

3501

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NOLL & TAM ARCHITECTS
FOR
DESIGN OF MULFORD-MARINA BRANCH LIBRARY**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Noll & Tam Architects ("Consultant") (together sometimes referred to as the "Parties") as of MARCH 5, 2019 (the "Effective Date").

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

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2020, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit D.
- 1.6 City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San

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

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$366,047, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, 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 included in the total amount of compensation provided under this Agreement..
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

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

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 **Workers' Compensation.**

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than **\$2,000,000** and automobile liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

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

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than **\$2,000,000** covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

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

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

4.4 All Policies Requirements.

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

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

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

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

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

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

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

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

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

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

Section 6. **STATUS OF CONSULTANT.**

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this

Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

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

Section 7. LEGAL REQUIREMENTS.

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

Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

Section 10. MISCELLANEOUS PROVISIONS.

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

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

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

sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by 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. Christopher Noll, AIA, Principal
Noll & Tam Architects
729 Heinze Avenue, #7
Berkeley, CA 94710
chris.noll@nollandtam.com

Any written notice to City shall be sent to:

Mr. John O'Driscoll, P. E.
835 E. 14th Street
San Leandro, Ca 94577
jodriscoll@sanleandro.org

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

- 10.11 Professional Seal.** Where applicable 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.

Seal and Signature of Registered Professional with
report/design responsibility.

- 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
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	California Labor Code Section 1720 Information

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

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

SIGNATURES ON FOLLOWING PAGE

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

CITY OF SAN LEANDRO

Noll & Tam Architects



Jeff Kay, City Manager



Christopher Noll, AIA, LEED AP, Principal

Attest:



Leticia I. Miguel, City Clerk

Consultant's DIR Registration Number
(if applicable)

Approved as to Fiscal Authority:



David Baum, Finance Director

Account Number: 210-69-193-5120

Approved as to Form:

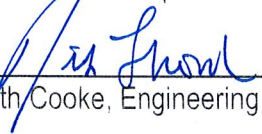


Richard D. Pio Roda, City Attorney

Per Section 10.7:

☒ Form 700 Not Required

☐ Form 700 Required

 for

Keith Cooke, Engineering & Transportation Director

EXHIBIT A

SCOPE OF SERVICES

Project Description

The City of San Leandro proposes to replace the Mulford-Marina Branch Library located at the intersection of Aurora Drive and Fairway Drive. The project shall include demolition of the existing building and construction of new improvements consisting of a new library building, an outside patio area, parking lot, and landscaping. The site limits shall be expanded to approximately twice the current area as indicated on the 2004 conceptual plan. Additionally, a walkway 250' long x 15' wide shall extend between the expanded library site and the golf course providing access to the adjacent Monarch Butterfly habitat.

The new library shall be a single storey building with an approximate floor area of 2500 sf. Type VB Non-rated construction is anticipated. Per the City's Green Building Ordinance, the project requires a minimum Leadership in Energy and Environmental Design (LEED™) rating of Silver.

Improvements to the expanded site shall be incorporated as a "Bid Alternate" and shall include: grading, drainage, landscaping, irrigation, perimeter fencing, asphalt paved access walkway and safety/security lighting.

This contract is for comprehensive consulting services necessary to deliver the project from initiation, through conceptual design and design development to the production of construction-ready plans, specifications and cost estimates (PS&E) for replacement (including existing building demolition) of the Mulford-Marina Branch Library. The Consultant's Services, at a minimum, shall include architectural, civil, structural, geotechnical, surveying, mechanical, electrical (lighting, power, phone, data, security), plumbing and landscape services.

The Construction Budget, without contingencies, and excluding the Bid Alternate, is programmed at \$2.8M. The Consultant shall manage the design to maintain the projected construction cost within this budget.

Any City requested changes in scope, with associated decrease or increase in Consultant's fee, shall be mutually agreed by both Parties and documented by an Amendment.

Scope of Services

Consultant shall coordinate meetings with all involved City staff including those from the Library Department, Public Works maintenance, Information Services, and Engineering & Transportation. Develop a list of needs that the project can address as well as constraints upon the project. Solicit input from and make presentations to neighborhood and stakeholder groups as well as the general public and document input received.

Consultant shall work with City staff to prioritize the list of needs and develop conceptual design documents that address as many needs as possible within project constraints. An evaluation of relevant codes and regulations shall be included. The documents shall illustrate the scale and relationship of the Project components and shall include a site layout plan and preliminary building floor plan, sections and elevations. Preliminary selections of major building systems and construction materials and interior and exterior

finishes shall be noted on the drawings or described in writing. Work shall include preparation of an opinion of probable construction cost.

