

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NICHOL CONSULTING ENGINEERS (NCE)
FOR
ANNUAL STREET PAVING 2021-23**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and Nichol Consulting Engineers (NCE) (“Consultant”) (together sometimes referred to as the “Parties”) as of _____, 2022 (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 December 31, 2024, 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 E.
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Consultant’s attention is directed to the San

Leandro Municipal Code, Title 1, Chapter 6, Article 6. Consultant must submit completed self-certification form and comply with the LWO if covered.

- 1.7 **Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed ONE MILLION SIXTY-FIVE THOUSAND DOLLARS (\$1,065,000.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. 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 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 the Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this agreement..

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 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 (\$4,000,000). 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 \$2,000,000 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.

4.5 All Policies Requirements.

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

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

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

satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

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

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

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

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

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

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

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant’s services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant

accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

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

Section 7. LEGAL REQUIREMENTS.

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

policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

Consultant may cancel this Agreement upon ninety (90) 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 Mark Goralka ("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:

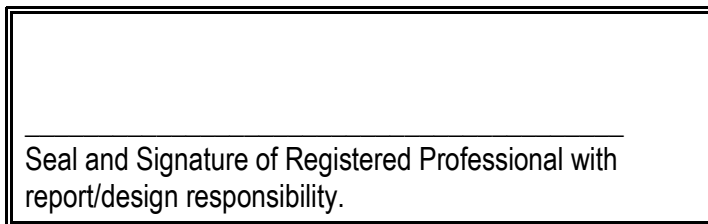
J. Ryan Shaffer, Principal Engineer
5253 College Avenue, Suite B
Oakland, CA 94618
(510) 250-9189
Email: rshafer@ncenet.com

Any written notice to City shall be sent to:
Mark Goralka, Associate Engineer
City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Email: mgoralka@sanleandro.org

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

- 10.11 Professional Seal.** Where applicable for permit approvals or in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and

signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



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

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	COVID-19 Compliance Requirements
<u>Exhibit E</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

NCE

Frances Robustelli, City Manager

J. Ryan Shafer, Principal

Attest:

Consultant's DIR Registration Number
(if applicable)

Kelly Clancy, Acting City Clerk

Budget Approved:

Approved as to Fiscal Authority:

Susan Hsieh, Finance Director

144-38-520-5120
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7: Form 700 Required

Sheila Marquises, Engineering and Transportation Acting Director

EXHIBIT A
SCOPE OF SERVICES

PROJECT DESCRIPTION

The City of San Leandro annually allocates funds toward street maintenance and rehabilitation. This project will involve pavement work on 88 street sections comprised of 11 arterial streets, 13 collector streets, and 64 local streets. Work includes curb ramp upgrades, new Rapid Rectangular Flashing Beacons (RRFBs) for 10 pedestrian crossings, traffic phasing plans for the Washington / Beatrice intersection, sidewalk bulb outs at select locations, and sanitary sewer point repairs within the project limits. The construction budget for the Project, is approximately \$12,500,000 and includes construction contingency.

This contract is for consulting services to develop sewer repair recommendations, prepare Plans, Specifications, and Engineer's Estimate (PS&E) for paving repairs on selected streets, as well as related bidding and construction administration assistance as described in the tasks below.

The following list of streets and treatments are included in the project. The streets were selected based on their Pavement Condition Index rating and by visual inspection of road surface deficiencies. Treatments envisioned is primarily asphalt rubber cape seal (ARCS) on all but 12 streets which are planned for mill and fill (M&F). Street selections, work limits, and treatments may change as more information becomes available during the design process. If any street requires reconstruction it may be removed from the project and replaced with another street segment as appropriate.

