

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
RMC WATER AND ENVIRONMENT**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and RMC Water and Environment (“Consultant”) (together sometimes referred to as the “Parties”) as of _____, 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 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, 2014, or the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant’s obligations hereunder.
- 1.5 **Public Works Requirements.** Because the services described in Exhibit A include “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit D.
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder’s attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Three Hundred Forty Five Thousand Seven Hundred Eighty Dollars, \$345,780, 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 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.

2.4 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.

2.5 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed \$88,900.00. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.6 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.7 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.

2.8 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 California 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 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 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 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.

4.4 All Policies Requirements.

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

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

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

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

4.4.5 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 certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

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

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

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System

(PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 60 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:

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

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing

party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

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

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

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

Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

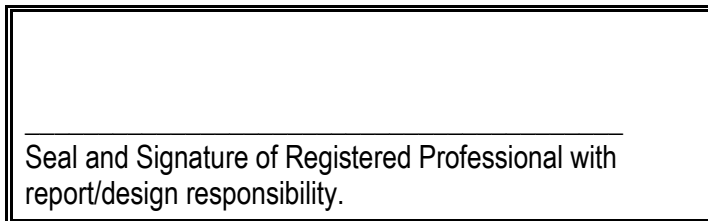
- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by John O'Driscoll ("Contract Administrator"). All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

Gisa Ju, P.E.
RMC Water and Environment
2001 North Main Street, Suite 400
Walnut Creek, CA 94596
925-627-4139

Any written notice to City shall be sent to:
John O'Driscoll, P.E.
City of San Leandro
835 East 14th Street
San Leandro, CA 94577
510-577-3494

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

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



10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C and D represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

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

CITY OF SAN LEANDRO

CONSULTANT

Chris Zapata, City Manager

Dave Richardson, Vice President

Attest:

Marian Handa, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number 593-52-255-5120

Approved as to Form:

Jayne W. Williams, City Attorney

1969630.1

EXHIBIT A

SCOPE OF SERVICES

Project Description

The City of San Leandro operates a sanitary sewer collection system and sewage treatment plant that serves the northern two thirds of the City. The collection system has over 120 miles of collection pipe in diameters from 4" to 42" and 13 lift stations. The system is mapped in Arc Gis software with attributes stored in an excel spreadsheet. The City also uses ICOM3 software to assist in management the collection system. When originally installed some portions of the collection system had separate parallel industrial and residential sewers, but all pipes are now used indiscriminately. The sanitary collection system does not intentionally collect storm water as the City has a separate storm water collection system, but a few storm water lines have been accidentally connected to the sanitary system. The sanitary collection system delivers sanitary sewage to the City's treatment plant at 3000 Davis Street with the exception of the sewage collected in the Valley area. The Valley area is an area roughly bounded by Interstate 880, Washington Avenue, and Fremont Avenue / Portola Drive within which the City owns and maintains the collection system but the sewage is delivered to Oro Loma Sanitary District for treatment.

The majority of the effluent treated at 3000 Davis Street is piped to ultimate discharge by the East Bay Dischargers Authority (EBDA) but a small percentage is reclaimed by EBMUD or is used to water the municipal golf course. The City has a permit from the Regional Water Control Board that allows treatment of 7.6 mgd average dry weather flow, and 22.3 mgd design peak wet weather flow. Actual flows are typically between 4 and 5 mgd dry weather and up to 22.3 mgd wet weather. The plant is currently receiving significant improvements intended to improve treatment efficiency and restore capacity to the permitted level.

This contract is for preparing a capacity study and master plan of the City's sanitary sewer collection system. RMC will prepare draft Technical Memorandum (TMs) at milestone points of the project as indicated in the task descriptions below. The purpose of the TMs will be to document and communicate work completed and present interim findings, results, and recommendations for the City's review. City's comments on the draft TMs will be incorporated into the Master Plan Report. Unless specifically noted, it is assumed that draft deliverables will be submitted electronically.

The deliverable schedules indicated in the tasks below are based on receipt of Notice to Proceed by January 29, 2013.