Due to LEED™ rating requirement, the Consultant shall submit LEED™ (v4.0) credits necessary for LEED™ Silver certification.

Consultant shall prepare color renderings of the project and computer simulated walk-throughs of the proposed building for presentation to the stakeholders and to the public.

Task 1 – Project Management

- a. Meet with the City staff to review the project objectives and scope.
- b. Provide input to assure delivery of the project on schedule and within budget
- c. Supervise, coordinate and monitor project design for conformance with standards and policies
- d. Coordinate with and manage sub-consultants
- e. Maintain project files
- f. Prepare correspondence and memos
- g. Prepare color digital perspective renderings as part of the Schematic and Design Development phases
- h. Prepare monthly invoices
- i. Manage the LEED™ application and documentation process

Task 2 – Schematic Design

- a. Prepare draft budget including hard and soft costs
- b. Provide topographical survey including contours at 2' min. intervals and property line locations
- c. Provide geotechnical survey of the expanded site including soils testing and analysis
- d. Determine finished floor elevation from the Technical Report titled "San Leandro Marina Sea Level Rise Risk Assessment (draft)", dated May 2016
- e. Conduct kick-off meeting to address the following:
 - i. Project Scope
 - ii. Budget including hard & soft costs
 - iii. Project Requirements
 - iv. Necessary outcomes and deliverables
 - v. Communication and decision making protocols
 - vi. Project Schedule
 - vii. Other important aspects of the project
 - viii. Preliminary Site concepts
 - ix. Define LEED™ project scope
- f. Develop a Needs Assessment from interviews with key library staff, from online survey responses and from input gathered at meetings 2-1, 2-2 & 2-3
- g. Utilities – Investigate existing site utility connections, water, electric, gas, telecom, data, sanitary & storm sewers to evaluate their capacity and location for reuse suitability with the new building
- h. Conduct Community Meetings
- i. Prepare a survey document for broadcast via social media to solicit online input from staff and the public
- j. Establish LEED™ goals with Owner and Design Team to select appropriate strategies and associated LEED™ credits to meet the goals. Identify the credits and options that should be

attempted by the team and assign responsibilities to appropriate team members for credit achievement.

- k. Provide conceptual library building program utilizing the needs assessment
- l. Architectural Components
 - i. Provide a narrative description of the project's scope; including type of construction and interior/exterior finishes
 - ii. Perform Building Code analysis
 - iii. Evaluate relevant codes & regulations including: zoning, storm water, parking, etc.
 - iv. Prepare conceptual design studies consistent with the Project Program requirements
 - v. Provide conceptual site plan with building floor plan & building elevations
 - vi. Reference images of proposed materials & design character
 - vii. Provide digital renderings to demonstrate the building exterior and interior spaces
- m. Civil - Provide conceptual grading and Utility Plan in sketch format
- n. Structural – Provide conceptual structural narrative and sketches to convey building structural systems
- o. Mechanical/plumbing - Provide narrative and sketches to convey the concepts of the HVAC and plumbing systems
- p. Electrical - Provide conceptual narrative and sketches to convey the electrical, lighting, communication, fire alarm and security systems
- q. Two stakeholder progress meetings plus 1 Community progress meeting are included.

Meetings:

- 2-1 Kick-off meeting with City Staff and Project Stakeholders
- 2-2 Community Meeting 1 – Visioning, Program, Site Concepts, Public input
- 2-3 Community Meeting 2 – for individuals unable to attend Community Meeting 1
- 2-4 Design Progress Meeting – Stakeholders
- 2-5 Community Meeting – Update/Progress Meeting
- 2-6 Phase Completion Meeting – Stakeholders

City Deliverables:

- 1. Technical Report titled “San Leandro Marina Sea Level Rise Risk Assessment (draft)”, dated May 2016
- 2. Phase I & Phase II Environmental Site Assessment; including Hazardous Material Report

Deliverables:

