

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
APARC SYSTEMS, LTD.**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Aparc Systems, Ltd. ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2012 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2015, 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 of care ordinarily observed by a competent practitioner of the profession in which Consultant is engaged on similar projects and in similar locations.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 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 Labor Code applicable to public works, to the extent set forth in Exhibit C. Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.*

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed THREE HUNDRED, THIRTY TWO THOUSAND, AND NINETY EIGHT U.S. DOLLARS (\$332,098.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and including reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit E, 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 (progress reports) at milestones shown in Exhibit B, and not more often than once a month for reimbursable costs, based on the cost for services performed prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- ~~At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;~~
- ~~The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;~~
- The Consultant's signature;
- 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 Fiscal Year Billing.** Invoices shall not be submitted for work completed spanning two fiscal years. An invoice for work performed and reimbursable costs incurred up to and including June 30th shall be submitted. Work performed and costs incurred beginning July 1st shall be invoiced separately. Invoices received that span the City's two fiscal years will be returned to the consultant for separate re-invoicing.
- 2.3 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.
- 2.4 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 Not Used**
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B-2, and shall not exceed \$9,732.00. Expenses not listed below 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. The City shall provide: a Traffic Control Plan; and the maximum overburden drill depths.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.
- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - b. City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
 - c. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.
 - d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

4.3 Professional Liability Insurance.

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

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

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

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

4.4 All Policies Requirements.

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

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and 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 except professional liability shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Except under the professional liability policy, Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES. Consultant shall with respect to all Services performed in connection with this Agreement, indemnify and hold City, its officers, employees, and volunteers, harmless from and against any and all claims to the extent caused by the

negligence, recklessness, or willful misconduct of the Consultant, (“Claims”). Consultant will bear all losses, costs, damages, expense and liability to the extent caused by its negligence. Such obligations to hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City. Consultant’s defense obligation under this indemnity paragraph includes only the reimbursement of reasonable defense costs to the extent of Consultant’s actual indemnity obligation hereunder.

Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code section 2783, 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.

Section 6. STATUS OF CONSULTANT.

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

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

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consistent with the standard of care, 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, consistent with the standard of care.
- 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 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 competence, experience, and personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. During the term of this Agreement and following its termination for any reason, neither City nor Consultant may assign this Agreement or any interest therein without the prior written approval of the other. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

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

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

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

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

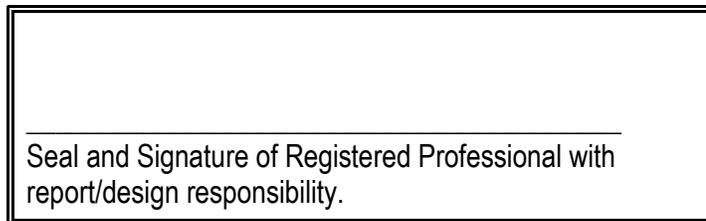
Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in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

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by John O'Driscoll ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:
Mr. Kris Emmons
Business Development Manager
Aparc Systems, Ltd.

One Market Street, Suite 3600
Vancouver, BC xxxxx
email: kemmons@aparcsystems.com

Any written notice to City shall be sent to:
Mr. John O'Driscoll, P. E.
835 E. 14th Street
San Leandro, Ca 94577
email: jodriscoll@ci.san-leandro.ca.us

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



- 10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, C and D 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>	Extended Warranty & Support
<u>Exhibit D</u>	Public Works Requirements
<u>Exhibit E</u>	Consultant's Proposal

- 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.

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

CITY OF SAN LEANDRO

APARC PRESIDENT & CEO

Chris Zapata, City Manager

Rob Ziola

Attest:

Approved as to Fiscal Authority

Marian Handa, City Clerk

David Baum, Finance Director

Account Number: 982-86-063-5120

Approved as to Form:

Jayne Williams, City Attorney

EXHIBIT A

SCOPE OF SERVICES

BACKGROUND

The Downtown Parking Garage is a newly constructed, 4-level, parking facility with a total capacity for 368 vehicles. The ground level will provide 2-hour free public parking, levels 2 & 3 will provide monthly permit parking and the 4th level will provide daily flat rate paid public parking.

