

**AMENDMENT NO. 1 TO CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NICHOLS CONSULTING ENGINEERS
FOR
ANNUAL STREET OVERLAY/REHABILITATION 2019-21**

This **Amendment No. 1** ("Amendment") is made by and between the City of San Leandro ("City") and Nichols Consulting Engineers ("Consultant") (together sometimes referred to as the "Parties") as of May 19, 2021, and amends that certain Consulting Services Agreement ("Agreement") dated June 17, 2020, between the Parties.

WHEREAS, City and Consultant have executed the Agreement, pursuant to which Consultant has provided certain consulting services to City with regard to the Annual Street Overlay/Rehabilitation 2019-2021 Project, Project No. 2020.0050, and

WHEREAS, the Parties desire to amend the Agreement to address an inconsistency between the City Council approved Resolution and the signed agreement.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

1. Section 2 of the Agreement entitled "Compensation" is hereby amended to pay Consultant a sum not to exceed Seven Hundred and Seventeen Thousand, One Hundred Ninety-One dollars (\$717,191); and

2. Exhibit B of the Agreement entitled "Compensation Schedule & Reimbursable Expenses" is hereby amended to read:

Contract Amount (alignment with Council Resolution No. 2020-031)	\$691,511
<u>Amendment No. 1</u>	<u>\$25,680</u>
Total Agreement Amount	\$717,191

3. All other terms shall remain in full force and effect.

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

SIGNATURES ON FOLLOWING PAGE

Amendment No. 1 to
Consulting Services Agreement between City of San Leandro and Nichol Consulting Engineers for the
Annual Street Overlay/Rehabilitation 2019-21, Project No. 2020.0050
___ for ___

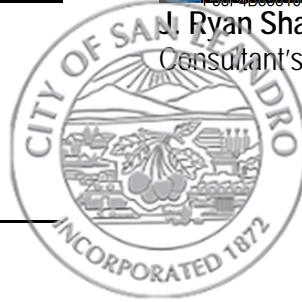
The Parties have executed this Amendment as of the date first written above. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

DS Nichols Consulting Engineers

DocuSigned by:
Fran Robustelli
C062C023AF624E3...
Frances Robustelli, City Manager

DocuSigned by:
J. Ryan Shafer 4-27-2021
F58F4803816B47B...
J. Ryan Shafer, Principal
Consultant's Signature



SEAL

Attest:

DocuSigned by:
Leticia I. Miguel
575DDE0FDA5642B...
Leticia I. Miguel, City Clerk

Budget Approved:

Approved as to Fiscal Authority:

DocuSigned by:
Chui Mun (Susan) Hsieh x
938644D85C6F48C...
Susan Hsieh, Finance Director

210-38-419-5120 x
Account Number

Approved as to Form:

DocuSigned by:
Richard Pio Roda
7B44538F6D6F470...
Richard D. Pio Roda, City Attorney

DocuSigned by:
Keith R. Cooke
AE075090FE4749D...
Keith R. Cooke, Director
Engineering and Transportation Depart
3725023.1

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NICHOLS CONSULTING ENGINEERS
FOR
ANNUAL STREET OVERLAY/REHABILITATION 2019-21 PROJECT**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Nichols Consulting Engineers ("Consultant") (together sometimes referred to as the "Parties") as of June 17, 2020 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2021, 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 **Seven Hundred Seventeen Thousand, One Hundred Ninety-One Dollars and No Cents (\$717,191.00)**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal 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, et
 - 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;

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 **\$7,400**. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

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

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

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

4.1 Workers' Compensation.

- 4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative,

Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

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

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

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

4.3 Professional Liability Insurance.

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

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

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

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

4.4 All Policies Requirements.

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

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

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

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

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

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

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

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

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

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

Section 6. STATUS OF CONSULTANT.

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

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

Section 7. LEGAL REQUIREMENTS.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

Consultant may cancel this Agreement upon 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.

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.