- 2-1 Schematic Site Layout Plan; alternate layouts shall be provided; plans shall include building location & orientation, outdoor use areas and parking spaces
- 2-2 Schematic Building Plan – floor plans, sections, elevations
- 2-3 Architectural Narrative – materials, finishes, codes/regulation compliance
- 2-4 Mechanical/Plumbing sketches & narrative – HVAC & plumbing systems
- 2-5 Electrical sketches & narrative – electrical, lighting, fire alarm and security systems
- 2-6 Structural sketches and narrative – framing and building structural systems
- 2-7 Preliminary list of possible LEED™ opportunities
- 2-8 Electrical sketches & narrative – electrical, lighting, fire alarm and security systems
- 2-9 Meeting minutes
- 2-10 Project Schedule

2-11 Cost model

Schedule:

1. Site concepts presentations/meetings – eight weeks after kick-off meeting
2. Phase completion presentations/meetings – twelve weeks after concept presentation

Task 3 – Design Development

- a. Develop the design based on the preferred design concept from Task 2
- b. Meet with the City's Community Development Department/Building Department to ensure regulatory compliance including but not limited to zoning, structural, fire, life & safety, accessibility and energy
- c. Conceptual furnishing plan (fixed and movable)
- d. Update cost model and confirm the design remains within budget (100% DD Cost estimate may be added for additional fee)
- e. One stakeholder meeting is included
- f. LEED™ Check-in with Design Team

Deliverables:

- 3-1 100% Architectural Design Development plans
- 3-2 Mechanical/Plumbing sketches & narrative – HVAC & plumbing systems
- 3-3 Electrical sketches & narrative – electrical, lighting, fire alarm security alarm and building access systems
- 3-4 Structural sketches & narrative – framing and building structural systems
- 3-5 Updated cost model
- 3-6 Updated color digital perspective renderings

Schedule & Meetings:

1. Design Progress Meeting – approx. eight weeks after Task #2
2. Stakeholder Meeting– Design progress/development
3. Design Progress Meeting – approx. four weeks after 60% comments

Task #4 – Preparation of Construction Documents – Final PS&E and Permitting

Based on input received in the Design Progress reviews and architect's and engineer's own quality control review, make final revision to working plans and back-up materials and submit to the City of San Leandro Building Regulations Department. Consultant shall respond to application comments necessary to acquire the building permit. Significant revisions shall be incorporated into the contract documents. Payment of Building Permit fees will be the responsibility of the City.

Based on input received in the 90% PS&E review and architect's and engineer's own quality control review, and significant comments received from the Building Permit application process, make final revision to working drawing plans and specifications and submit the requisite number of wet-signed documents for final review and approval, stamping and signature by City of San Leandro City Engineer. Provide itemized and final response to all comments received in Design Progress review.

Meetings: None.

Deliverables:

- 4-1 Building Permit application with plans & supporting documents
- 4-2 Structural Calculations
- 4-3 Title 24 Energy Calculations
- 4-4 Project contract plans & specifications ready for bidding
- 4-5 Engineer's estimate of probable costs after 60% CD equivalent.
- 4-6 Bid Set (100% CD Set) including responses to Plan Check comments
- 4-7 LEED™ submission for Design Review
- 4-8 Design specifications of FF&E
- 4-9 Signage Documentation

Schedule:

- 1. Final Contract Document's – five weeks after Task #3 review comments received
- 2. Permit document submittal – at 90% CD equivalent
- 3. LEED™ submission during Plan Check Review

Task 6 – Bidding Assistance

- a. Attend Pre-Bid Conference
- b. Provide written responses submitted questions
- c. Prepare & provide Addenda documents as necessary
- d. Assist City with Bid evaluations

Meetings:

Consultant shall administrate stakeholder and community meetings, including preparation of agendas and meeting minutes. Meeting presentations shall describe the project, update progress and discuss design issues. Graphics/renderings shall be provided to demonstrate the objectives of the meeting. The time for a total of seven meetings has been included in the Basic Services. If additional meetings are needed, Consultant shall request written authorization before attending the meetings.

Deliverables Format

Final design confirmation plans: PDF

Meeting notes: PDF

Sketches, narratives, calculations and Final Plans: PDF and AutoCAD format

Final Plans: Provide three wet-signed full-sized hardcopies in addition to the electronic files

Cost estimates: PDF

Technical specifications: PDF and Microsoft Word.

Excluded Services

The following items are excluded from the scope of work unless noted as included, but are available on the basis of additional services should they become required and as approved by the City of San Leandro:

- Agency or utility permitting plan check or review fees (to be paid by City)
- Redesign due to Value Engineering
- Construction management services

EXHIBIT A-1 DETAILS OF DESIGN

Design shall be prepared in accordance with the California Building Standards Code as currently adopted by the City as of the date of this agreement.

