

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
GHD SERVICES INC.  
FOR  
SAN LEANDRO MARINA DECOMMISSIONING AND DEMOLITION PLAN**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and GHD Services Inc. ("Consultant") (together sometimes referred to as the "Parties") as of March 1, 2017 (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, this Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on October 1, 2017, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.
- 1.6 Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless

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

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed one hundred seven thousand, two hundred dollars and eighty-five cents (\$107,200.85), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. This amount includes \$96,402.85 for the basic scope of services (Table 1 of Exhibit B), plus up to \$10,600 in reimbursable expenses. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

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

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the

hours spent by each person, a brief description of the work, and each reimbursable expense;

- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

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

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

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

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

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

**2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$10,600 (ten thousand six hundred dollars). 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 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.**

- 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 those requirements, but

only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agendas, 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 \$3,000,000 per occurrence (\$6,000,000 aggregate) and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 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 an 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 its right to 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.
- d. 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.

**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 \$500,000 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 3 (three) 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 3 (three) years after completion of work under this Agreement.

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

#### **4.4 Environmental Insurance.**

**4.4.1 General Requirements.** Contractor shall purchase and maintain liability insurance with coverage, as further specified below, for losses arising from or in any way related to pollution conditions, both sudden and non-sudden (gradual), which arise from or in connection with the Contractor's transportation services and any disposal facilities used in connection with the underlying Agreement. The required insurance coverage shall be endorsed to cover Non-Owned Disposal Sites. The Contractor's insurance shall include:

- a. Pollution Legal Liability; and,
- b. Environmental Transportation Liability insurance; provided, however, if the Contractor does not maintain a separate policy evidencing pollution liability coverage in relation to the Contractor's transportation services, then the Contractor's automobile liability insurance policy must be endorsed so as to satisfy the minimum scope of coverage related to the Contractor's transportation services as set forth in this Addendum.

**4.4.2 Limits.** The Policies shall contain minimum liability limits of:

- a. Pollution Legal Liability - \$2,000,000 per loss and \$2,000,000 in the aggregate.
- b. Environmental Transportation Liability - \$2,000,000 per loss and \$2,000,000 in the aggregate.

**4.4.3 Form and Duration.** Continuous coverage under the Policies shall be maintained until final completion or termination of the Project, in accordance with the underlying Agreement. If written on a claims made basis, continuous coverage under the Policies shall be maintained for a minimum of one year beyond final completion or termination of the Project, in accordance with the underlying Agreement.

#### **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 Reserved.**
- 4.5.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to the City the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.
- 4.5.4 Wasting Policies.** No occurrence made policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense). This Section 4.4.4 does not apply to any claims made professional liability policy.
- 4.5.5 Cancellation Requirements.** Consultant shall provide that, for each insurance policy required by Section 4, coverage shall not be canceled by either party, except after 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 endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

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

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

**Section 6.** **STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the



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

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

## **Section 7. LEGAL REQUIREMENTS.**

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

employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

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

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

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

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

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
  - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
  - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

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

expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

**Section 10. MISCELLANEOUS PROVISIONS.**

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

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

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that

it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

**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 Debbie Pollart, Public Works Director ("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:

Robert Larsen, CHMM  
GHD Services, Inc.  
5900 Hollis Street, Suite A  
Emeryville, CA 94608

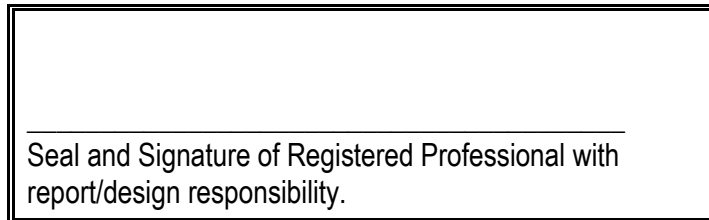
Any written notice to City shall be sent to:

Debbie Pollart, Public Works Director  
14200 Chapman Road  
San Leandro, CA 94578

With a copy to:

City of San Leandro  
Department of Finance  
c/o Purchasing Technician  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

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



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

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

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

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

**SIGNATURES ON FOLLOWING PAGE**

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

CITY OF SAN LEANDRO

GHD SERVICES INC.