ID	Street Name	Start Location	End Location	Proposed Treatment
<i>ARTERIAL STREETS</i>				
A1	BANCROFT AV	148TH ST	EAST 14TH ST	ARCS
A2	ESTUDILLO AV	90 FT E/O BANCROFT AV	SAN JOSE ST	ARCS
A3	ESTUDILLO AV	SAN JOSE ST	MORGAN AV	ARCS
A4	ESTUDILLO AV	MORGAN AV	70 FT W/O MACARTHUR BL	ARCS
A5	ESTUDILLO AVE	MACARTHUR BLVD	SANDELIN ST	ACRS
A6	MACARTHUR BL	DUTTON AVE	SAN LEANDRO CREEK	ARCS
A7	MACARTHUR BL	N CITY LIMITS (DURANT AVE)	SUPERIOR AVE/FOOTHILL BLVD	ARCS
A8	MARINA BL	TEAGARDEN ST	PACIFIC AV	ARCS
A9	MARINA BL	PACIFIC AV	ALVARADO ST	ARCS
A10	WASHINGTON AV	I-880 OVERCROSSING (W/O)	194' S/O LEWELLING BL	ARCS
A11	WASHINGTON AV	S/O SAN LEANDRO BLVD	FLORESTA BLVD	ARCS
<i>COLLECTOR STREETS</i>				
C1	139TH AV	RR TRACKS	DRIVEWAY @ 790 139TH AV	ARCS w/ dig outs
C2	139TH AV	WASHINGTON AV	RR TRACKS	M&F
C3	CATALINA ST	FAIRWAY DR	FARALLON DR	ARCS w/ dig outs
C4	DUTTON AV	EAST 14TH ST	130' EAST OF E. 14TH	ARCS w/ dig outs
C5	FAIRWAY DR	MONARCH BAY	AURORA DR	ARCS
C6	FARALLON DR	DOOLITTLE DR	2046 FARRALLON	ARCS w/ dig outs
C7	LAKE CHABOT RD	ESTUDILLO AVE	SANDELIN	ARCS w/ dig outs

C8	PREDA ST	DAVIS ST	MINERVA ST	ARCS w/ dig outs
C9	TEAGARDEN ST	MONTAGUE AV	MARINA BL	ARCS
C10	TIMOTHY DR	DAVIS ST	RD NARROWS 548 ft S/o DAVIS ST	ARCS
C11	WARDEN AV	DAVIS ST	N SIDE OF MELCHER ST	ARCS w/ dig outs
C12	WAYNE AV	DAVIS ST	GARDNER BLVD	ARCS
C13	WILLIAMS ST	ORCHARD AVE	SAN LEANDRO BLVD	ARCS
<u>LOCAL STREETS</u>				
R1	141ST AV	EAST 14TH ST	BANCROFT AV	M&F
R2	142ND AV	LARK ST	141ST AV (E OF WAKE AV)	ARCS w/ wedge grind
R3	142ND AV	141ST AV (W OF BANCROFT AV)	BANCROFT AV	M&F
R4	ALVARADO ST	SAN LEANDRO CR	ANTONIO ST	ARCS w/ wedge grind
R5	ANZA WY	#312 ANZA WY	WASHINGTON AV	M&F
R6	ANZA WY	CARMEL WY	#312 ANZA WY	M&F
R7	ANZA WY	CARMEL WY	MONTEREY BL	M&F
R8	BEECHER ST	DAVIS ST	N to CUL-DE-SAC	ARCS w/ dig outs
R9	BEGIER AV	ST MARY AV	DEAD END EAST	ARCS
R10	BEGIER AV	BANCROFT AV	CHETLAND RD	ARCS
R11	BELLA VISTA AV	LORRAINE BL	S TO DEAD END	M&F
R12	BONNIE VISTA AV	LORRAINE BL	S TO DEAD END	M&F
R13	CARDEN ST	DOOLITTLE DR	DAVIS ST	ARCS
R14	CHURCHILL ST	FARGO AV	MANOR BL	M&F
R15	CLEARVIEW DR	REGENT DR	LONGVIEW DR	ARCS
R16	COBURN CT	ROSE DR	SAN LEANDRO BL	ARCS
R17	CROSBY ST	FARGO AV	MANOR BL	ARCS
R18	CUMBERLAND AVE	WILEY ST	FARNSWORTH ST	ARCS
R19	DARIUS CT	DARIUS WY	W TO END (CUL DE SAC)	ARCS
R20	DEWEY ST	LEWELLING BL	TROJAN AV	ARCS w/ dig outs
R21	DRAKE AV	CORVALLIS ST	PEPPERDINE ST	ARCS
R22	EDGEMOOR ST	MANOR BL	TROJAN AV	ARCS w/ wedge grind
R23	ELM ST	CEDAR AV	WILLOW AV	ARCS w/ wedge grind
R24	ELVINA DR	DEAD END N OF LAVERNE DR	RANDY ST	ARCS
R25	EVERGREEN AV	SAN RAFAEL ST	SYBIL AV	M&F
R26	FJORD ST	FLUME CT	SPRINGLAKE DR	ARCS
R27	FLUME CT	FJORD ST	E TO END (CUL D ESAC)	ARCS
R28	FOUNTAINHEAD DR	EBB TIDE ST	E TO END (CUL DE SAC)	ARCS
R29	GLEN DR	OAKES BLVD	DUTTON AVE	ARCS
R30	GLEN DR	LEE AVE	BANCROFT AVE	ARCS w/ dig outs
R31	GRAFF AV	ESTUDILLO AVE	1582 GRAFF AVE	M&F Estudillo to Sandelin then ARCS
R32	IAN ST	ALOHA WY	SOUTH DEAD END	ARCS

