

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
AARON WELCH PLANNING  
FOR  
ZONING CODE AMENDMENTS TO IMPLEMENT THE BAY FAIR TRANSIT ORIENTED DEVELOPMENT  
SPECIFIC PLAN**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and Aaron Welch Planning (“Consultant”) (together sometimes referred to as the “Parties”) as of July 15, 2019 (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, 2020, 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). 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 SEVENTY THOUSAND DOLLARS (\$70,000.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**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 B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$0. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**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 certifies that Worker's Compensation insurance requirements under California Law do not apply to himself or his company.

**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 All Policies Requirements.**

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

- 4.4.2 Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.4.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, 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 Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- 4.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.5 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.
- 4.6 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 10 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 Avalon Schultz, Principal Planner (“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:  
Aaron Welch  
Principal  
Aaron Welch Planning  
1226 Rose Street  
Berkeley, Ca 94702

Any written notice to City shall be sent to:  
Avalon Schultz, AICP  
Principal Planner  
City of San Leandro  
835 E. 14<sup>th</sup> Street  
San Leandro, CA 94577

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

**10.11 Reserved.**

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

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification

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

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

**SIGNATURES ON FOLLOWING PAGE**

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

CITY OF SAN LEANDRO

Aaron Welch Planning

\_\_\_\_\_  
Jeff Kay, City Manager

\_\_\_\_\_  
Aaron Welch, Principal

Attest:

\_\_\_\_\_  
Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

\_\_\_\_\_  
David Baum, Finance Director

010-41-001-5120

\_\_\_\_\_  
Account Number

Approved as to Form:

\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

Per Section 10.7:

Form 700 Not Required

Form 700 Required

\_\_\_\_\_  
Thomas Liao, Community Development Director

**EXHIBIT A**  
**SCOPE OF SERVICES**

# Scope of Work

The overall strategy for completing this zoning code update will be to incorporate relevant development standards from the Bay Fair Specific Plan into the zoning code for the new B-TOD zoning district. There will also be related General Plan amendments related to the Bay Fair TOD Plan and final zoning code amendments under this contract. It is assumed that the new B-TOD zoning district will implement the vision set forth in the Bay Fair Specific Plan, and that this vision will not change as part of this re-zoning. The goal of this process is to effectively translate the vision of the Specific Plan into zoning standards that will achieve the vision articulated in the Specific Plan. The zoning district will incorporate just the primary development controls that already exist in the zoning code – such as height, lot coverage, required open space, and land use – while deferring to the Specific Plan itself for more detailed guidance, intent statements, and guidelines. Tasks within this budget may be subject to change, but not without City approval.

Task	Estimated Hours	Not-to-Exceed Cost
<p><b>1. Regular check-ins and project management:</b> Conduct an initial brainstorming and strategy meeting (meeting of up to two hours, plus up to four hours of additional meeting prep) to determine overall structure and desired content of the new Bay Fair TOD zoning district and implementation strategy. The project kick-off meeting will include discussion of potential direction and strategies on key project topics, which could include:</p> <ul style="list-style-type: none"> <li>• Strategies for how the zoning should address the by-right approval process, including the following key questions: Should by-right approval be based on a level of density? Should it be limited to ½ mile radius around BART? Should it be dependent on other features like parcel size?</li> <li>• Strategies for how the zoning should address parking standards, including the following key questions: Should parking standards be phased in over time or all at once? Should parking standards be aligned with citywide standards?</li> <li>• Discussion of which design policies in the Specific Plan should be included as objective development standards, including the following key questions: How should the City ensure quality design without being overly prescriptive? How will this align with any parallel efforts to create citywide Objective Design Standards?</li> </ul> <p>Conduct regular check-ins and communication with City staff and subconsultants throughout the course of the project.</p>	24	\$3,840
<p><b>2. Public Meetings:</b> Conduct the following meetings in coordination with City staff:</p> <ul style="list-style-type: none"> <li>• <b>Two stakeholder group meetings.</b> Hold up to two stakeholder group meetings to discuss and vet the proposed Bay Fair Zoning Update, one before the zoning update draft is prepared, and one during public review of the draft. Potential stakeholder group participants are anticipated to be key property owners who participated in the Bay Fair Specific Plan process, such as the Bay Fair Mall owners and BART. Consultant will coordinate with staff to create meeting materials and identify discussion topics for the two stakeholder group meetings. These may be similar or identical to material created for the two community meetings. For efficiency these stakeholder meetings will occur in parallel and at the same time in the process as the two community meetings. Staff will also attend and may also present.</li> <li>• <b>Two community meetings.</b> Hold up to two community meetings to discuss and vet the proposed Bay Fair Zoning Update, one before the zoning update draft is prepared, and one during public review of the draft. Potential participants are anticipated to include neighbors, affected property owners,</li> </ul>	80	\$12,800