\_\_\_\_\_  
Chris Zapata, City Manager

\_\_\_\_\_  
[NAME, TITLE]

Attest:

\_\_\_\_\_  
Consultant's DIR Registration Number

\_\_\_\_\_  
Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

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

\_\_\_\_\_  
210-57-114-5120

Account Number

Approved as to Form:

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

Per Section 10.7:

☒ Form 700 Not Required

☐ Form 700 Required

\_\_\_\_\_  
Debbie Pollart  
Public Works Director

1969630.2 (2015)

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

October 27, 2016

Reference No. 11119148.98

Ms. Debbie Pollart  
Public Works Director  
City of San Leandro  
14200 Chapman Road  
San Leandro, California 94578

Dear Ms. Pollart:

**Re:    Scope of Work for Engineering and Professional Services  
      San Leandro Marina Decommissioning and Demolition Plan  
      San Leandro, California**

GHD is pleased to submit this proposal to the City of San Leandro Department of Public Works (DPW) for engineering and professional services to develop a Decommissioning and Demolition Plan for the San Leandro Marina motorized vessel dock facilities. We understand this project is undertaken in support of the San Leandro Shoreline Development Project currently in progress by the City. This project scope is based on correspondence and our review of the background information provided during meetings with the San Leandro Public Works Director on September 9 and September 16, 2016, including the following DPW Engineering Division drawings.

- DPE Engineering Division drawings: 291 (12/1965), 709 (3/1981), and 867 (3/1985);
- Environ detail/as-built drawings: 420-431 (12/1969);
- Environ detail/as-built drawing: 448-456, 459-462, 468 (5/1972);
- Environ detail/as-built drawings: 576-587, 591-595 (12/1974);
- PLS Surveys, Inc. Bathymetric Survey drawing 1802, sheet 2 of 2 (3/2006).

**1.     Project Description**

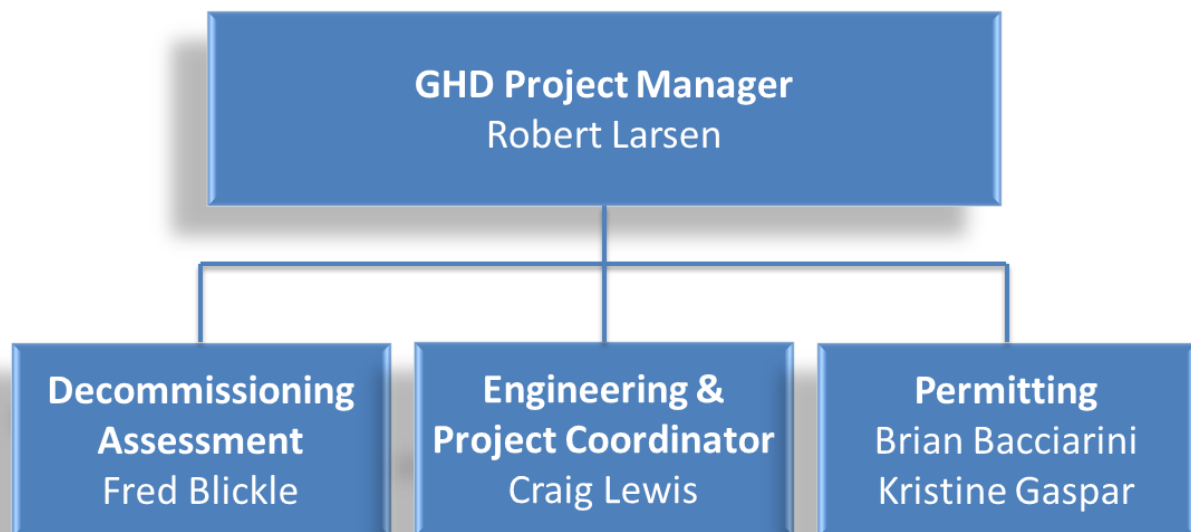
The San Leandro Marina has operated since the 1960's as a small boat marina. The San Leandro Shoreline Development Project contemplates, in part, decommissioning and removal of the existing motorized vessel facilities and appurtenances in the north basin to allow for other uses of the basin for recreation and wildlife habitat. The project would require removal of structures and features including the wood and concrete docks and associated piers, restrooms, fuel dock, harbor master's office, remnants of the Blue Dolphin restaurant platform, and rip-rap in select locations. The Marina Decommissioning and Demolition Plan is focused on only waterside features of the project which will be removed and either recycled, reused, sold or disposed.