R33	INVERNESS ST	TROJAN AVENUE	LEWELLING BLVD	ARCS
R34	JEFFERSON ST	CALLAN AVE	CHUMALIA ST	ARCS
R35	JOYCE AV	WILLIAMS ST	CASTRO ST	ARCS w/ dig outs
R36	JUNIPER ST	WILLOW AVE	CEDAR AVE	ARCS
R37	KENYON AV	SAN RAPHAEL ST	EVERGREEN AVE	M&F
R38	LAFAYETTE AV	CALIFORNIA AVE	TOLER AVE	ARCS
R39	LAKEVIEW DR	MARINEVIEW DR (NORTH INT)	MARINEVIEW DR (SOUTH INT)	ARCS
R40	LORRAINE BL	SAN LEANDRO BLVD	LAFAYETTE AVE	M&F
R41	McCORMICK ST	EDISON AV	ADAMS AV	ARCS
R42	NORTON ST	FARGO AVE	MANOR BLVD	ARCS
R43	ORCHARD AV	DAVIS ST	840' S/O DAVIS (HOUSE #1398)	ARCS w/ dig outs
R44	OTTAWA AV	ACACIA ST	HEMLOCK ST	ARCS
R45	RANDY ST	ELVINA ST	DEAD END E OF SUNNYHAVEN ST	ARCS
R46	RIVERDALE ST	SPRINGLAKE DR	MILLSTREAM DR	ARCS w/ dig outs
R47	SAMOA RD	JAMAICA WAY	FIJI WAY	ARCS
R48	SANDELIN AV	LAKE CHABOT ROAD	PARKER ST	ARCS
R49	SANTIAGO RD	JAMAICA WAY	FIJI WAY	ARCS
R50	SEELEY ST	WAYNE AVE	PACIFIC AVE	ARCS
R51	SITKA ST	AURORA DR	DOOLITTLE DR	ARCS w/ dig outs
R52	SULLIVAN AV	LEWELLING BL	BURKHART AV	ARCS
R53	SWENSON ST	FARGO AV	MANOR BL	ARCS
R54	THORNTON ST	ORCHARD AV	MAGNOLIA LN	ARCS
R55	THORNTON ST	SAN LEANDRO BL	CARPENTIER ST	ARCS
R56	TORTUGA RD	JAMAICA WY	FIJI WY	M&F
R57	TROPIC CT	LEWELLING BL	S TO END (CUL-DE-SAC)	ARCS w/ dig outs
R58	UPTON AV	CENTRAL AV	450' N/O CENTRAL	ARCS
R59	VIEW DR	GRAFF AV	ASTOR DR	ARCS
R60	WAKE AV	148TH AV	HALSEY AV	ARCS
R61	WALNUT DR	AURORA DR	END	ARCS
R62	WAYNE AV	LINTON AVE	MARINA BLVD	ARCS
R63	WEST AVE 133RD	DEAD END AT MARINA GOLF COURSE	MENLO ST	ARCS w/ dig outs
R64	WEST JOAQUIN AV	HAYS ST	CARPENTIER ST	ARCS

Scope of Services:

Task 1 – Project Management & Meetings

Consultant will provide an experienced Project Manager to serve as the City's single point of contact on the contract who will have primary responsibility for coordinating the efforts of the Project team and subconsultants. Project Manager will arrange a kick-off meeting as well as monthly project coordination meetings held with the City and the design team via video conference or at Consultant and/or City offices depending on meeting needs and preferences. Consultant will prepare agendas and meeting summaries following the meeting. Project status updates: Coordinate, prepare and distribute electronic copies (pdf) of agendas and meeting summaries, and participate in up to 20 Project design coordination meetings for an expected project design duration of one (1) year through the end of construction documents (not including bidding and construction support phases).

Task 2 – Field Review and Pavement Treatment Selection

Consultant will perform a preliminary field review of the City's street list to confirm the selected treatments. Review will consider readily observable pavement conditions, drainage problems, evidence of subgrade problems, traffic, pedestrian and bike use, as well as other field constraints such as geographic location and grade issues as they pertain to preliminary pavement treatment selection. Consultant shall discuss concerns and any proposed revisions to the street selections with City staff upon completion of the preliminary field review. Consultant and the City will then finalize the project street list to be included in the following civil design tasks and construction documents.

