and construction inspection support to the City on an as-needed basis. TRB plan reviewers and inspectors will work with City staff to ensure that all work conforms to the project construction documents, Codes and Ordinances including Grading Code, APWA Standard Specifications, AWWA Standards, State (2019 California Energy Code) and Federal (ADA) Building Codes related to site accessibility.

Civil Engineering Plan Review

- Plan review subdivision maps, parcel maps, and improvement drawings. Our project manager shall assign a California Licensed Civil or Structural engineer who is qualified to review subdivision maps, parcel maps, site development plans and construction drawings.
- Maintain engineering records.
- Provide engineering advice and recommendations to Planning, Building and Public Works divisions.
- Provide consultation regarding current development review to the Chief Building Official, Planning Manager and Engineer.
- Assist City staff with code interpretation and application of state and federal regulations.
- Perform related duties as assigned by City.

Construction Inspection

- Oversee Quality Assurance of the construction activities to verify conformance to plans and specifications.
- Document all work, contractor and subcontractor personnel and equipment, and field orders daily.
- Maintain onsite project log and as-built schedule report. Prepare daily reports of observations and activities.
- Maintain a daily inspection report containing a record of weather, contractors, work onsite, number of workers, work accomplished, problems encountered, solutions agreed upon, and other similar relevant data as directed by City.
- Perform daily photo-documentation of the progress of the project in accordance with City practice.
- Monitor establishment and application of appropriate Contractor site safety programs.
- Monitor and report on applicable Erosion Control and SWPP provisions.
- Perform related duties as assigned by the City.

Compensation Schedule and Reimbursable Expenses

TRB and Associates offers the following fixed-fee and hourly rate schedules for services provided. Please note that Building Plan Review services are rendered on either a fixed fee or hourly rate basis, as noted below. If additional services are requested such as Code Consultation & Code Instruction, Fire Plan Review, Building Inspection, Permit Processing, Staff Augmentation and Other services (e.g., CASp consulting), those services can be provided on an hourly basis at rates shown in the provided Schedule of Hourly Rates and Reimbursables.

Plan Review Services

Our plan review fees may be calculated as a percentage of the total Building Division Plan Check Fee collected by the City. The fee compensation shown covers three total plan review cycles – the initial plan review and two rechecks. Any further review cycles which become necessary and reviews of revisions to approved plans would be billed based upon a negotiated hourly rate. Please note that the turnaround timeframe for providing expedited and express plan reviews would be negotiated/mutually agreed upon prior to commencement of the review. Please also note that all plan reviews are subject to a minimum \$250 fee.

Turnaround Timeframe (in business days)	Structural Only Review	M/E/P Only Review	Complete Review (Structural, Life Safety/Disabled Access, M/E/P, Green, Title 24 Energy)
Standard* - 10 days first check - 5 days rechecks	50%	50%	65%
Expedited** - 5 to 7 days first check - 5 days rechecks	Standard fee plus an additional 50 percent	Standard fee plus an additional 50 percent	Standard fee plus an additional 50 percent

* For exceptionally large/complex projects, 15-day first check and 10 day rechecks may apply, as mutually agreed upon prior to commencement of review.

** Turnaround timeframe would be mutually agreed upon prior to commencement of work.

*** Note: For other review scope combinations not specifically identified in the above table (e.g. Electrical Only, Mechanical/Plumbing Only, etc.), the fee compensation would be on an hourly basis.

Please note that the pickup, shipment, and delivery of hardcopy and/or electronic plan documents and other relevant correspondence to the City is included in the above-noted cost.

Hourly Rate Schedule

The following billing rates apply for services rendered on an hourly basis:

<u>Position</u>	<u>Hourly Rate</u>
Principal	\$165.00
Project / Division Manager	\$150.00
Building Official	\$145.00
Assistant Building Official	\$135.00
Plan Review Task Leader	\$145.00
Senior Plan Review Engineer/Architect	\$130.00
Senior Plans Examiner (Building & Fire)	\$125.00
Plan Review Engineer/Architect	\$115.00
Plans Examiner (Building & Fire)	\$110.00
Engineering Technician	\$ 90.00
Permit Technician III	\$ 85.00
Permit Technician II	\$ 75.00
Permit Technician I	\$ 65.00
Clerical/Admin	\$ 58.00
Fire Protection Engineer	\$185.00
CASp Certified Inspector/Examiner	\$125.00
Grading/Storm Water Plan Review Engineer	\$185.00
QSP Storm Water Inspector	\$185.00
Inspection Task Leader / Inspector of Record	\$135.00
Supervising Inspector	\$120.00
Senior Inspector III	\$110.00
Senior Inspector II	\$105.00
Senior Inspector I	\$100.00
Inspector II	\$ 90.00
Inspector I	\$ 85.00
Intern Inspector	\$ 70.00

- Overtime, Emergency, Expedited, and After-hours work is billed at the above-noted rates plus an additional 50 percent (Note that no overtime will be charged without client authorization)
- Project inspections subject to prevailing wage requirements are at the above-published rates plus 30 percent.
- All requested inspection and other staff-augmentation services are subject to a minimum 4-hour fee.
- Reimbursement for direct expenses, incurred in connection with the work, will be at cost plus 15 percent.
- Reimbursement for non-City vehicles used in connection with the work will be at the current IRS rate plus 20 percent per mile.
- Other in-house charges for prints, reproductions and equipment use, etc. will be at standard company rates.

The above Schedule is valid through June 30, 2022 and may be adjusted thereafter in accordance with City requirements.*

**Any requests for a rate increase after the first year will be submitted in writing at least 30 days in advance to the Building Safety Division*

EXHIBIT B

NONE

EXHIBIT C

INDEMNIFICATION

- A. Consultant shall, to the extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.
- B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.
- C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the City.
- D. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.
- E. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

EXHIBIT D

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

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

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