Task 1 – Project Management and Coordination

This task includes the following activities:

- Progress Meetings. In addition to frequent contact via email and telephone, RMC will participate in periodic progress meetings with the City to discuss progress to date, findings, outstanding issues and next steps. At a minimum, progress meetings will be held with City staff following submittal of all draft deliverables to discuss the findings and any review comments.
- Progress Reporting. RMC will prepare monthly progress reports to summarize project activities and budget/schedule status.

- QA/QC Activities. RMC will use its Deltek QA/QC system to ensure that every major deliverable is identified and tracked for review. All data, results, and deliverables will be reviewed prior to submittal to the City.

Task 1 Deliverables:

- Agendas and meeting minutes for the kickoff meeting and project progress meetings
- Monthly invoices and project progress reports

Task 1 Assumptions:

- Five (5) progress meetings at City offices, in addition to telephone conference calls as needed.

Task 1 Schedule:

- Meeting minutes to be delivered within one week of meetings.

Task 2 – Data Collection and Review

The City has provided copies of previous reports, sewer system mapping, and GIS data in the proposal and initial (flow monitoring plan) phases of the project. RMC will prepare an initial request list of additional data and information that may be relevant to the Master Plan. For information required from other City departments or outside sources (e.g., City Planning Department), RMC will coordinate the data collection. The information may include additional data, facility information and other required information including but not limited to:

- Digital mapping related to the City’s general plan or other specific planning areas , if available;
- Record drawings of any sewer facilities for which complete data is not included in the current GIS (if not already provided);
- Pump station SCADA data, record drawings and operating information;
- Latest County tax assessor’s database, which includes parcel land use information, or parcel data available from the City related to land use, dwelling units, lot sizes, etc ;
- Available water consumption data by customer account;
- Agreement with Oro Loma Sanitary District for conveyance and treatment of Valley Area flows.
- SSO and blockage reports, maintenance logs and other data relating to known problem areas in the collection system;
- Existing Standard Operating Procedures (SOPs), maintenance manuals, or similar for sewers and pump stations;
- Relevant inventory and maintenance history/scheduling data from ICOM3 maintenance management system or other sources;
- Available CCTV inspection data.

RMC will review the data in order to assess the information available for preparing the Master Plan. For any data that is not available but critical for the Master Plan, RMC will recommend an approach for obtaining the information or making use of existing data, and will discuss this approach with the City.

Task 2 Deliverables:

- Data request list

Task 2 Schedule:

- Data request list shall be submitted within two weeks of notice to proceed.

Task 3 – Flow Monitoring

Flow monitoring is necessary to quantify dry and wet weather flows in the system and to calibrate the sewer system hydraulic model. A flow monitoring plan and site reconnaissance was conducted under a previous contract. This task involves the following activities:

After the City's approval of the final flow-monitoring plan and traffic control plans, RMC (or their sub consultant) will install, calibrate and maintain the flow meters for up to 2 months during the rainy season and remove the flow meters at the end of this monitoring period. In addition, 3 recording rain gauges will also be installed to capture rainfall data during the flow monitoring period. RMC will review flow monitoring site reports to confirm final flow meter locations and will review the flow monitoring data every two to three weeks during the flow monitoring periods to check data quality and consistency. RMC will provide final electronic data files (15-minute data) at the conclusion of the monitoring.

Task 3 Deliverables:

- Flow monitoring data for each site including depth, velocity, flow rate, and rainfall in MS Excel format

Task 3 Assumptions:

- 21 area-velocity flow meters and 3 rain gauges will be installed for a period of up to two months during the 2012/13 wet weather season.
- Flow meters will be installed during late January or early February 2013.
- City will provide any required encroachment permit(s) for work in City streets.

Task 3 Schedule:

- Flow monitoring data shall be submitted by June 30, 2013.

Task 4 – Hydraulic Model Development

Under this task, RMC will develop and calibrate a hydraulic model of the collection system. RMC will use its own software licenses for the modeling work; however, all model files developed and generated as part of the project will be provided to the City at project conclusion. RMC will use InfoWorks CS, a fully dynamic hydraulic modeling program from Innowyze, for this work.