After the preliminary field review, Consultant shall complete a detailed pavement condition survey of each street section. This condition survey will generally note the presence of load related and environmental distresses, such as alligator cracking, longitudinal and transverse cracking, rutting, patches and utility cuts, distortions and depressions as they pertain to developing appropriate pavement treatments. In addition, potential base repairs will be identified in the condition survey. Base repairs will be marked in the field on the pavement in white paint, numbered, and limits verified with the City for inclusion in the bid documents. A visual survey of all curb and gutters will be included to identify areas where drainage or the adjacent pavement has been compromised. Curb repair recommendations will be limited to only those sections of curb and gutter that are damaged to the extent that they will affect pavement rehabilitation (i.e., tree root damage extending into pavement) as agreed with City staff. Geographic positioning system (GPS) coordinates will be collected by NCE staff in the field for base and curb repair locations for inclusion in the AutoCad bid drawings files for integration with the topographic survey data. Consultant will complete additional detail studies of selected streets using paving coring and deflection testing as described in subtasks 2.1 and 2.2 below.

Using the field review data obtained above, Consultant will develop pavement resurfacing and rehabilitation recommendations for each street section and intersections identified for pedestrian crossing improvements. NCE will perform its analysis in accordance with the Caltrans Highway Design Manual. Consultant will develop pavement structural section recommendations based on desired street Traffic Indices provided by the City. NCE will develop recommendations for a range of pavement treatment options. Other relevant information will be included in this review, such as quantities and treatments of failed pavement sections (base repairs) and full width milling and wedge grinding requirements.

Unless otherwise indicated in this scope of work, the pavement term "resurfacing" shall signify a surface application of asphalt rubber cape seal (ARCS) over the existing pavement with dig out repairs at selected locations as needed. Similarly, the term "rehabilitation" shall signify milling and replacing the upper asphalt

concrete surface ('mill and fill") and include dig-out repairs at selected locations as necessary. Other treatment options or revisions to the street selections may be considered in the future as more information becomes available during the design.

A Pavement Design Technical Memorandum summarizing the field data collection and recommended repairs for the selected streets will be prepared for City review. This memorandum will be a 'living' document that will be updated throughout the course of the project as new information becomes available or to reflect revisions requested by the City.

Subtask 2.1 Pavement Coring:

NCE will collect selected pavement section core samples (4" – 8" diameter cores) on all mill and fill street sections. For each core sample, Consultant will measure and record the thickness and material type of each layer encountered in the pavement structural section, including the presence of any pavement reinforcing fabric. Bulk samples of subgrade materials will be collected at the core locations for laboratory testing such as R-value, moisture content and Atterberg Limits (plasticity index) determinations. The presence of AB will be measured at all cores. A dynamic cone penetrometer test will be completed at selected core locations to estimate AB and subgrade layer properties.

Additionally, Consultant will apply for and obtain an encroachment (or similar) permit from the City prior to starting the coring. Consultant will arrange for traffic control services during the coring to minimize any inconvenience to traffic, parking and public access. Preparation of individual traffic control plans for coring is assumed not to be required. All work on collector or arterial streets shall be restricted to within the hours of 9:00 am and 3:00 pm.

Subtask 2.2 Pavement Deflection Testing

Consultant will perform non-destructive pavement deflection testing in accordance with California Test Method (CTM) 356 to evaluate the structural capacity of existing pavement section on arterial and collector streets to be rehabilitated by mill and fill where such data would be relevant to the design of the pavement repair. Consultant to develop the extent of deflection testing with the City and based on available street information.

Additionally, Consultant will apply for and obtain an encroachment (or similar) permit from the City prior to starting the deflection testing. Consultant will arrange for traffic control services during the deflection testing to minimize any inconvenience to traffic, parking and public access. Preparation of individual traffic control plans for deflection testing is assumed not to be required.

Task 3 – Utility Coordination and Encroachment Permitting

Consultant will issue project notification letters to applicable utility providers with a preliminary project schedule for street resurfacing and rehabilitation and request utility facility maps, as-builts and record drawings for street sections planned for rehabilitation. As part of Task 6.2, below, Consultant will locate utilities using GPR and coordinate with and provide this information to applicable utility providers. Consultant will prepare and distribute a second round of letters and communication including utility location information based on ground penetrating radar (GPR) that is provided for all rehabilitation street sections to solicit feedback and need for utility relocation or adjustments. Consultant to obtain utility clearance letters documenting that their facilities are not in conflict with the proposed pavement repairs.