SCOPE OF WORK

Provide a parking access and revenue control system for the garage using License Plate Reader (LPR) technology, Pay Stations and a hosted Management System. Permit parkers will validate their vehicles by pre-payment of monthly or quarterly fees and registering their vehicle license plate. Daily public parkers will pay for that day's parking at a Pay Station and enter their vehicle license plate. The LPR technology will include stationary mounted equipment at the garage entrance & exits plus two mobile LPR systems. This system shall then determine valid permit parkers on levels 2 & 3; valid paid daily parkers on level 4 and also vehicles exceeding the 2 hour time limit on the ground floor. The permit system shall manage prepayment of monthly fees and direct payments into the City's bank account. The enforcement system shall interface with the City's existing Duncan Solutions backend citation system.

Consultant shall also provide an Extended Coverage package of Warranty, Maintenance and Support Services for a period of one (1) year commencing with acceptance of the fully installed functional system. The City may elect to enter into an Extended Coverage package as outlined in Exhibit C.

Consultant Deliverables

1. Pay Station
 - a. Provide two Pay Stations at the ground floor level
 - b. Install and secure to concrete slab
 - c. Payment options shall include: coin; credit and debit card
 - d. Users may also key in their license number and pay by cellular/smart phone directly to the TMS
 - e. AC powered with battery back-up
 - f. Communication to the TMS via Wi-Fi service
 - g. Convert Pay stations to Ethernet compatible, when that technology becomes available (at no additional cost to the City)
 - h. Three (3) Administrator Access Licenses shall be provided
 - i. Pay Stations shall be equipped with ADA compliant alpha numeric keypads

2. Traffic Management System (TMS)
 - a. TMS shall be web hosted by Consultant
 - b. Permit System capabilities shall include:
 - i. Pre-defined configuration by the City's Administrator
 - ii. Configuration revisions by the City's Administrator
 - iii. Processing new applications for permits

- iv. Offer "Reserved" or "Permit" parking selections to applicants
- v. Allow switching from "Reserved" to "Permit" (or vice versa)
- vi. Reserved parkers will select a unique Reserved stall number from a list of available spaces
- vii. Establish wait lists when Reserved or Permit zones are full
- viii. Monthly or quarterly parking renewal
- ix. Email renewal reminders at Users' option
- x. Processing permit cancelation requests
- c. Provide 3 sets of Handheld Digital Assistants and Mobile Printers
- d. TMS shall accept cellular/smart phone payments
- e. TMS shall be interfaced (by Consultant) with the City's existing Duncan Solutions backend citation system
- f. Consultant shall upload file with citations log automatically to the server address provided by Duncan Solutions
- g. Three (3) Administrator Access Licenses shall be provided
- h. Data Requirements
 - i. City shall maintain ownership and control of all collected data
 - ii. Multiple physical, procedural and technical safeguards shall be used to protect and limit access to City's data.
 - iii. Data shall be encrypted to the AE2 256 bit standard
 - iv. Access to data shall be granted only to City's approved system administrators and shall be encrypted to AES 256 bit standard
 - v. All collected data shall be stored in an Aparc Systems, Ltd. data center within the United States only. Aparc data centers shall be redundant, geographically-dispersed and SAS 70 (Type II) audited.
 - vi. Consultant shall notify the City at least 48 hours before scheduled downtime for routine maintenance
 - vii. Data will be maintained and accessible by the City's System Administrators for two years.
 - viii. If the contract is terminated at any time, Consultant will be responsible for providing all stored data to the City within 30 days. The City will provide the media to APARC within 7 days of termination.