Subtask 4.1 Develop Model Network

This subtask includes the following activities:

- Develop and Validate Model Network. Using data from the City's GIS and asset inventory database, RMC will develop a hydraulic model of the sewer system. Available sewer record drawings and data from the City's previous Hydra model (as documented in the Appendix to the City's 1993 Master Plan report) and H2OMap SWMM model of the Transit Oriented Development (TOD) area (if available from the City) will be used to supplement the data in GIS and existing databases. The modeled sewer network will include, at a minimum, all sewers 10 inches and larger (i.e., the "trunk network") and critical smaller diameter pipes, including those that serve areas of significant size, are known or suspected by City staff to have capacity problems, or serve areas of potential future growth or redevelopment. Less critical smaller-diameter pipelines will not be included in the initial model but could be added in the future as needed. The model will also include any pump stations located within the trunk network. Following the construction of the model database, a QA/QC process called "model validation," will be used to verify the data before

beginning any model runs. This process includes checking network connectivity and data completeness and reasonableness for apparent discrepancies (e.g., negative pipe slopes, outlet pipe invert elevations higher than inlet invert elevations etc.). Missing or suspect data will be resolved to the extent possible through review of available record drawings or field verification. The source of all new or updated data in the model will be documented directly in the model database using InfoWorks “flags” and notes.

- Delineate Subbasins and Populate Model. RMC will review and refine (further subdivide) the previous model subcatchment (subbasin) boundaries and assign the model loads and flow factors developed as part of Subtask 4.2 to the subcatchments.

Subtask 4.2 Develop Model Loads and Preliminary Flow Factors

This subtask includes the following activities:

- Estimates of Existing Wastewater Flows. RMC will review existing parcel, customer billing and water use data, land use type, number and type of dwelling units, etc. that are collected under Task 2 to determine the best approach for using this data to estimate existing base wastewater flows. The exact methodology to be used to develop model loadings will depend on the format and completeness of available parcel-based data; however, it is anticipated that EBMUD water use records will be the primary source of data for developing model loads. If sufficient data is not available to generate loadings on a parcel basis, then 2010 census data at the block level may be used for this purpose. Commercial, industrial, and/or institutional users which may contribute significantly greater unit flows than average shall be identified and investigated individually through discussions with City staff.
- Estimates of Future Wastewater Flows. RMC will review the City’s General Plan, TOD Strategy and 2010 downtown/BART TOD infrastructure study, and other relevant planning documents, and will coordinate with the City Planning Department staff to discuss specific planning issues and potential growth or redevelopment areas in the City. Using this information, estimates of future wastewater flows based on the type, density, and location of projected future development and redevelopment areas will be developed for a 30-year planning horizon as specified by the City. To the extent that the information is available, these estimates will be compiled at the parcel level to maximize the accuracy of the data. The projected timing of any growth/redevelopment will also be discussed to provide input on potential phasing of collection system improvement projects identified as part of the Master Plan.
- Preliminary Design Flow Criteria. RMC will develop the design criteria to be used to estimate wastewater flows, including unit base wastewater flow factors for residential and non-residential land uses; diurnal base wastewater flow patterns; and infiltration/inflow parameters. These criteria will be developed based on the flow monitoring data from Task 3 plus RMC’s experience with similar Bay Area systems. These criteria will be verified/refined through the model calibration process under Subtask 4.3.

Subtask 4.3 Calibrate Model

- Calibrate Model. RMC will run the model under existing conditions and compare the computed dry weather and wet weather flow hydrographs to observed flow monitoring data and pump station and treatment plant SCADA data. Modeling parameters such as unit flow rates, diurnal curves, and I/I factors will be adjusted as needed to achieve a reasonable match for modeled to metered flows.

Task 4 Deliverables:

- Calibrated hydraulic model for the sewer system (model files plus data exported to GIS and/or Excel tables)

Task 4 Assumptions:

- RMC will use its own model licenses for the work under this project
- City staff will provide record drawings and assistance with field verification if needed to obtain or confirm data for critical sewers included within the model

Task 4 Schedule:

- Model shall be delivered at time of submittal of final deliverables under Task 9

Task 5 – System Performance Evaluation and Improvement Needs

This task involves evaluation of collection system capacity and identification of specific improvement needs to address any deficiencies.