Based on the City's street list, there are 18 locations where the proposed improvements will encounter BART, Caltrans, or railroad right-of-way. Consultant will prepare the necessary encroachment permit applications, on behalf of the City, for Caltrans, BART, CPUC and UPRR review. For rail crossings, Consultant will prepare encroachment applications with the CPUC and UPRR, as well as Right of Entry and non-intrusive survey permits with UPRR as needed.

Consultant will also carefully document all utility coordination notifications, conversations, meetings and information in a dated matrix format or with meeting summaries and provide copies to the City. Consultant will also keep the City informed of any project delays related to utilities and / or permitting. Topographic and GPR Survey data, including marked utility depth alignments, will be provided to the City.

Task 4 – Sanitary Sewer Defect Evaluation and Point Repair Recommendations

Consultant will review sanitary sewer CCTV and condition reports, to be provided by the City, of City owned and maintained sanitary sewer facilities which underlie the proposed street list. The City will provide access to video inspection logs using "T4 Spatial Vault" software and / or ICOM sewer asset management software. The review will assess pipe and structure conditions to evaluate where point repairs are required using standard "Pipeline Access and Certification Program (PACP)" codes. Recommended repairs at service lateral connections will be noted as such and the City will be responsible for notifying the private owner of the service lateral and coordinating additional action.

Consultant will prepare a table identifying sewer line defects and repair recommendations. At a minimum, the repair recommendations shall consider pipe section replacement, manhole structure replacement, and pipe slip lining. City will prepare the contract documents, bid, and oversee the construction of the sanitary sewer point repairs.

Task 5 – Surface Seal Plans, Specifications & Estimates (PS&E)

Consultant will prepare construction documents for the proposed pavement surface seal work in accordance with the Pavement Design Technical Memorandum discussed above. The documents shall be suitable for a competitively bid public works project. This shall include construction plans, technical specifications, and cost estimate (PS&E). City will provide front end specifications including bid forms. These documents shall provide all relevant information needed by a contractor to complete the proposed paving improvements and be presented in sufficient detail to minimize contractor requests for information and change orders.

The PS&E for this task will show all improvements related to the streets to receive surface seal treatments, except for curb ramp upgrades and sanitary sewer point repairs. The City will prepare PS&E, bid and oversee the construction of ADA ramp upgrades and sanitary sewer point repairs separately from the surface seal bid package.

Plans will also include the quantity of utility facility covers (such as storm drain and sanitary sewer manholes, water and gas valves, and survey monuments) that will require adjustments to grade, traffic striping, and pavement legends. Signage and Striping plans will be prepared for all arterial and collector streets, as well as for street segments on the City bike routes. Plans shall show existing striping for a minimum of 25' beyond the paving limits. Existing striping may be revised based on the City's complete streets evaluation and / or to meet current CAMUTCD standards.

Along with pavement repairs proposed above, these PS&E shall include design of Rapid Rectangular Flashing Beacons (RRFBs) for pedestrian crossings at ten (10) intersections to be identified at later date. In addition, this task shall provide traffic phasing plans for the Washington / Beatrice intersection to minimize disruption to commuters accessing I-880.

Submittals at 30%, 70%, 100%, and Final Bid completion phases shall be provided per the following expectations:

- The 30% PS&E preliminary design submittal will identify the scope of work of the project. It will depict basic street paving limits of work, preliminary pavement treatments, with tabulated pertinent geometric information and work quantity schedule tables. It shall identify all permits and easements needed for the project. It will also provide a table of contents for the technical specifications and City standard details to be used.
- The 70% PS&E submittal will identify all the design elements and any special details needed. It shall identify potential utility conflicts or required relocations. It will incorporate design elements including layout plans of base repair locations, similar in format to the City's 2020-21 Annual Street Sealing project plans, pavement treatments, right-of-way parcel lines, typical cross-sections of selected pedestrian crossings to be regraded for ADA compliance, tabulated curb and gutter repairs, and limits of work.
- 100% PS&E will include all design information and details needed to accomplish the scope of work. Based on the project estimated cost and available budget, bid items and/or street segments may be changed to additive alternates or removed from the final bid documents.
- Final Bid PS&E shall be stamped and signed by the engineer of record and be complete and ready for public bid.