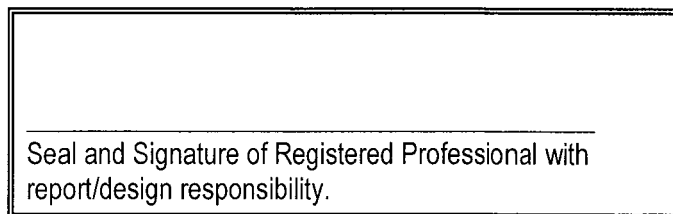
10.9 Contract Administration. This Agreement shall be administered by Austine Osakwe ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:
J. Ryan Shafer
Nichols Consulting Engineers
5253 College Avenue #B
Oakland, CA 94618
rshafer@ncenet.com

Any written notice to City shall be sent to:
Austine Osakwe
City of San Leandro
Engineering and Transportation Department
835 East 14th Street
San Leandro, CA 94577
aosakwe@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.



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

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

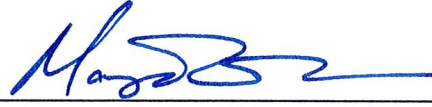
The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

Nichols Consulting Engineers

DocuSigned by:

C82A697A18A54E3...
Jeff Kay, City Manager


J. Ryan Shafer, Principal
MARGOT YAPP, PRESIDENT

Attest:

Consultant's DIR Registration Number
(if applicable)

DocuSigned by:

373DDE0FD43642B...
Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

DocuSigned by:

E7220C3EABE3403...
Elizabeth Warmerdam, Interim Finance Director

210-38-419-5120
Account Number

Approved as to Form:

DocuSigned by:

7B41538F6D5F470...
Richard D. Pio Roda, City Attorney

Per Section 10.7:
 Form 700 Not Required
 Form 700 Required

DocuSigned by:

AEQ75096FE1743D...
Keith R. Cooke, Director
Engineering and Transportation Department

EXHIBIT A**SCOPE OF SERVICES****PROJECT BACKGROUND**

The City of San Leandro annually allocates funds toward street maintenance and rehabilitation. The total budget for the Annual Street Overlay/Rehabilitation 2019-21 Project, including design, construction, inspection, construction management, and contingency is \$11,400,000. This project will involve extensive paving work on street sections comprising of 2 arterial streets, 2 collector streets, and 10 residential streets. Street sections included in the project are listed as follows:

Arterial and Collector Streets

Street Name	Start Location	End Location
Manor Boulevard	Kesterson St	Farnsworth Boulevard
Grand Avenue	Joaquin Avenue	Sybil Avenue
Hesperian Boulevard	Thornally Drive	CV Freeway
Bancroft Avenue	Lee Avenue	Sybil Avenue

Residential Streets

Street Name	Start Location	End Location
Corbet Court	Thornally Drive	North End (Cul De Sac)
Olive Court	Hesperian Boulevard	East End (Cul De Sac)
Norene Way	Benedict Drive	Sandelin Avenue
Fordham Avenue	Corvallis St	Rollins St
Rollins St	Ottawa Avenue	Fordham Avenue
Pleasant Way	Stoakes Avenue	Bellview Drive
Fleming St	Fargo Avenue	Manor Boulevard
West Avenue 130 th	Neptune Drive	Aurora Drive
Marina Court	West Avenue 130 th	South End (Cul De Sac)
Thornally Drive	Hesperian Boulevard	Central Avenue

The streets were selected based on their Pavement Condition Index rating, and by visual inspection of road surface deficiencies.

Along with pavement construction, the project will address ADA accessibility along the selected street segments and new curb ramps and crossings shall be constructed where required. ADA compliant curb ramps and street crossings shall be designed at all corners of a four-way intersection, and at two crossings of a "T" intersection.

This contract is for consulting services to develop Plans, Specifications, and Engineer's Estimate for the Annual Street Overlay/Rehabilitation 2019-21 Project as described below. In addition, this CSA shall

provide construction documents for the Pedestrian Crossing Improvements 2020 project at the following intersections:

- Aurora Drive and Walnut Drive - includes curb bulb-outs, drainage improvements and Rectangular Rapid Flash Beacon (RRFB)
- Williams Street and Joyce Street- includes RRFB
- Monterey Boulevard and Anza Way – includes curb bulb-outs on the northwest and southeast corners, curb ramp on southwest corner, RRFB and drainage improvements

SCOPE OF SERVICES

The scope of services for this CSA shall include the following tasks:

Task 1 – Project Management & Meetings

1A) Project Kick-off Meeting/Progress Meetings:

Consultant will arrange a kick-off meeting with the City and other stakeholders to initiate work on the project. The objectives of the kick-off meeting will be:

- Review of the Scope of Work
- Establish Lines of Communication
- Confirm Deadlines
- Confirm Project Schedule and Milestones
- Define Design and Operation Criteria

In addition, consultant will research and coordinate, as-needed, with other City departments and other agencies, such as PG&E, AT&T, EBMUD, OLSD, School Districts, etc., to identify any potential conflicts, requirements, or design issues early to minimize delays (and costs) later in the design process or during construction. At the kick-off meeting, key deliverables for each Task and the Project Schedule will be reviewed and adjusted accordingly to meet City and stakeholder needs.

To keep the City aware of overall project costs and to closely monitor any potential funding issues, consultant will begin developing Preliminary Engineering Cost Estimates as soon as they develop the engineering design recommendations. During the course of the project, consultant will seek to develop the most appropriate and cost-effective pavement rehabilitation alternatives to stay within the planned project budget and schedule.

Throughout the project, consultant will attend regularly scheduled progress meetings with the City (estimated at 3), to maintain good communications. The purpose of the progress meetings will be to identify and resolve any design or funding issues that may surface in a timely manner, present design alternatives and recommendations to City, and continue coordination with project stakeholders, as necessary.

Deliverables: Kick-off/Progress Meeting Agendas and Minutes

1B) Utility Coordination:

Consultant will coordinate with utility agencies early in the design process to help avoid potential construction delays and unnecessary disruptions to public services. Utility coordination will be a critical item

to keep utility providers informed about the project and schedule to allow for proper notification and planning should utility providers have planned maintenance projects within the subject street sections and/or need to lower/adjust their utilities to accommodate street rehabilitation and particularly reconstruction. One of the first and earliest items that consultant will complete is to send notification letters to applicable utility providers with a preliminary project schedule for street rehabilitation and reconstruction. Consultant will also request utility as-builts and record drawings for street sections planned for reconstruction. As part of consultant's field investigations, as an optional task, consultant will locate utilities using GPR and coordinate with and provide this information to applicable utility providers. This GPR data is for initial planning purposes with utilities.

Consultant will also carefully document all utility coordination notifications, conversations, meetings and information in a dated matrix format with mailing details. Follow-up calls will be made for each of the above notifications to confirm receipt. Consultant will keep City informed of any project delays related to utilities.

Deliverables: Utility Notification Letters and Utility Contact Matrix.

1C) Caltrans and Railroad Permitting (Optional Task):

At the kick-off meeting, consultant will discuss further the City's plans to extend rehabilitation and street improvements on Hesperian Boulevard into Caltrans ROW at Highway 238 and the railroad north of Springlake Dr. If the currently scoped roadway maintenance improvements are to extend into or impact Caltrans or Railroad ROW, consultant will setup a meeting with each of these stakeholders to confirm encroachment permit, or similar, requirements. Consultant will prepare the necessary encroachment permit application, on behalf of the City, for Caltrans review for the work at Hesperian Blvd and assume one resubmittal is necessary to address any comments from Caltrans. Consultant will utilize its railroad specialist, JMA Civil, to coordinate with the railroad owner on right-of-entry, preliminary engineering letter with UPRR, site visit, and CPUC Form G preparation and filing. Any additional work necessary to complete the coordination and permitting beyond what is stated above may be prepared for additional scope and fee.

Deliverables: Caltrans Encroachment Permit Application and Railroad Right-of-Entry Forms for Filing.

Task 2 – Pavement Rehabilitation Design

2A) Pavement and Curb & Gutter Condition Survey:

Consultant will perform a detailed pavement condition survey of each street section based on distresses concurrent with the deflection testing. The surveys will generally cover the travel and parking lanes. Pavement condition surveys serve the purpose of further refining the appropriate pavement rehabilitation treatments that are developed based on pavement deflection testing and coring.

This condition survey will generally note the presence of load related and environmental distresses, such as alligator cracking, longitudinal and transverse cracking, rutting, patches and utility cuts, distortions and depressions as they pertain to developing appropriate pavement treatments. In addition, potential base repairs will be identified in the condition survey. Base repairs will be measured in length and width to estimate base repair bid quantities and located on design sheets for all street sections. It is the intent that base repair quantities will be for bidding quantity purposes only, and that actual locations will be marked by Consultant with City's construction manager prior to construction.