<p>past participants in the Bay Fair TOD Specific Plan process, or other interested community members or stakeholder groups. Consultant will coordinate with staff to create meeting materials and identify discussion topics for the two community meetings. These may be similar or identical to material created for the two stakeholder meetings. For efficiency these community meetings will occur in parallel and at the same time in the process as the two stakeholder meetings. Staff will also attend and may also present.</p> <ul style="list-style-type: none"> <li>• <b>One Council Study Session.</b> Consultant will conduct one City Council study session early in the process to identify council desires and goals for the zoning code update. This should occur at a similar time in the process as the first stakeholder meeting and community meeting, and could utilize similar or identical meeting material. Consultant will prepare or adapt any necessary presentation in coordination with staff. The council work session is anticipated to be focused on technical implementation, not revisiting the Bay Fair Specific Plan vision, and would likely include 5-10 minutes of presentation and 30-45 minutes of discussion and questions. Staff will also attend and may also present.</li> <li>• <b>One Planning Commission Study Session.</b> Consultant will conduct one Planning Commission study session later in the process to receive feedback on proposed content or concepts for the zoning code update. This should occur at a similar time in the process as the second stakeholder meeting and community meeting, and could utilize similar or identical meeting material. Consultant will prepare or adapt any necessary presentation in coordination with staff. The Planning Commission work session is anticipated to be focused on technical implementation, not revisiting the Bay Fair Specific Plan vision, and would likely include 5-10 minutes of presentation and 45-60 minutes of discussion and questions. Staff will also attend and may also present.</li> <li>• <b>One Planning Commission Hearing.</b> Consultant will attend one hearing of the Planning Commission, at which the Planning Commission will make a recommendation to approve the zoning and general plan amendment. Consultant will be available to answer questions and if necessary provide a short presentation about content in the zoning amendment. Staff will also attend and may also present.</li> <li>• <b>One City Council Hearing.</b> Consultant will attend one hearing of the City Council, at which the City Council will adopt the zoning and general plan amendment. Consultant will be available to answer questions and if necessary provide a short presentation about content in the zoning amendment. Staff will also attend and may also present.</li> </ul> <p>For all meetings and hearings, notes will be dealt with in the following way: Consultant will keep and provide meeting notes to staff, to the degree that this is possible while facilitating a meeting or presenting at a hearing. Staff will then synthesize and distribute notes based on staff's own additional notes. For all meetings and hearings, staff will be responsible for meeting noticing, set-up, logistics, staff reports, and printing any necessary meeting material.</p>		
<p><b>3. Test Fits:</b> Conduct a series of physical test fits using development massing models on multiple existing and planned parcels within the Bay Fair Specific Plan area to confirm that the details of the development standards in the Specific Plan are appropriate, properly calibrated amongst all standards, and generating the types of buildings and development consistent with the vision. Test fits would occur on multiple different sizes and orientations of parcels in different areas of the Bay Fair Plan area, including in different height zones and in zones subject to daylight plane standards. Assumed use would likely be residential or residential with ground-floor</p>	70	\$11,200

<p>retail, but could also include office if desired. Test fits are anticipated to be simple massing models for technical analysis, not detailed renderings for public display. Development standards will be confirmed and if necessary adjusted based on the results of these test fits. Physical test fits will be completed by sub-consultant VMWP. The anticipated VMWP staff person for this task will be John Doyle with oversight from Rick Williams, but could be another key VMWP staff member.</p>		
<p><b>4. Allowed Uses:</b> Confirm allowed land uses, based on list of uses generated for the Bay Fair Specific Plan. This task is intended to be rapid and not require substantial work, since it was largely completed during the specific plan process, and the strategy is intended to be highly flexible in allowed uses across the B-TOD district.</p>	8	\$1,280
<p><b>5. Development Controls:</b> Update development standards in the zoning code, focused on primary development controls such as height, setbacks, required open space, façade articulation, and other existing categories in the existing zoning code, particularly Article 6 Division 2. This will require a review and annotation of the Bay Fair Specific Plan to identify relevant standards to populate these sections of the zoning code, and then updates to the code using new numbers and standards. This task is the most substantial of the project. This task assumes that more detailed components of the specific plan, including development guidelines and potentially some standards or requirements related to other topics such as green building, will remain in the Specific Plan but not be added to the zoning code. Part of this task will include identifying which design guidance from the Specific Plan should be incorporated as objective development standards in the zoning code update. These objective development standards are anticipated to apply to all projects within the B-TOD zone, but are also particularly important for projects within ½ mile of BART that may be subject to by-right approvals. Objective development standards in the zoning code are anticipated to be drawn from or copied from the existing Specific Plan material, not created independently. Alignment with any parallel citywide efforts to create objective development standards will be an important consideration, but this task does not include creation of citywide objective development standards. The task of creating development controls may include a small contribution from a sub-consultant, anticipated to be Ben Noble or another zoning specialist, for peer review or other inputs.</p> <p>This task will include the following deliverables:</p> <ul style="list-style-type: none"> <li>• Administrative draft of Zoning text amendment</li> <li>• Public review draft of Zoning text amendment (for stakeholder review)</li> <li>• Public hearing draft of Zoning text amendment</li> </ul>	130	\$20,800
<p><b>6. Bay Fair Master Planning and/or Planned Development process:</b> Find precedents for and define a process for master planning or other planned development process for large Bay Fair development such as the Bay Fair Mall. It is assumed that the existing Planned Development (PD) process will remain in place and be available to Bay Fair projects, but there is anticipated to be an additional master planning requirement for large projects. This process could defer to or augment existing city PD processes, or be a unique process, depending on discussions with City staff. The type of process desired will affect the amount of work required. This task may include contributions from a sub-consultant for peer review or other inputs.</p>	24	\$3,840
<p><b>7. General Plan Land Use Updates:</b> Update the B-TOD land use classification text in the General Plan to reflect the related and final zoning code changes.</p>	24	\$3,840
<p><b>8. Zoning and General Plan Map update:</b> Update the City zoning and General Plan land use map to reflect the new B-TOD zone and land use category. This task assumes no changes to any other areas of the map besides the Bay Fair zoning district. This task could be completed in coordination with the City's in-house GIS expertise or other</p>	8	\$1,280