## 2. Project Team

GHD anticipates a close working relationship with the City of San Leandro personnel throughout the completion of the work. GHD's Project Manager (Mr. Robert Larsen-Emeryville) will be the primary point of contact for City of San Leandro personnel and will be responsible for the quality of GHD's work product, meeting the Project Schedule, and adhering to the Project budget. The Project Manager will be supported by GHD's Project Coordinator/Engineering Technical Lead (Mr. Craig Lewis-San Francisco) who has recently completed the San Francisco Marina West Harbor Renovation Project (described below) in 2016. The Project Manager will also be supported by GHD's Decommissioning Expert and Corporate decommissioning group leader (Mr. Fred Blicke-Emeryville) who will provide technical assistance on an as needed basis drawing from his experience on a considerable number of projects of this nature throughout his 30-plus year career. Permitting Technical Support will be provided by technical staff reporting to GHD's Permitting Technical Lead (Mr. Brian Bacciarini-Santa Rosa). This key team will be supported by a number of other GHD professionals and sub-consultants as required. The key members of GHD's proposed team are identified below and a Project Organizational Chart is shown on Figure 1.

**Figure 1**



GHD's Project Manager and Decommissioning Expert are both domiciled in GHD's Emeryville California office which is approximately 15 miles from the City of San Leandro. Additional experienced engineering and permitting support will be provided by GHD's San Francisco and Santa Rosa offices as needed to meet specific project needs and ensure a quality work product. GHD's corporate organization is designed to allow the most qualified staff to service projects where and whenever projects require specific expertise. GHD achieves this flexibility by operating on a single cost center business mode. As a result, resources are available from across GHD's base of 3000 staff in North America to contribute their personal expertise as required to meet the needs of individual projects. We utilize uniform management approaches (e.g., ISO 9001:2008 Quality System) to ensure responsiveness, accountability and consistent project reporting.

### **3. Project Experience**

GHD is uniquely qualified to assist the City of San Leandro with the engineering and professional services relating to the decommissioning and demolition requirements needed at the San Leandro Marina due to our extensive experience and knowledge. In regards to our technical capabilities related to this project, GHD has been providing demolition and decommissioning services to Fortune 500 companies throughout North America and Europe for over 20 years; we are a key leader in this market sector. GHD has completed decommissioning and demolition evaluation related services of over one billion square feet of property.

Our San Francisco Bay Area offices are well equipped to provide effective local knowledge, management and technical support on this project as demonstrated by our recent work for the City of San Francisco. Current or past similar decommissioning and demolition projects are the San Francisco Marina West Harbor Renovation Project (consolidated design package for the waterside improvements), Argo Solvents Plant and Barge Dock Facility Decommissioning project (bid documents and contract administration and direct demolition contractor management), and Morton Newark Salt Plant Decommissioning project (decommissioning assessment and compliance review, specifications and contractor procurement assistance).

### **4. Scope of Work**

#### **4.1 Marina Facilities Decommissioning Assessment**

GHD will conduct the necessary field investigation and engineering activities required to evaluate observable physical and environmental conditions of the facilities to provide for the development of a Decommissioning and Demolition Plan. A physical inventory of marina facilities will be prepared including floating docks, fixed piers, buildings on fixed piers, subsurface support structures, utilities, harbor masters office and a limited amount of rock revetment or rip-rap. Field investigation will require access to buildings and improvements by GHD field engineers for a minimum of two days. Documentation of existing utility components (water, electrical, sewer and/or communications) will be included in the inventory. A table and drawing will be prepared identifying quantities of materials that will be demolished, recycled, sold or reused.

Existing as built engineering drawings provided by the City of San Leandro DPW will be reviewed as a component of the Marina Facilities Decommissioning Assessment to identify construction methods and materials of existing marina appurtenances.

A Hazardous Materials survey will be conducted to identify and quantify potential hazardous materials associated with the marina facilities including fluorescent light fixtures, mercury-containing equipment, battery devices, creosote pilings and potential lead and asbestos containing materials. The Hazardous Materials survey will identify sample locations and parameters that may include polychlorinated biphenyls (PCBs), total Resource Conservation and Recovery Act (RCRA) metals, RCRA semi-volatile organic compounds (SVOCs) and RCRA volatile organic compounds (VOCs). Photo documentation will be completed as part of this task, in a format acceptable to DPW. GHD will prepare a Health and Safety Plan (HASP) to address project-specific hazards associated with completing the scope of work outlined in this section.