A visual survey of all curb and gutters will be included to identify areas where drainage or the adjacent pavement has been compromised. Consultant's scope is limited to repair recommendations for sections of

curb and gutter that are damaged to the extent that they will affect pavement rehabilitation (i.e., tree root damage extending into pavement). Consultant will notify City of extensively damaged or offset curb and gutter, and discuss repair approaches to such locations; additional time may be required to complete the surveys.

Prior to survey of the curb and gutter, consultant will meet with the City and establish condition criteria for assessment and replacement. Based on the criteria established with the City, consultant will then determine what level of curb and gutter replacement will be pursued for design plans and documents.

Sidewalk replacement is not included in this scope of work but can be added, if required, for additional scope and fee.

2B) Pavement Deflection Testing:

Consultant will perform non-destructive pavement deflection testing in accordance with California Test Method (CTM) 356 to evaluate the structural capacity of the existing pavement section on the subject arterial and collector streets. The Falling Weight Deflectometer (FWD) is a conceptually simple yet powerful device for measuring the response of pavements under simulated wheel loads and estimating their structural capacities. All travel lanes of each arterial and collector street section will be tested at approximately 100-foot intervals that will be staggered at one-half the test interval length in adjacent lanes or the opposite lanes of traffic. Separate data files will be established for each travel direction so that separate analyses can be performed, if desired or warranted.

Approximately 410 data points will be collected; it is estimated that the FWD testing will take 2 days to complete. The final number of data points to be collected may change to accommodate field constraints. Consultant will arrange for traffic control services during the deflection testing to minimize any inconvenience to traffic, parking and public access. Traffic control will conform to the latest standards contained within the Manual of Uniform Traffic Control Devices (MUTCD) Part VI and the Caltrans Traffic Manual Chapter 5 "Traffic Control for Construction and Maintenance Work Zones," as well as any local requirements that exist.

Consultant will apply for and obtain a no-fee encroachment permit from the City prior to starting the deflection testing. Preparation of individual traffic control plans for deflection testing is assumed not to be required.

2C) Pavement Coring:

Consultant will collect pavement section core samples (4" – 8" diameter cores) on all street sections at locations determined by consultant. Pavement cores will be obtained approximately every 1,000 to 1,500 feet or less with a minimum of two core samples per street. A minimum of one pavement core at each intersection identified for the 2020 Pedestrian Crossing Improvements will be taken (Aurora Drive and Walnut Drive, Williams Street and Joyce Street, and Monterey Blvd and Anza Way) to support pavement design recommendations for potential pavement regrading to meet ADA requirements. It is estimated that up to 61 core locations will be performed. For each core sample, consultant will measure and record the thickness and material type of each layer encountered in the pavement structural section, including the presence of any pavement reinforcing fabric.

Consultant will collect bulk samples of subgrade in support of potential street reconstruction. Consultant will collect bulk samples of subgrade materials at the core locations for laboratory testing such as R-value, moisture content and Atterberg Limits (plasticity index) determinations. It is assumed that up to 20 bulk

samples will be obtained for testing. Aggregate base (AB) thickness will be measured at all core locations. A dynamic cone penetrometer may also be advanced at critical core locations to estimate AB and subgrade layer properties.

Consultant received pavement pothole data from the City in December 2019 from four locations within the project area of Hesperian Boulevard. Consultant recommends a total of nine core locations be sampled on this street. Therefore, this scope of work includes five additional core locations be sampled by Consultant for the purposes of pavement design on Hesperian Boulevard. Consultant will apply for and obtain a no-fee encroachment permit from the City prior to performing coring work. Preparation of individual traffic control plans for deflection testing is assumed not to be required.