The scope of this agreement includes all architecture and engineering service required to complete the work. No work shown on the plans or listed in the specifications shall be 'design build' unless it is specifically listed herein, or approved in writing by the City. The interior portion of the fire suppression sprinkler system (if so equipped) may be design build. All exterior piping up to and including the fire service riser shall be designed under this contract.

Unique, proprietary, or experimental designs and materials are prohibited unless approved by City.

Technical Specification shall be CSI format. Front end specifications (administrative) shall be prepared by the City. Consultant shall prepare all other specifications. Consultant shall coordinate the work with the front end specifications prepared by the City. Performance specifications are prohibited. Specifications shall be coordinated with the plans.

Reports provided by City, including Hazardous Materials contain recommendations for design and construction. Design work shall be done in accordance with these recommendations. Consultant shall communicate with the authors of the reports as required to clarify or understand the recommendations. The reports are not construction documents; recommendations for construction shall be included and shown completely on the plans and in the specifications.

The City has a standard door hardware specification guideline. All work shown shall conform to said guideline.

The City has standard plans that indicate details of construction of many site improvements. All work where a standard plan is applicable shall conform to the standard plans unless otherwise approved by the City.

Fire alarm, intrusion alarm and building access systems are to be monitored and maintained by a proprietary consultant / contractor "Denalect Alarm". Consultant shall coordinate with Denalect Alarm and shall incorporate equipment specified by Denalect Alarm into the construction documents.

Structural calculations shall be provided for the design of the vertical and lateral force resisting systems. Calculations shall include the design of joists, rafters, beams, headers, posts, columns, connections, footings, horizontal diaphragms, collectors, frames, braces, walls (in and out of plane), supports, attachments, and all other items whose design is controlled by building code requirements. Structural design shall be in accordance with the California Building standards code and the SEAONC blue book. Where conflicts exist, the more stringent shall apply. Allowable stresses for all materials shall be as published in the UBC, CBC, NDS, AISC, or other nationally recognized source. ICBO reports are acceptable.

The design shall comply with the Building Energy Efficiency Standards according Title 24, Part 6 of California Code of Regulation.

The site shall be graded so that storm water does not drain to adjacent property. All site drainage shall be discharged in a manner conforming to the C3 requirements of the Clean Water Program.

EXHIBIT A-2 DETAILS OF DELIVERABLES

The City of San Leandro has a standard title block and standard size sheet (24"x36"). The contractor shall use both for all sheets of the plans.

Drawings and technical specifications shall be clear, complete, and buildable. All information required to build the project shall be shown. If required information is not shown in the details, then the location of said information shall be clearly noted. Details, plans, elevations, etc. shall be arranged and numbered on the sheets in a regular consistent pattern.

All drawings will be produced in AutoCad latest version. All xref drawings, pen-setting files, attached images, fonts, and other files associated with the AutoCAD files shall also be sent to the City to allow for accurate plotting of the drawings.

All plans shall be drafted in accordance with Consultant's CAD standards. Text shall not be written over lines or other text. Existing items/work/features shall be clearly labeled as such. Text shall plot at 3/32" tall minimum. Details shall not be called as similar unless the actual detail clearly notes what occurs at the similar location. Details shall be cut with the proper orientation. Details with reverse orientation shall be noted as OH (opposite hand) on the drawings. Words shall be completely spelled out unless an abbreviation is defined on the drawings.

Standard plans that are referenced on this project shall be included on the plan sheets of the construction documents. Details will be provided in .tif format, they shall be inserted into electronic files and printed without changes.

Dimensions shall be buildable. Concrete shall not be dimensioned tighter than 1/2" in plan and 1/4" vertical. Structural wood including all stud walls shall not be dimensioned tighter than 1/4". Structural steel shall not be dimensioned tighter than 1/8". Finish work excepted.

Items to be prefabricated shall be so noted on plans. Plans shall differentiate between field welding and shop welding.

Specifications shall be written and printed with times new roman font at 11 point minimum. Specifications shall be edited such that only materials, procedures, and execution specific to this project are included.

Per the Public Contract Code, the specifications shall not call for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service.

Cost estimates shall break down the scope of work in sufficient detail to allow City staff to verify the cost of the individual work items.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

COMPENSATION SCHEDULE

Task Description	Not to Exceed Amount
Task 1 - Schematic Design	\$84,985
Task 2 - Design Development	\$82,175
Task 3 - Construction Documents	\$196,452
Task 4 - Bidding Assistance	\$2,435
TOTAL FEE	\$366,047

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 basis per the fee schedule shown on Exhibit B-1 or a mutually agreed upon lump sum fee.