Task 6 – Rehabilitation Plans, Specifications & Estimates (PS&E)

Consultant will prepare construction documents for the proposed pavement rehabilitation work in accordance with the Pavement Design Technical Memorandum discussed above. The documents shall be suitable for a competitively bid public works project. This shall include construction plans, technical specifications, and cost estimate (PS&E). These documents shall provide all relevant information needed by a contractor to complete the proposed paving improvements and be presented in sufficient detail to minimize contractor requests for information and change orders.

The PS&E for this task will show all improvements related the streets to receive rehabilitation, except for curb ramp upgrades and sanitary sewer point repairs. The City will prepare PS&E, bid and oversee the construction of ADA ramp upgrades and sanitary sewer point repairs separately from the surface seal bid package.

Plans shall incorporate typical design elements including layout plans for rehabilitation street sections, pavement treatments, right-of-way parcel lines, preliminary design, wedge grinds, conform grind locations at intersecting side streets, typical cross-sections, curb and gutter and sidewalk repairs, gutter flow line for drainage repairs, and limits of work. Plan sheets will include base / curb repair schedules and will show individual base / curb repair locations. Plans will also include utility facilities (storm drain and sanitary sewer manholes, water and gas valves, and survey monuments) that will require adjustments to grade, traffic striping, and pavement legends. Signage and Striping plans will be included for all streets. Plans to show

existing striping for a minimum of 25' beyond the paving limits. Existing striping may be revised based on complete streets evaluation and / or to meet current MUTCD standards.

Submittals at 30%, 70%, 100%, and Final Bid completion phases shall be provided per the following expectations:

- The 30% PS&E preliminary design submittal will identify the scope of work of the project. It will depict basic street paving limits of work, preliminary pavement treatments, with tabulated pertinent geometric information and work quantity schedule tables. It should identify all permits and easements needed for the project. It will also provide a table of contents for the technical specifications and City standard details to be used.
- The 70% PS&E submittal will identify all the design elements and any special details needed. It should identify potential utility conflicts or required relocations. It will incorporate design elements including layout plans of base repair locations, similar in format to the City's Annual Overlay / Rehabilitation 2019-21 project plans, pavement treatments, right-of-way parcel lines, typical cross-sections of selected pedestrian crossings to be regraded for ADA compliance, tabulated curb and gutter repairs, and limits of work. The 70% submittal shall include information from the topographic and utility surveys from subtasks 6.1 and 6.2 described below.
- 100% PS&E will complete all design information and details needed to accomplish the scope of work. Based on the project estimated cost and available budget, bid items and/or street segments may be changed to additive alternates or removed from the final bid documents.
- Final Bid PS&E shall be stamped and signed by the engineer of record and be complete and ready for public bid.

Design of the streets requiring rehabilitation include subtasks for topographic survey and utility locating as described below.

Subtask 6.1 - Topographic Survey

Consultant's Project Surveyor will complete monument/control references, field investigation and field surveys sufficient to prepare a topographic mapping product for all streets stated under key assumptions. The mapping shall be compiled at an agreed upon scale with a 1' contour interval and will be based on the City Datum.

The mapping area shall be a corridor along each of the street sections between the existing back of walk to opposite back of walk, starting and stopping at the designated locations and including through the returns of the terminating streets. In the absence of an existing sidewalk, the survey will extend to 5 feet behind the curb or edge of pavement, or up to the first substantial barrier (wall, fence, etc.), whichever occurs first. Lastly, the mapping will extend 25 feet beyond the curb return up each intersecting side street.

The topographic data to be collected shall include:

- Cross-sections at 50' intervals along with detailed surface topography and/or additional spot elevations as required defining the longitudinal and cross slope grade breaks. Typically, the cross section will include back of walk, top of curb, flowline and lip of gutter, pavement ¼ point (if one exists), and pavement centerline.
- Survey locations for significant surface features, such as curbs, gutters, sidewalks, driveways, misc. concrete, pavement, striping, fences, surface utilities, trees, signs, street

lights and signals. Survey data for sanitary and storm drain facilities will include rim elevations, invert elevations, pipe direction and pipe size will be provided for accessible structures within the mapping limit. To the extent visible, the survey will obtain a measurement from the top of manhole rim to the top of cone, and note any adjustment rings. In no case shall the surveyor enter a manhole to obtain any data.

- Location of all surface evident street monumentation within the mapping corridor (for preservation and Record R/W purposes).
- Location of underground utility locator markings.
- Provide a topographic survey for each area of work. Plans shall be clean and legible, with data points / text information not overlapping other data.
- Provide AutoCAD Civil3D DTM surface for each street section.
- Any observed water meter or sewer cleanout behind the back of walk (up to 5' behind walk) will also be surveyed.