2D) Pavement Design Recommendations:

Using the data obtained in tasks 2A – 2C, consultant will perform pavement analysis and design services and develop pavement rehabilitation and reconstruction recommendations for each street section and intersections identified for pedestrian crossing improvements. Consultant will perform its analysis in accordance with the Caltrans Highway Design Manual. Consultant will develop pavement structural section recommendations expressed in the form of a Traffic Index (TI) that will be provided by the City. Consultant will develop recommendations including, but not limited to the following:

- Reconstruction
 - Hot Mix Asphalt (HMA) over AB
 - Full Depth HMA
 - FDR
- Conventional HMA pavement overlays
- Warm Mix Asphalt (WMA)
- Rubberized Hot Mix Asphalt (RHMA) overlays
- Alternative rehabilitation methods (in-place recycling, mill & fill treatments, etc.)
- Quantities and treatments of failed pavement sections (base repairs)
- Full width milling and wedge grinding requirements

Consultant will summarize its recommendations in a Pavement Design Technical Memorandum to the City that at a minimum, will include the following:

- Results of deflection testing, coring and laboratory analyses
- Description of testing procedures and analysis performed for the project
- Recommended alternatives for pavement rehabilitation and reconstruction
- Summaries of the cost-effectiveness, sustainability, greenhouse gas reduction potential and other information pertinent to submitting an application for the Local Street and Roads Award Program sponsored by Save California Streets.

Consultant will submit two (2) paper copies and an electronic version of its draft technical memorandum to the City for initial review. Upon receipt of any comments from the City, consultant then prepare the final technical memorandum, which will be signed and stamped by consultant's Pavement Engineer. Two (2) copies and an electronic version of the final technical memorandum will then be provided to the City reflecting any comments on the draft technical memorandum.

Deliverables: Draft & Final Pavement Technical Memoranda.

Task 3 – Plans, Specifications & Estimates (PS&E)

The work that will be performed during the development of design PS&E are outlined in the subsequent tasks.

3A) Design Data Gathering:

Consultant will review relevant available data and records from the City, public and private utility providers, and other sources that may be appropriate to support the preparation of project contract documents. These may include but are not limited to the City drainage structure inventory maps, aerial photographs of the City, as-built street improvement and infrastructure plans, striping and markings, as-built plans from utility providers, including any preliminary plans for future work that may conflict with this project. The gathered information will be compiled and included in the topographic surveys used for design.

Consultant has assumed that the City will be able to provide the following:

1. Any information readily available regarding utilities (i.e., water, sanitary sewer, electrical, and storm drain), boundary and property limits (if available), tree locations, site features and existing construction as is available from City.
2. Readily available aerial maps.
3. As-built drawings for existing lighted pedestrian crossing facilities (i.e. wiring, structures) on the overlay program street list and the 2020 Pedestrian Crossing Improvements.
4. Indicate any other planned improvements adjacent to the 2020 Pedestrian Crossing Improvements.

3B) Topographic Survey and Preliminary Design:

Consultant will complete monument/control recovery, field investigation and field surveys sufficient to prepare a topographic mapping product for all streets in the project. The mapping shall be compiled at an agreed upon scale with a 1' contour interval and will be based on the City Datum.

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

The topographic data to be collected for the Annual Overlay/Rehabilitation street list is more specifically defined as:

- Cross-sections at 50' intervals along with detailed surface topography and/or additional spot elevations as required defining the longitudinal and cross slope grade breaks. Typically the cross section will include back of walk, top of curb, flowline and lip of gutter, pavement ¼ point (if one exists), and pavement centerline.
- Surveyed locations for significant surface features, such as curbs, gutters, sidewalks, driveways, misc. concrete, pavement, striping, fences, surface utilities, trees, signs, street lights and signals will be included. A structure inventory for sanitary and storm drain facilities reflecting rim elevations, invert elevations, pipe direction and pipe size will be provided for accessible structures within the mapping limit. To the extent visible, consultant will obtain a measurement from the top of manhole rim to the top of cone, and note any adjustment rings. Consultant shall not enter a manhole to obtain any data.

- Location of all surface evident street monumentation within the mapping corridor (for preservation and Record R/W purposes).
- Location of underground utility locator markings.
- Provide a finished draft topographic survey for each area of work.
- Provide AutoCAD Civil3D DTM surface for each street section.
- Any observed water meter or sewer cleanout behind the back of walk (up to 5' behind walk) will also be surveyed.

The topographic data to be collected for intersections of Aurora Dr and Walnut Drive, and at Monterey Blvd and Anza Way will follow the same scope as above, with the following exceptions:

- Topographic survey will extend 100' beyond curb returns where bulb outs are to be constructed and 50' into all other adjacent streets.
- Cross-sections at 25'-50' intervals along with detailed surface topography and/or additional spot elevations as required defining the longitudinal and cross slope grade breaks.