As part of this task, a format will be developed to capture and report piling and foundation removal and disposal costs, identification of acceptable disposal sites, associated restoration activities and quantification and cataloging of building material types, which will be presented in Demolition and Restoration Worksheets.

#### **4.2 Decommissioning Permits Assessment**

GHD will determine Resource Agency permitting needs for Phase II Demolition as part of this assessment. Based on our current understanding of the Project, resource agencies that would have permitting authority over demolition of the existing harbor facility would include:

- Army Corps of Engineers
- Regional Water Quality Control Board
- Bay Conservation and Development Commission
- California Department of Fish & Wildlife

GHD proposes to contact each agency to discuss the appropriate permitting approach in light of the demolition work and in context of the overall Shoreline Development. For each agency, a written summary will be provided that includes the type of permit anticipated, supporting documentation that will be required, expectation on Best Management Practices to be incorporated into the project, such as work windows and turbidity controls, as well as an overall approach.

Although some agencies are already aware of the project, as is indicated by comments made on the DEIR, the project elements and phases need to be described carefully so as not to give the impression of “piece-mealing” the project. Typically resource agencies will want to permit the whole of the action. GHD believes that there is justification in permitting the project in phases, as currently proposed by the City. In addition, it is worth discussing how the overall Shoreline Development could receive credit for removal of the existing harbor facility, even though the demolition and development will be led by two different entities on different time schedules.

In person meetings may be beneficial for some agencies, such as BCDC. Therefore, we have assumed two resource agencies meetings as part of this initial phase of work. The remaining discussions would be isolated to conference calls.

There is likely an existing BCDC Major Permit for the harbor facility. GHD will review the conditions of the permit related to decommission and demolition of the facility.

#### **4.3 Optional Services**

GHD can provide optional services, or contract approved sub-consultants to perform additional services related to the San Leandro Marina north basin, if requested by DPW, as follows:

- Prepare technical contract bid documents
- Prepare administrative contract bid document
- Perform a Biological Survey of the north basin
- Provide a Bathymetric Survey
- Provide a Topographic Survey

- Provide Sediment sampling and testing
- Provide Geotechnical Engineering Services
- Perform Engineering Design Calculations or related services

## **5. Deliverables**

GHD will prepare a Marine Facilities Decommissioning Assessment which will include:

- Items to be decommissioned
- Permitting and regulatory compliance
- Engineering assessment of demolition activities
- Decommissioning and Demolition cost estimate
- Decommissioning schedule estimate

### **5.1 Assumptions**

GHD has made the following assumptions in developing our costs for the scope of work outlined in Section 4.

- GHD will have unrestricted access to the Site for investigation and sampling
- Validation will not be conducted on laboratory analytical results of samples collected under this scope of work
- GHD will be allowed no less than eight hours of access to the Site per day
- Sampling will be conducted in one comprehensive sampling event (e.g., one mobilization). This Proposal includes costs for only those quantities of samples and sample analysis specified in Table 1. Based on Site observations, additional samples may be recommended
- Decommissioning and demolition contract documents and technical specifications are not included in this scope of work, but pricing for preparation of these documents can be provided upon request
- Decommissioning and demolition oversight is not included in this scope of work, but pricing to provide oversight of these activities can be provided upon request

## **6. Costs**

GHD will complete the defined scope of work outlined in this proposal on a time and materials basis in accordance with the costs presented in Table 1.

GHD does not charge a premium for overtime, weekend, or holiday work necessary to meet client deadlines.

## EXHIBIT B

### COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Cost Table 1  
Defined Scope of Work Cost Estimate  
San Leandro Marina Decommissioning and Demolition Plan  
San Leandro, California