3. License Plate Readers

- a. Provide and install two complete Mobile LPR systems into two of the City's enforcement vehicles
 - i. Specify high speed wireless modem requirements
- b. Provide and install four Stationary LPR systems, one at each of the garage's entry and exit lanes
 - i. Secure equipment & accessories to the garage structure
 - ii. Connect to AC power source
 - iii. Connect to Ethernet communication

General Terms

1. Component Quality
 - a. Consultant shall provide only new components and as specified (make, model, etc.) in their proposal
 - b. Any equipment revisions or substitutions shall be reviewed and approved by the City. City shall determine if revision or substitution is equal or better
 - c. Approved revisions or substitutions shall be provided at no additional cost to the City
2. Testing and Training and Acceptance
 - a. System Acceptance Test (SAT) shall be performed to confirm that all the physical, operational and management features and capabilities specified are present in the final installed integrated system
 - b. SAT shall occur over a minimum of 30 days
 - c. Provide the following training to key City staff
 - i. Equipment care and basic maintenance
 - ii. Access License, report & data extraction
 - d. Provide 3 weeks' notice for training
 - e. Provide operating manuals, maintenance manuals
 - f. Training may occur concurrently with SAT
 - g. Operating and Maintenance Manuals shall be provided concurrent with training
 - h. Consultant may submit for final acceptance of the system upon satisfactory completion of all work, testing, demonstrations and training
3. Warranty
 - a. Equipment and installation (100% parts and labor) shall be warranted for period of one year from date of acceptance by City
4. Extended Coverage- Warranty, Maintenance and Support Services
 - a. The City shall have the option of purchasing extended maintenance for a period of up to ten years beyond the additional warranty period, (LPR maintenance is limited to 5 years)
 - b. Fully comprehensive Extended Coverage package including:
 - i. Call Center Support
 - ii. Defective part replacement
 - iii. On site labor and online technical support
 - iv. Spare parts inventory
 - v. Firmware upgrades, patches and new software releases
5. Transaction & Extended Memory Capacity Fees
 - a. Consultant shall charge \$1.00 for each monthly permit transaction
 - b. Consultant shall charge \$0.35 for each daily parking transaction
 - c. Consultant shall charge TMS memory storage beyond 2 GB at \$200.00 per GB
 - d. Consultant shall charge MLPR memory storage beyond 5 GB at \$50.00 per GB
 - e. Transaction & Extended Memory Capacity Fees shall be computed monthly and invoiced to the City

City Deliverables

1. Pay Station
 - a. Level Concrete surface at Pay Station locations
 - b. AC power to the Pay Station vicinity
 - c. Ethernet communication to the Pay Station vicinity (for future conversion)

2. Traffic Management System (TMS)
 - a. TMS shall be web hosted by Consultant, but accessible to City staff
 - b. Internal IP address for the handheld docking station
 - c. Establish a Wells Fargo e-merchant account
 - d. Consultant access to Duncan Solutions to specify citation fields, file name, FTP server and frequency for uploading
 - e. City shall be responsible to approve cancelation requests and issue pro-rated refunds directly to user

3. License Plate Readers
 - a. Provide two City enforcement vehicles for installation of MLPR
 - b. Provide high speed wireless modem for each vehicle
 - c. AC power to the Fixed LPR vicinities
 - d. Ethernet communication the Fixed LPR vicinities
 - e. Active communication hub (Verizon, Comcast or AT&T)
 - f. Delineators at garage entrance/exits to channelize vehicles into camera "recognition windows"

TIME OF PERFORMANCE.

1. Fully installed operational parking system ten weeks after receipt of Notice to proceed

EXHIBIT B-1

COMPENSATION SCHEDULE

Consultant shall provide the Scope of Services defined in Exhibit A for this project on a not to exceed the limits as follows