Survey shall also include:

- Additional detail and elevation data collected at intersections identified for enhanced pedestrian improvements, such as bulbouts or RRFB's.

Survey to use a combination of record data and any monuments collected during topographic surveying, to locate the existing right-of-way limits. Additionally, the surveyor will calculate and show the location of each adjoining parcel lot line from record data (assessor's parcel data, record mapping and apparent lines of occupation). It should be noted this property line data will not be based upon a field survey and should be considered approximate only.

Subtask - 6.2 Utility Locating

Using GPR, Consultant's utility locator will field locate utility alignments and depths for utility mains and laterals for utilities within all rehabilitation streets in accordance with key assumptions to the extent that GPR methods can detect utilities. Traffic control will consist of a 1-man crew with traffic control arrow board and signs. Utility location markings from the GPR investigation will be included in topographic surveys.

If GPR cannot establish utility alignments and or depths, potholing may need to be completed for additional scope and fee. GPR along utility mains will be marked at various locations along each street section. No utility potholing is included in this scope of work.

Task 7– Design Support During Bidding

Consultant will provide services during bidding of the Paving Rehabilitation and Sanitary Sewer Point Repair projects. This will include attending the pre-bid conferences, responding to bid questions about the project design, and preparation of bid addenda and/or clarifications to the PS&E.

Task 8 – Design Support During Construction

Consultant will provide support services during construction of the Surface Seal, Rehabilitation and Sanitary Sewer Point Repair projects. At a minimum, these services are anticipated to include attendance at the pre-construction and pre-paving conferences, periodic participation in weekly construction meetings, reviewing Contractor submittals (particularly mix design and materials), responding to Contractor requests for information (RFI), providing recommendations for any necessary construction changes due to

unforeseen field conditions, assisting with the review and preparation of Contract Change Orders, final processing with Caltrans to secure encroachment permits for construction, and field review of construction for acceptance and identification of punch-list items. Consultant shall also visit the site upon substantial completion and prepared punchlist listing corrective items as needed.

Schedule:

Time is important on this project, and the schedule below outlines the expectations for completion the project deliverables. These completion dates are based relative to the issuance of the Notice to Proceed (NTP) by the City.

<u>Deliverable</u>	<u>Completion Date (Weeks after NTP)</u>
Preliminary Field Review, Utility Map requests / Notifications, and Final Street List	8
Pavement Recommendations Matrix (Rehabilitation Streets)	14
Sanitary Sewer Defect Review and Identification	18
Surface Seal PS&E 30% / 70% / 100%	12 / 24 / 36
Topographic Survey and Utility Locating	18
Rehabilitation PS&E 30% / 70% / 100%	22 / 33 / 48

Upon completion of the Preliminary Field Review and Final Street List, Consultant shall confirm schedule for completion of all project PS&E tasks for City review and approval. Consultant shall assume that the City will provide written responses on progress submittals within 21 days of receipt. The City and Consultant will work cooperatively to try and meet the following project schedule:

- City goal to issue NTP in April 2022
- Consultant goal to complete SS Point Repairs Design by the end of September 2022.
- Consultant goal to complete Final IFB Surface Seal PS&E by the first week of January 2023.
- Consultant goal to complete Final IFB Rehab PS&E by the end of March 2023.

Format:

- Consultant will provide a written response for all City comments on submittals and meet with the City to review responses and agree on revisions to be included in subsequent submittals.
- Electronic files for all above deliverables are to be in adobe PDF, as well as original program files from AutoCAD 2022, MS Word, and MS Excel.
- All final bid documents submittals will be reviewed, stamped and signed by Consultant’s California licensed profession engineer of record, and original copies delivered to the City in both hard copy and electronic formats. Permit submittals shall be similarly signed as required by the agency.
- Technical specifications to be based on the 2015 Greenbook format and modified to incorporate Caltrans standards for materials and other revisions as appropriate

- AutoCAD drawings to be on standard 24x36" size, on City standard title block. Plan sheets to be drawn at a minimum scales of: 1"=20' for mill and fill; 1" = 50' for cape seal sheets, base repair location layouts and striping plans; and 1"=200' for limits of work and location vicinity maps.
- A bid quantity table summarizing major work items (e.g., HMA tonnage, base repair area, etc.) and their estimated quantities will be developed and included on each respective plan sheet.