map-publishing resources. Consultant will not provide GIS services for this project, but will rely on in-house City resources.		
<b>9. CEQA Documentation.</b> Sub-consultant Rincon will provide necessary CEQA documentation for the zoning code update and general plan amendment as necessary. It is assumed that the zoning code update and general plan amendment effort will not increase the growth projections already created for the Bay Fair TOD Specific Plan and EIR, and will tier off of the existing, adopted CEQA document and Bay Fair TOD Specific Plan. Required CEQA documentation is assumed to be an Addendum to the existing Bay Fair TOD Specific Plan CEQA document. If different types of CEQA analysis, new growth projections, or different documentation become required, this could affect the project scope and budget. Anticipated Rincon staff would be Karly Kaufman, Abe Leider, or other key Rincon staff.	56	\$8,960
<b>10. Miscellaneous Services.</b> This item serves as a contingency budget to allow for miscellaneous activities which may be necessary to comprehensively complete the proposed scope of work above in this contract. Any work under this Item 10 will require City approval prior to initiation of the work by the consultant. This may include a range of efforts as feasible and as needed by the City, and as feasible by the Consultant within the project, such as: <ul style="list-style-type: none"> <li>• Additional public outreach such as community, public and/or stakeholder meetings.</li> <li>• Long-range planning and implementation efforts related to the Bay Fair area such as support for City coordination with BART to implement AB 2923 around the Bay Fair BART Station</li> <li>• Formal or informal project design review of Bay Fair development projects</li> <li>• Additional effort approved by the City for scope tasks identified in this scope of work.</li> </ul>	13.5	\$2,160
<b>Total</b>	<b>437.5</b>	<b>\$70,000</b>

Assumptions for these tasks are as follows:

- Tasks above completed by Aaron Welch would be charged at the standard billing rate of \$160 per hour, but as noted some tasks could be completed by sub-consultants which may change the billing rate. Regardless of billing rate, work would be completed within the not-to-exceed maximum. Anticipated billing rates are shown in Exhibit B.
- The project would be anticipated to occur during Summer 2019 through June 2020, depending on other City constraints such as City Council calendar other ongoing City projects.
- Scoped hours not needed for one task may be used for other tasks as long as the total budget is not exceeded.
  - There are no reimbursable expenses or direct costs anticipated for this project. Reimbursable activities such as printing or other production of documents or meeting materials will be completed by the City and the cost will be borne by the City.

**EXHIBIT B**

**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES**

## Exhibit B. Anticipated Billing Rates

Billing rates below apply to the San Leandro Bay Fair Zoning Update project, and are valid through the end of 2020.

<b>Name</b>	<b>Firm</b>	<b>Anticipated Billing Rate</b>
Aaron Welch	Aaron Welch Planning	\$160/hour
Karly Kaufman	Rincon Consulting	\$160/hour
John Doyle or other Designer	VMWP	\$140/hour
Abe Leider (if needed)	Rincon Consulting	\$220/hour
Rick Williams (if needed)	VMWP	\$200/hour
Ben Noble or other	Ben Noble or other	\$160/hour

## EXHIBIT C

### INDEMNIFICATION

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

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

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