Subtask 5.1 Establish Capacity Evaluation and Design Criteria and Level of Service

RMC will propose appropriate design and hydraulic criteria to be used for assessing the capacity of existing sewer facilities and sizing new facilities, including Manning's "n" factor for gravity sewers or Hazen-Williams "C" for force mains, maximum d/D values, minimum and maximum velocities, slopes, and depth of cover, and pump station design and reliability considerations (e.g., firm capacity). RMC will also identify alternative approaches for defining an appropriate design storm or storms, including use of an actual historical storm or a synthetic event based on rainfall intensity-duration-frequency statistics or other methods such as the SCS Type IA distribution curve. RMC will propose criteria for evaluating the performance of the system under the design event (e.g., acceptable level of surcharge) that reflects the City's desired level of service and risk acceptance. The proposed criteria will be reviewed and discussed with City staff.

Subtask 5.2 Evaluate Existing System Performance

Using the hydraulic model and based on the criteria established in Subtask 5.1, RMC will evaluate the performance of the existing gravity trunk sewers, pump stations, and force mains under existing and future dry and design wet weather flows. Capacity deficiencies will be identified based on the performance criteria established in Subtask 5.1. Thematic maps and hydraulic grade line plots will be prepared to present the identified capacity problem areas.

Subtask 5.3 Develop Capacity Improvement Projects

This subtask includes the following activities:

- Development of Alternatives and Preliminary Solutions. Using an iterative simulation process and engineering judgment, RMC will develop and test solutions to identified capacity deficiencies. Solutions may include upsizing or paralleling existing pipes, upgrading pump stations that lack sufficient firm capacity, consolidating flows in new sewers or existing sewers with available capacity, implementing flow diversions at critical locations, or sewer rehabilitation to reduce I/I. Based on preliminary model results and discussion with City staff, the alternatives will be refined and focused on the most viable solutions for more detailed project development.
- Analysis of Proposed Solutions. RMC will evaluate potential project alternatives in further detail, including review of projects sites on aerial mapping or in the field. The purpose of these

evaluations is to confirm the suitability of pipeline alignments, and identify any design, constructability, permitting, or environmental issues that could potentially be “fatal flaws” or that should be considered in project development. RMC will develop planning level cost estimates based on the most viable construction method for each potential solution for the identified deficiencies.

Subtask 5.4 Evaluate Alternatives for Valley Area

RMC will review the alternatives for conveying Valley Area flows to the San Leandro WPCP that were developed in the 1998 Valley Area Wastewater Export Study . RMC will use the hydraulic model to confirm or update the required facilities for conveying flow to the San Leandro WPCP under each of those alternatives, and will update the estimated costs of the alternatives. The alternatives will be compared to the estimated future costs of continued conveyance and treatment at Oro Loma Sanitary District (OLSD). Potential future capital projects that might be needed by Oro Loma Sanitary District (OLSD) to convey Valley Area flows will be discussed with the District. The alternatives will be compared on the basis of capital and operating costs (including cost of pumping and treatment), constructability, system reliability, community and environmental impact, permitting requirements, and other factors to be discussed with the City.

Task 5 Deliverables:

- Thematic maps and hydraulic grade line plots of predicted capacity deficiencies
- Concepts and estimated costs of proposed Capacity Improvements
- Concepts and estimated costs of Valley Area Alternatives.

Task 5 Assumptions:

- City will provide cost of treatment at San Leandro WPCP and facilitate obtaining similar information from OLSD.
- No new alternatives for the Valley Area will be developed.

Task 5 Schedule:

- All items delivered by September 30, 2013

Task 6 – Lift Station Reliability Evaluation

This task will evaluate the length of time that each of the City’s 13 lift stations may be out of service without resulting in an overflow under dry and wet weather conditions, and identify potential opportunities for increasing lift station reliability

Subtask 6.1 Determine Lift Station Time to Overflow

Using the information developed in previous tasks, RMC will estimate the dry and wet weather flows for each lift station. For lift stations included in the modeled system, the hydraulic model will be used to simulate the shut-down of each station under typical dry weather diurnal flows and under both a design storm wet weather flow condition and a more moderate storm event. The resulting hydraulic grade line results from the model, elevation data for surrounding manholes in the system, and pump station design drawings will be used to identify the likely overflow points under a system shut-down and the time to overflow. For lift stations not included in the model, flow estimates will be calculated based on the tributary area of each lift station and the flow factors developed under Subtask 4.2, and the available storage upstream of the station will be estimated based on the wet well volume and upstream piping.