Topographic survey information for Hesperian Boulevard and Grand Avenue were provided by the City in December 2019. After further review, the topographic survey file for Grand Avenue is lacking much of the general and detailed information necessary for the proposed design project and a new survey is recommended. The survey provided for Hesperian Blvd has adequate general data and will require additional survey to missing information such as, but not limited to full roadway cross sections, storm and sewer structure elevations, and extending limits of survey to what is needed for the project design. Consultant's topographic surveyor will conduct spot checks of the Hesperian survey file to verify information is still accurate and complete. Underground utilities collected by Consultant's private utility locator will also be added to the Hesperian survey drawing.

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

Based on topographic survey data with existing right-of-way, consultant will develop preliminary design documents that depict basic street and/or pedestrian crossing improvements layout, and preliminary pavement treatments with pertinent geometric information. Consultant will submit preliminary technical specifications and an engineer's estimate. It is assumed that the City will require a 10-day review/comment period once the preliminary PS&E package is submitted.

Consultant has assumed that the City will be able to provide the following:

1. Upfront specifications including General Provisions and Special Provisions.
2. City Standard Provisions and Standard Design Criteria.
3. Electronic files of City cover sheet template, if preferred.

Deliverables: Topographic Survey, Six (6) full size and an electronic version Preliminary Plan Sets, outline of Technical Specifications, and Engineer's Estimate (PS&E).

3C) Utility Location:

Using GPR, consultant's utility locator will field locate utility alignments and depths for utility mains and laterals for utilities within all streets and two of the 2020 Pedestrian Crossing Improvement intersections in accordance with key assumptions to the extent that GPR methods can detect utilities. If GPR cannot establish utility alignments and or depths, potholing may need to be completed for additional scope and fee. GPR along utility mains will be marked at various locations along each street section. Traffic control will consist of a 1-man crew with traffic control arrow board and signs. Items excluded from work are as follows:

- Cost of permits and inspection of any kind on this project
- Night shift or overtime
- Certified or stamped traffic control plans
- Lane closures
- Pressure washing paint marks

Utility location markings from the GPR investigation will be included in topographic surveys.

No utility potholing is included in this scope of work.

Deliverables: Marked Utility Depth and Alignments and Electronic Collection of Utility Information.

3D) 70% PS&E:

Preliminary PS&E will be revised to incorporate comments received from the City. Consultant will meet with the City to review these comments, from which the 70% PS&E will be prepared. Consultant will provide a response to each comment that is included in a comment table provided by the City. Consultant will prepare the 70% PS&E for the planned pavement reconstruction street sections and the three intersections identified for pedestrian crossing improvements. The 70% plans will incorporate typical design elements including layout plans for reconstruction street sections, pavement treatments, right-of-way parcel lines, preliminary design, wedge grinds, conform grind locations at intersecting side streets, typical cross-sections, curb and gutter repairs (adjacent to curb ramps), gutter flow line for drainage repairs, and limits of work. The plans will be prepared in AutoCAD format on 24" x 36" sheets, drawn at a scale of 1"=20'. Rehabilitation plan sheets will include base repair schedules and will show individual base repair locations. Base repairs will be marked in the field on the pavement in white paint, numbered, and verified prior to construction with the City's construction manager. Additionally, a table summarizing major work items (e.g., HMA tonnage, base repair area, etc.) and their estimated quantities will be developed and included on the respective plan sheets. This information is particularly useful to contractors when assembling construction bids and schedules, thus resulting in more competitive bids, and to the City for verifying pay quantities during construction.

Traffic striping plans will be developed for all street section plans. Traffic striping is assumed to match existing conditions and traffic patterns unless minor changes are requested by the City Traffic Engineering Group or are required to be revised to meet current CA MUTCD standards. This may include alteration or addition of bicycle lanes, which it is assumed that the City Traffic Engineering Group will provide all appropriate details and lane configurations. Minor changes to traffic striping at the 2020 Pedestrian Crossing Improvement locations to accommodate the City's proposed improvements noted in the City's RFP are included in this scope. Otherwise, no significant traffic striping changes or design requiring traffic studies or assessment of traffic impacts is planned or included as a part of this scope. The 70% PS&E striping plan submittals will include City standard improvements in a layer/color separate from the existing

striping to indicate the difference between proposed and existing. Existing striping will be shown outside of the paving limits up to 25 feet into begin, end and cross streets.