City Responsibilities:

The City provide the following:

- Readily available utility information (i.e., water, sanitary sewer, electrical, and storm drain), boundary and property limits (if available), tree locations, site features and existing construction.
- Readily available aerial maps.
- Available Sanitary Sewer video logs and data.
- Project requirements including design objectives, budget, constraints, and criteria.
- Provide front-end specifications including General Provisions and Special Provisions.
- City Standard Plans and Details.
- Electronic files of City cover sheet template.
- Direction on extending street improvements into Caltrans, BART, or Rail ROW.
- Contract Documents for the Curb Ramp and the Sanitary Sewer Point Repair project phases.
- Onsite construction inspectors monitoring the construction contract.
- Review and comment on design progress submittals.

Assumptions:

- 60,000 LF of sanitary sewer mains will require video review.
- 28 pavement core locations taking 5 days to complete.
- 27 bulk soil samples will be obtained for laboratory testing.
- Street condition field surveys are limited to only those items necessary to show on the plans for the pavement repair scope of work; including pavement dig-out locations, offset curb and gutters, and excessive crown / cross slope.
- Scope assumes one encroachment permit resubmittal is necessary to address any comments from Caltrans and BART.
- Railroad coordination is predicated on the fact that no significant improvements or changes, such as to vehicular or pedestrian movements, pavement grades, or roadway alignments, are proposed within the railroad ROW
- Tasks which significantly exceed this estimate for reasons beyond Consultant's control shall be discussed with the City prior to exceeding. If justified, the City can issue a change order for additional work or modify the scope.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Consultant will be paid on a time and materials not to exceed basis.

Phase:

Item	Description	NTE Fee
1	Project Management and meetings	\$38,520
2	Pavement design and recommendations	\$113,970
3	Utility Coordination	\$114,615
4	Sanitary Sewer Point Repairs Defect Review	\$56,050
5	Surface Seal PS&E	\$329,400
6	Rehabilitation PS&E	\$323,025
8	Bid Support	\$19,540
9	Construction Administration and Support	\$69,630
	Total Cost	\$1,065,000

The above costs include reimbursable expenses, including the following sub-consultant activities which will be paid on a cost plus 5% basis:

- Coring (Consultant In house field crew): \$27,000
- Traffic Control: \$9,680
- Laboratory Testing (CE&G) \$3,850
- Traffic Engineering (Fehr and Peers) \$54,962
- Rail Specialist (JMA) \$33,000
- Surveying (MPS) \$63,118
- Utility Location \$26,653

SCHEDULE OF CHARGES 2022

PROFESSIONAL SERVICES

Principal.....	\$285/hour
Associate.....	\$225/hour
Senior	\$195/hour
Project.....	\$170/hour
Staff.....	\$150/hour

TECHNICAL SERVICES

Senior Construction Manager*	\$150/(\$170-PW)/hour
Senior Designer.....	\$160/hour
CADD Designer	\$140/hour
Senior Technician*	\$125/(\$150-PW)/hour
Construction Inspector*	\$130/(\$155-PW)/hour
CAD Technician.....	\$125/hour
Senior Field Scientist.....	\$130/hour
Field Scientist	\$105/hour
Project Administrator	\$110/hour
Field/Engineering Technician*	\$105/(\$125-PW)hour
Technical Editor.....	\$105/hour
Clerical	\$90/hour

CONTRACT LABOR

From time to time, NCE retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor will be charged at regular Schedule charges.

LITIGATION SUPPORT

Engineer/Scientist	\$330/hour
Court Appearances & Depositions	\$550/hour

EQUIPMENT

Plotter Usage.....	(separate fee schedule)
Truck.....	\$100/day
Automobile.....	IRS Standard Mileage Rate+15%
Falling Weight Deflectometer Testing.....	\$4,000/Day
Coring.....	\$5,000/Day
Environmental Equipment.....	(separate fee schedule)

OUTSIDE SERVICES

Rental of equipment not ordinarily furnished by NCE and all other costs such as special printing, photographic work, travel by common carrier, subsistence, subcontractors, etc.cost + 10%

COMMUNICATION/ REPRODUCTION

In-house costs for postage, printing, and copying
.....Related staff labor plus non- labor charges x 5%

*A surcharge of \$25/hour applied for technicians and construction inspectors to comply with Prevailing Wage (PW) per requirements of California Department of Industrial Relation

EXHIBIT C

INDEMNIFICATION

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

EXHIBIT D

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

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

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

EXHIBIT E

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 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 submitted directly to the Labor Commission, and 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.

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