REIMBURSABLE EXPENSES

Description	Rate
Mileage	Federal reimbursement rate
Reproductions, Renderings, Computer Models & Physical Models	Cost + 15%
Postage, Messengers, & Other Usual Expenses	Cost + 15%

EXHIBIT B-1**STANDARD BILLING RATES (hourly)**

Noll & Tam Architects	2018 Rates	2019 Rates
Principal	\$180 - \$220	\$220
Associate Principal	\$175 - \$185	\$185
Sr. Architect	\$165 - \$175	\$180
Manager	\$165 - \$175	\$175
Job Captain / Sr. Designer	\$155 - \$165	\$165
Int. Designer	\$130 - \$150	\$150
Jr. Designer	-	\$135
Project Assistant	\$105 - \$110	\$110

tbd Consultants	2018 Rates	2019 Rates
Principal	\$220	\$220
Project Manager	\$190	\$190
Sr. Estimator / MEP Estimator	\$180	\$190
Sr. Project Controller / Sr. Scheduler	\$180	\$190
Estimator / Scheduler / Project Controller	\$175	\$180
Asst. Estimator / Asst. Project Controller	\$140	\$150
Administrative / Tech. Support	\$90	\$90

atium Engineering	Rates through 12/31/2019
Principal	\$125

Blue Forest Engineering	Rates through 12/31/2019
Principal	\$180
Engineer VI	\$150
Engineer V	\$120
Engineer IV	\$100
Engineer III	\$85
Engineer II	\$75
Engineer I	\$70
Energy Modeler	\$65
CAD / BIM	\$60
Administrative	\$50

CSW / ST2	Rates through 12/31/2019
Principal	\$235
Engineer Manager	\$235
Project Engineer V	\$205
Project Engineer IV	\$193
Project Engineer III	\$175
Project Engineer II	\$158
Project Engineer I	\$152
Senior Engineer	\$211 - 220
Engineer V	\$163
Engineer IV	\$140
Engineer III	\$128
Engineer II	\$110
Engineer I	\$100
Senior Designer	\$186
Designer V	\$153
Designer IV	\$141
Designer III	\$128
Designer II	\$116
Designer I	\$110
Technician IV	\$110
Technician III	\$106
Technician II	\$100
Technician I	\$85
Project Coordinator/ Off. Mgr.	\$120
Project Assistant I	\$88
Project Assistant I	\$77
Survey Supervisor	\$198
Project Surveyor	\$175
Land Surveyor	\$153
Survey Technician	\$116
Two-man Survey Party	\$275

Einwillerkuehl Landscape Architecture	Rates through 12/31/2019
Partner	\$200
Project Manager	\$130
Technical	\$130
Designer	\$110
Graphics	\$60
Administration	\$60
Intern	\$60

Jennifer Sweeny Associates, LLC	Rates through 12/31/2019
Principal	\$175

MAR Structural Design	Rates through 12/31/2019
President	\$275
Partners	\$225
Project Engineers	\$150 - \$175
Designers	\$135
CAD Staff	\$125
Clerical	\$65 - \$95

Mathew William Design	Rates through 12/31/2019
Design Services	\$125
Production Services	\$90
Project Management	\$75

Rockridge Geotechnical , Inc.	Rates through 12/31/2019
Principal Engineer / Geologist	\$175 - \$250
Associate Engineer / Geologist	\$150 - \$180
Senior Engineer / Geologist	\$135 - \$160
Senior Project Engineer / Geologist	\$125 - \$150
Project Engineer / Geologist	\$120 - \$140
Geotechnical Construction Manager	\$110 - \$130
Senior Staff Engineer / Geologist	\$105 - \$125
Senior Staff Engineer / Geologist	\$100 - \$125
Field Technician	\$100 - \$125
Graphics	\$100
Technical Typing & Editing	\$85

EXHIBIT C

INDEMNIFICATION

- A. Consultant shall, to the extent permitted by law, including without limitation California Civil Code sections 2782 and 2782.8, indemnify, hold harmless and participate in the joint defense of City and Consultant, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all third party claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.
- B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.
- C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the 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, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

EXHIBIT D

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

HOURS OF WORK:

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

WAGES:

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

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

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

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

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

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

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