Traffic control plans are not included in this scope of work. The City desires to have the contractor prepare traffic control plans in accordance with project technical specifications and requirements and submit to the City's traffic engineering group for review.

Technical specifications for traffic control will be further refined to add additional language regarding early submittal of traffic control plans by the contractor and that plans are street specific. The City's traffic engineering group will edit and provide comments to meet their requirements.

It is assumed that all non-compliant curb ramps will be replaced or retrofitted (e.g., detectable warning surface embedded in concrete) in accordance with Greenbook or City based standards. Curb ramps will be replaced or retrofitted based on guidance from the Department of Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are altered through Resurfacing dated July 8, 2013.

Curb ramps will be identified as either Caltrans standard case or custom on the plans. Custom ramps will be detailed in the construction drawings. Ramps that can be replaced using a Caltrans or City standard case layout will not be included as a detail in the construction drawings.

A topographic survey has been proposed for all curb ramps identified for replacement.

The project will, to the extent possible and within the context of proposed rehabilitation, address visible drainage issues. No major drainage improvements are assumed for this project which require significant stormwater drain and pipe alteration and/or reconstruction. Green infrastructure design improvements are not included in this scope of work but can be added for additional scope and fee, as needed.

Drainage improvements are expected for the two intersections (Aurora Drive at Walnut Drive and Monterey Blvd at Anza Way) where bulb outs are to be installed. The drainage improvements are expected to be limited to a trench drain and minor relocation of a drain inlet.

The 70% PS&E will include the City's 2020 Pedestrian Crossing Improvements RFP which includes new RRFB systems, bulb outs, crosswalk improvements, and signage improvements for three intersections (Aurora Drive at Walnut Drive, Williams Street at Joyce Street, and Monterey Blvd at Anza Way).

Consultant will prepare the Technical Specifications in MS Word format and will follow the City's formatting conventions. The Technical Specifications and details will reference the City's standard provisions and Greenbook Standards (including subsequent updates). Consultant will, however, recommend deviating from Greenbook Standards where necessary, if such changes will improve the likelihood of achieving a successful construction project without compromising the integrity of the design.

Consultant will prepare Engineer's Cost Estimate in MS Excel format based on the most recent construction cost data available to consultant. This estimate will be updated and refined as the design effort progresses.

It is assumed that the City will require a 15-day review/comment period once the 70% PS&E package is submitted.

Deliverables: Six (6) copies of 70% PS&E with full size plan sets.

3E) Draft 100% PS&E:

Consultant will revise 70% PS&E to incorporate comments received from the City. Consultant will meet with the City to review these comments, from which the Draft 100% PS&E will be prepared. Consultant will provide a response to each comment that is included in a comment table provided by the City. The Draft 100% PS&E will include additional design information and details typically expected at this stage of completion, such as utility facilities (storm drain and sanitary sewer manholes, water and gas valves, and survey monuments) that will require adjustments to grade, traffic striping, and pavement legends. The Draft 100% PS&E will be packaged and submitted similar to the 70% PS&E, unless directed otherwise.

The Technical Specifications will be further refined at this stage of the design. Consultant will review and comment on the City's front end documents (bid and contract forms, General Provisions, Special Provisions, etc.), which the City will prepare. The Engineer's Cost Estimate will also be updated to reflect the revised quantities of work depicted on the plans.

It is assumed that the City will require a 10-day review/comment period once the Draft 100% PS&E package is submitted.

Deliverables: Six (6) copies of Draft 100% PS&E with full size plan sets.

3F) Final (100%) PS&E:

Consultant will revise the Draft 100% PS&E to incorporate comments received from the City. Consultant will again meet with the City to review these comments, from which the Final (100%) PS&E will be prepared. Consultant will provide a response to each comment that is included in a comment table provided by the City. The Final (100%) PS&E will include all notes and details necessary for construction

A final quantity calculation will be tabulated, and this will be entered into the final Engineer's Estimate for the project. All final documents will be reviewed, stamped and signed by consultant's engineer, and the final PS&E will be delivered to the City in both hard copy and electronic formats.