Subtask 6.2 Develop Options to Increase Time to Overflow

For each lift station, RMC will assess the potential for increasing the amount of time the station may be out of service before a surface overflow occurs. At a minimum, this will include the following:

- Evaluate the impact of modifying pump station controls to maximize available storage
- Evaluate the feasibility of installing overflow pipelines from the station wet well to adjacent sewers, or through passive diversions in the collection system upstream of the pump station
- Evaluate the potential for wet well expansion or the addition of on-site emergency storage
- Assess potential for the addition of permanent standby power or emergency pump connections, where not already present

Based on the above evaluations, RMC will recommend options for increasing time to overflow at each lift station, including conceptual level estimates of the cost of the options.

Task 6 Deliverables:

- TM on Lift Station Reliability Evaluation including time each station may be off line without an overflow, potential options for increasing time to overflow, and conceptual estimates of costs of the options.

Task 6 Schedule:

- All items delivered by September 30, 2013

Task 7 – Review of Sewer Maintenance, Inspection, and Rehabilitation Programs

This task involves working with the City to evaluate its current sewer system operation & maintenance (O&M), inspection, condition assessment and rehabilitation programs, and helping the City develop business processes to effectively and efficiently manage its collection system.

Subtask 7.1 Conduct Staff Interviews and Prepare O&M Assessment

RMC will conduct interviews with City staff responsible for various aspects of collection system maintenance and management. The interviews would be scheduled to take place over a two-day period and include personnel involved in all aspects of sewer system management, including O&M staff and others responsible for data management, FOG control, review of inspection data, and rehabilitation decision-making. Based on these interviews, RMC will prepare an assessment report (TM) summarizing the findings of the assessment and identifying areas for potential improvement.

Subtask 7.2 Prepare Workload Estimate and Staffing Plan

Based on data collected during the two-day site visit and follow-up data requests, RMC will prepare a workload estimate and staffing plan to support prioritization of maintenance activities and identification in changes to staffing and equipment required to meet the overall goals for maintaining the sewer system.

Subtask 7.3 Develop Condition Assessment and Rehabilitation Decision Process

RMC will review the current approach utilized by the City to assess sewer condition and determine rehabilitation needs. RMC will work with City staff to develop a well-documented and objective decision process to identify the specific defects requiring corrective action, along with specific maintenance, repair, rehabilitation, or replacement methods to employ to address defects identified through CCTV inspection. The decision process will be focused on correcting severe structural defects and areas of excessive maintenance demand.

Task 7 Deliverables:

- TM on Sewer Maintenance, Inspection, and Rehabilitation Program Review, including workload and staffing needs estimate
- TM on condition assessment and rehabilitation decision process

Task 7 Assumptions:

- City will ensure staff availability for the 2-day interview sessions for the O&M assessment.

Task 7 Schedule:

- All items delivered by July 1, 2013

Task 8 – Project Prioritization

In conjunction with City staff, RMC will prioritize the recommended sewer improvement projects. Prioritization criteria will include the severity of existing capacity deficiencies (as indicated by the extent of surcharge or potential overflows predicted by the model), the relative impact of the predicted surcharge or potential overflows (on public health and safety, water quality, business and community facilities, etc.), the timing of proposed development/redevelopment, maintenance history and/or sewer condition information, and coordination with other City projects (e.g., road improvements). Based on the criteria above, the recommended projects will be assigned to priority groups based on their relative priority.

Task 8 Deliverables:

- List of prioritized projects (to be incorporated into Master Plan report)

Task 8 Schedule:

- Prioritized project list shall be submitted by November 1, 2013

Task 9 Master Plan Preparation

This task involves compiling the work conducted as part of the earlier tasks into a comprehensive Sewer System Master Plan report for use by the City.