| <i>Item</i>   | <i>Quantity</i> | <i>Unit</i> | <i>Rate</i> | <i>Budget Estimate</i> |
|---|-----------------|-------------|-------------|------------------------|
| <b>1.1 HEALTH AND SAFETY PLAN</b>                   |                 |             |             |                        |
| Project Manager                                     | 1               | hours       | \$185.00    | \$ 185.00              |
| Project Engineer                                    | 2               | hours       | \$122.00    | \$ 244.00              |
| Safety Professional                                 | 1               | hours       | \$153.00    | \$ 153.00              |
| Word Processing                                     | 1               | hours       | \$63.00     | \$ 63.00               |
| Additional Admin Expenses (5% Labor)                | —               | L.S.        | —           | \$ 32.25               |
| <b>Task 1.1 Subtotal:</b>                           |                 |             |             | <b>\$ 677.25</b>       |
| <b>1.2 MATERIAL REVIEW, SITE INSPECTION AND SAP</b> |                 |             |             |                        |
| Project Manager                                     | 24              | hours       | \$185.00    | \$ 4,440.00            |
| Senior Technical Advisor                            | 12              | hours       | \$215.00    | \$ 2,580.00            |
| Marine Engineer                                     | 20              | hours       | \$215.00    | \$ 4,300.00            |
| Structural Engineer                                 | 56              | hours       | \$155.00    | \$ 8,680.00            |
| Electrical/Mechanical Engineer                      | 24              | hours       | \$160.00    | \$ 3,840.00            |
| Civil Engineer                                      | 36              | hours       | \$175.00    | \$ 6,300.00            |
| Environmental Scientist                             | 40              | hours       | \$107.00    | \$ 4,280.00            |
| Senior CADD   | 72              | hours       | \$135.00    | \$ 9,720.00            |
| Word Processing                                     | 32              | hours       | \$63.00     | \$ 2,016.00            |
| Field Expenses - PPE, truck charge                  | 2               | days        | \$175.00    | \$ 350.00              |
| Additional Admin Expenses (5% Labor)                | —               | L.S.        | —           | \$ 2,307.80            |
| <b>Task 1.2 Subtotal:</b>                           |                 |             |             | <b>\$ 48,813.80</b>    |
| <b>1.3 SAMPLING AND ANALYSIS</b>                    |                 |             |             |                        |
| Project Manager                                     | 0               | hours       | \$185.00    | \$0.00                 |
| Senior Technical Advisor                            | 0               | hours       | \$215.00    | \$0.00                 |
| Environmental Scientist                             | 0               | hours       | \$107.00    | \$0.00                 |
| Field Expenses - PPE, truck charge                  | 0               | days        | \$175.00    | \$0.00                 |
| Laboratory analysis                                 | 0               | L.S.        | —           | TBD                    |
| Additional Admin Expenses (5% Labor)                | —               | L.S.        | —           | \$0.00                 |
| <b>Task 1.3 Subtotal:</b>                           |                 |             |             | <b>TBD</b>             |
| <b>1.4 ACM EVALUATION</b>                           | 1               | L.S.        |             | \$0.00                 |
| <b>Task 1.4 Subtotal:</b>                           |                 |             |             | <b>TBD</b>             |
| <b>1.5 Compliance Review</b>                        |                 |             |             |                        |
| Project Manager                                     | 6               | hours       | \$185.00    | \$ 1,110.00            |
| Senior Technical Advisor                            | 32              | hours       | \$150.00    | \$ 4,800.00            |
| Environmental Scientist                             | 12              | hours       | \$117.00    | \$ 1,404.00            |
| GIS Specialist                                      | 4               | hours       | \$106.00    | \$ 424.00              |
| Field Expenses - PPE, truck charge                  | 1               | days        | \$250.00    | \$ 250.00              |
| Additional Admin Expenses (5% Labor)                | —               | L.S.        | —           | \$ 365.70              |
| <b>Task 1.5 Subtotal:</b>                           |                 |             |             | <b>\$ 8,353.70</b>     |
| <b>1.6 BDA REPORT</b>                               |                 |             |             |                        |
| Senior Technical Advisor                            | 24              | hours       | \$215.00    | \$ 5,160.00            |
| Project Manager                                     | 16              | hours       | \$185.00    | \$ 2,960.00            |
| Marine Engineer                                     | 18              | hours       | \$215.00    | \$ 3,870.00            |
| Structural Engineer                                 | 60              | hours       | \$155.00    | \$ 9,300.00            |
| Electrical/Mechanical Engineer                      | 10              | hours       | \$160.00    | \$ 1,600.00            |
| Civil Engineer                                      | 14              | hours       | \$175.00    | \$ 2,450.00            |
| Environmental Scientist                             | 80              | hours       | \$107.00    | \$ 8,560.00            |
| Chemist   | 4               | hours       | \$143.00    | \$ 572.00              |
| Database Analyst                                    | 0               | hours       | \$130.00    | \$ -                   |
| Senior CADD   | 6               | hours       | \$135.00    | \$ 810.00              |
| Word Processing                                     | 24              | hours       | \$60.00     | \$ 1,440.00            |
| Additional Admin Expenses (5% Labor)                | —               | L.S.        | —           | \$ 1,836.10            |
| <b>Task 1.6 Subtotal:</b>                           |                 |             |             | <b>\$ 38,558.10</b>    |