Hardware, software, installation, set-up, testing and training

Item	Cost
1.1 – Pay Stations (2)	\$ 13,494.00
1.2 – Accessories	\$ 4,110.00
1.3 – Professional Services	\$ 6,900.00
1.4 – Parts & Consumables	\$ 6,296.00
2.1 – TMS	\$ 37,821.00
2.2 – Handheld Sets (3)	\$ 8,934.00
2.3 – Accessories	\$ 1,363.00
2.4 – Professional Services	\$ 19,444.00
2.5 – Parts & Consumables	\$ 1,512.00
3.1 – Mobile LPR (2)	\$ 75,234.00
3.2 – Software	\$ 11,786.00
3.3 – Professional Services	\$ 23,659.00
4.1 – Stationary LPR (4)	\$ 38,372.00
4.2 – Software	\$ 7,067.00
4.3 – Professional Services	\$ 15,824.00
5.1 – *OPEX (year 1)	\$ 21,264.00
Taxes (9%)	\$ 26,338.00
Total	\$ 319,458.00

Any additional services beyond those detailed in Exhibit A shall be pre-approved in writing and shall will be provided on either an hourly fee, unit cost, basis or a mutually agreed upon lump sum fee.

*OPEX – Reoccurring Operational Costs (total operational expense of the turn-key, fully operational parking system)

PAYMENT SCHEDULE

Item	Cost	Due at NTP	Due at Substantial Completion	Due at Acceptance
– Hardware	\$ 159,671.00	\$ 79,835.43	\$ 39,917.76	\$ 39,917.76
– Software	\$ 61,775.00	\$ 6,177.48	\$ 27,798.65	\$ 27,798.65
– Miscellaneous Items	\$ 74,834.00	\$ 37,417.09	\$ 18,708.59	\$ 18,708.59
– OPEX (year 1)	\$ 23,178.00			\$ 23,178.00
Total	\$ 319,458.00	\$123,430.00	\$86,425.00	\$109,603.00

EXHIBIT B-2

REIMBURSABLE EXPENSES

Reimbursable Expenses:

- Monthly/Quarterly Permit Transactions \$1.00 per completed Transaction
- Daily Parking Transactions \$0.35 per completed Transaction
- TMS memory storage beyond 2 GB \$200.00 per GB
- MLPR memory storage beyond 5 GB \$50.00 per GB

Consultant may charge the above Reimbursable Expenses at the following not to exceed limits:

Item	Monthly Limit	Annual Limit
1 – Monthly/Quarterly Permit Transactions	\$ 200.00	\$ 2,400.00
2 – Daily Parking Transactions	\$ 770.00	\$ 9,240.00
3 – Added TMS Memory Storage*	n/a	\$ 800.00
4 – Added MLPR Memory Storage*	n/a	\$ 200.00
Sub-total Limit		\$ 12,640.00

* City and Consultant shall monitor TMS and MLPR memory storage usage through the first six months of service. If storage capacity is then projected to exceed the annual cost limit, actions will be taken to maintain capacity within limits. If limit cannot be maintained, then increased allowance shall be negotiated.

EXHIBIT C

TEN YEAR EXTENDED OPERATIONAL, WARRANTY & SUPPORT

City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1, for four (4) additional one-year terms, as deemed beneficial to the City, for a total contract period of five (5) years. Consultant shall be notified in writing by the City Purchasing Agent of the City's intention to extend the Contract term at least ninety (90) calendar days prior to the expiration of the Contract.

Consultant shall provide Extended Operational, Warranty and Support for this project on a Lump Sum basis as follows:

Item	Years 2-5
1 – Pay Stations	\$ 3,948.00
2 – TMS, 3 sets Handheld Devices & Printers	\$ 6,348.00
3 – LPR – 2 Mobile Systems	\$ 1,820.00
4 – LPR – 4 Stationary Cameras	\$ 6,156.00
Taxes (9%)	\$ 2,544.48
Sub-total cost per year	\$ 30,816.48

The stated yearly fee for this agreement shall be adjusted annually on the anniversary of the execution of the contract based on the Consumer Price Index published by the Bureau of Labor Statistics, for all commodities for all urban consumers in the U. S. Cities Average Index (index base 1982 - 1984 = 100) for the preceding twelve months.

Payments are due at the commencement of each annual renewal period.

EXHIBIT D

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

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty 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 Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of

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

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

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

Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor 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.

EXHIBIT E
CONSULTANT'S PROPOSAL