- Draft Master Plan. RMC will incorporate the findings and recommendations of the project into a comprehensive Master Plan report. This report will document the methodology and assumptions used to develop the hydraulic model, the recommended performance and design criteria, model results, recommended improvements and sewer system CIP, and results and recommendations of the sewer maintenance assessment. The report appendices will contain supporting data including flow monitoring data plots, model data and results tables, and other pertinent information. The report will include an Executive Summary section that can be extracted as a stand-alone document and provided to City management and Council members or other interested parties.
- Final Sewer Master Plan. RMC will prepare a final Sewer Master Plan report, incorporating the City's comments on the Draft Master Plan. The final plan will serve as a basis for future master plan updates.

Task 9 Deliverables:

- Draft Sewer Master Plan

- Final Sewer Master Plan (ten hard copies plus editable electronic files of report text and tables in MS Word or Excel, and .pdf files of map figures)

Task 9 Schedule:

- Deliver draft plan by November 30, 2013
- Deliver final plan three weeks after receiving comments on draft plan

OPTIONAL TASK

City shall provide written direction to proceed with the following task if desired. Consultant shall not begin work on this task unless written direction is received. The fee for this task is included in the not to exceed amount listed in section 2. Should the City decide this task is not desired the not to exceed amount in section 2 will be reduced by \$18,200 and the reimbursable amount in section 2.5 will be reduced by \$700.

Task 10 Review and Recommend Improvements for Key O&M Business Processes

RMC will assist the City in refining the key business processes that will allow it to effectively utilize its ICOM3 maintenance management system. RMC will map and review how staff are using the system to create, plan, schedule, and track work orders for planned and unplanned work activities. RMC will also map and review how staff is using the ICOM3 maintenance data to make asset-based decisions on future maintenance frequencies. RMC will then recommend business process changes to improve these processes. Recommendations for creating, planning, scheduling, and tracking work orders will focus on ensuring all work activities are accurately tracked in ICOM3, resulting in analyzable and reliable data for use in managing the system and meeting regulatory requirements for tracking maintenance activities. Recommendations for improving the City's process for making asset-based decision on future maintenance frequencies will focus on implementation of a process to collect and utilize code-based feedback from maintenance crews and an objective decision tree for analyzing this feedback to optimize collection system maintenance activities.

Task 10 Deliverables:

- TM on Business Process Review, including processes for:
 - Creation, planning, scheduling, tracking, and reporting of maintenance activities
 - Maintenance frequency updates

Task 10 Assumptions:

- City will ensure staff availability for one-on-one meetings with key staff to support mapping of current business processes.
- Decision to proceed with or abandon task will be made within 4 weeks of completion of task 7.

Task 10 Schedule:

- All items delivered within four months following City's authorization to proceed with this task

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Item	Reimbursement rate
Sub-consultant	Cost + 10%
Vehicle mileage	As specified by IRS
Outside reproduction	Cost + 10%
Delivery	Cost + 10%
Travel expenses	Cost + 10%

Billing Classifications 2013 Rates	
Engineer-Planner-Scientist	EPS-1 \$ 140
	EPS-2 \$ 150
	EPS-3 \$ 160
	EPS-4 \$ 175
	EPS-5 \$ 185
	EPS-6 \$ 195
	EPS-7 \$ 205
	EPS-8 \$ 215
	EPS-9 \$ 225
	EPS-10 \$ 240
	EPS-11 \$ 255
	EPS-12 \$ 265
	EPS-13 \$ 275
	EPS-14 \$ 285
Technicians	Tech-1 \$ 120
	Tech-2 \$ 125
	Tech-3 \$ 130
	Tech-4 \$ 135
	Tech-5 \$ 140
	Tech-6 \$ 145
	Tech-7 \$ 150
Administrative	AD-1 \$ 90
	AD-2 \$ 95
	AD-3 \$ 100
	AD-4 \$ 110
	AD-5 \$ 120
	AD-6 \$ 130

EXHIBIT C

INDEMNIFICATION

- A. Consultant shall, to the extent permitted by law, indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.
- B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant.
- C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the City.
- D. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement.

EXHIBIT D

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

HOURS OF WORK:

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

WAGES:

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

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

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

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

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

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.