TOTAL BUDGET ESTIMATE: \$ 96,402.85

## 2016/2017 USA Fee Schedule

**Principals:** \$190.00 - \$220.00

**Associates:** \$165.00 - \$215.00

**Specialist:** \$180.00 - \$220.00

**Engineers:**

- ◆ Level A \$112.00
- ◆ Level B \$122.00
- ◆ Level C \$134.00 - \$154.00
- ◆ Level D \$159.00 - \$170.00
- ◆ Level E \$175.00 - \$185.00
- ◆ Level F \$205.00 - \$215.00

**Geologists/Hydrogeologists:**

- ◆ Level A \$112.00
- ◆ Level B \$122.00
- ◆ Level C \$134.00 - \$154.00
- ◆ Level D \$159.00 - \$170.00
- ◆ Level E \$175.00 - \$185.00
- ◆ Level F \$205.00 - \$215.00

**Environmental Chemists/Scientists/Planners:**

- ◆ Level A \$107.00
- ◆ Level B \$117.00
- ◆ Level C \$128.00 - \$138.00
- ◆ Level D \$148.00 - \$158.00
- ◆ Level E \$173.00 - \$183.00
- ◆ Level F \$205.00 - \$215.00

**Industrial Hygienists/Safety Professionals:**

- ◆ Level A \$107.00
- ◆ Level B \$117.00
- ◆ Level C \$128.00 - \$143.00
- ◆ Level D \$153.00 - \$163.00
- ◆ Level E \$175.00 - \$185.00
- ◆ Level F \$205.00 - \$215.00

**Information Technologists:**

- ◆ Level A \$107.00
- ◆ Level B \$117.00
- ◆ Level C \$128.00 - \$138.00
- ◆ Level D \$148.00 - \$158.00
- ◆ Level E \$173.00 - \$183.00
- ◆ Level F \$205.00 - \$215.00

**Database Analysts:**

- ◆ Level A \$92.00
- ◆ Level B \$102.00
- ◆ Level C \$118.00 - \$138.00
- ◆ Level D \$152.00 - \$172.00
- ◆ Level E \$182.00 - \$192.00
- ◆ Level F \$197.00 - \$207.00

**Technicians/Technologists:**

- ◆ Level A \$79.00
- ◆ Level B \$97.00
- ◆ Level C \$112.00
- ◆ Level D \$123.00 - \$143.00
- ◆ Level E \$153.00 - \$163.00
- ◆ Level F \$190.00 - \$205.00

**Draft/CADD:**

- ◆ Level A \$75.00
- ◆ Level B \$85.00
- ◆ Level C \$96.00
- ◆ Level D \$106.00
- ◆ Level E \$116.00
- ◆ Level F \$126.00

**Technical Apprentices:** \$80.00 - \$90.00

**Administrative Support:** \$63.00

July 1, 2016  
Range Fee Schedule

## 2016/2017 Fee Schedule

### Notes:

- 1) Rates are for employees GHD.
- 2) Mileage rates are consistent with current IRS/Canada Revenue Agency rates, which is the rate at which employees are reimbursed.
- 3) Company owned vehicle rate is \$80.00/Day plus \$0.28/mile (USA) or \$0.24/km (CDN).
- 4) Travel charges are identified under disbursements and are passed through directly as incurred, all travel via common carrier being at coach class rates.
- 5) Accommodation expenses are identified under disbursements and are passed through directly as incurred. Lodging costs and meal allowances for each full day depend on the area.
- 6) Photocopy charges are \$0.14 per page.
- 7) Color photocopy charges are \$0.50 per page.
- 8) Information Technology is billed at \$4.50 per hour per person.
- 9) Specialized Computer Application is billed at \$15.00 per hour.
- 10) Other Office and Field Supplies are charged at standardized rates and are available upon request.
- 11) Other project related out of office disbursements, expenses, and subcontractor costs will be invoiced with a markup of 10%.
- 12) Fee schedule is subject to change on July 1, 2017.

## **EXHIBIT C**

### **INDEMNIFICATION**

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