Deliverables: One (1) wet-signed and one (1) Electronic File of the Final (100%) Plans, Technical Specifications, and Engineer's Estimate.

The electronic files for the final construction plans, specifications, and engineer's estimate will be in AutoCAD 2018, MS Word, and MS Excel, respectively.

EXHIBIT B

**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES
FEE ESTIMATE**

Task Description	NCE Labor Hours	NCE Labor Expenses	FWD/Coring Costs	Traffic Control Costs	Lab Testing Costs	Surveying Costs	Utility Location Costs	Railroad Specialist Costs	Reimbursable Expenses	Total Costs
1. Project Management & Meetings										
1A. Project Kick-off and Progress Meetings	90	\$14,900							\$200	\$15,100
1B. Utility Coordination	76	\$10,820							\$200	\$11,020
1C. Caltrans and Railroad Permitting (Optional)	56	\$7,940						\$16,500	\$200	\$24,640
Subtotal	226	\$34,700	\$-	\$-	\$-	\$-	\$-	\$-	\$600	\$51,800
2. Pavement Rehabilitation Design										
2A. Pavement and C&G Condition Survey	69	\$9,520							\$500	\$10,020
2B. Pavement Deflection Testing	10	\$1,620	\$7,000	\$3,520					\$200	\$12,340
2C. Pavement Coring	35	\$4,720	\$36,000	\$14,080	\$15,400				\$400	\$70,600
2D. Pavement Design Recommendations	144	\$23,200							\$400	\$23,600
Subtotal	258	\$39,060	\$43,000	\$17,600	\$15,400	\$-	\$-	\$-	\$1,500	\$116,560
3. Plans, Specs and Estimate										
3A. Design Data Gathering	28	\$3,790							\$100	\$3,890
3B. Topographic Survey & Preliminary Design	208	\$29,660				\$125,724			\$500	\$155,884
3C. Utility Location	12	\$1,630					\$61,837		\$200	\$63,667
3D. 70% PS&E	1073	\$148,140							\$1,500	\$149,640
3E. Draft 100% PS&E	742	\$102,665							\$1,500	\$104,165
3F. Final (100%) PS&E	507	\$70,085							\$1,500	\$71,585
Subtotal	2570	\$355,970							\$5,300	\$548,831

			\$429,730	\$43,000	\$17,600	\$15,400	\$125,724	\$61,183	\$16,500	\$7,400	\$717,191
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RATE SCHEDULE

<u>Staff</u>	<u>Hourly Rate</u>
Project Manager/ Senior Engr	\$175/hour
Principal Engineer & QA/QC	\$250/hour
Associate Engineer	\$200/hour
Project Engineer	\$150/hour
Staff Engineer	\$130/hour
CADD Designer	\$125/hour
Clerical	\$80/hour

EXHIBIT C

INDEMNIFICATION

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

EXHIBIT D

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.

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2020-031

RESOLUTION OF THE CITY OF SAN LEANDRO CITY COUNCIL TO APPROVE A CONSULTING SERVICES AGREEMENT WITH NICHOLS CONSULTING ENGINEERS (NCE) FOR THE DESIGN OF THE ANNUAL STREET OVERLAY/REHABILITATION 2019-21, PROJECT NO. 2020.0050 FOR AN AMOUNT NOT TO EXCEED \$691,511; TO AUTHORIZE FOR INDIVIDUAL AGREEMENT AMENDMENTS UP TO (10%) (OR \$69,151); AND TO AUTHORIZE CUMULATIVE AGREEMENT AMENDMENTS UP TO 15% (OR \$103,726) (PROVIDES AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO A CSA WITH NCE TO PREPARE THE SURVEYS AND DESIGNS FOR THE ANNUAL STREET OVERLAY/REHABILITATION 2019-21 PROJECT)

WHEREAS, the City Council has indicated that streets are a critical component of the City's infrastructure and their condition is an important factor in the quality of life for residents and the vitality of local businesses; and

WHEREAS, the City Council has approved the City Budget which contains the Capital Improvement Program and the Annual Street Overlay/Rehabilitation 2019-2021 Project; and

WHEREAS, the City Council has directed the City Manager and his designees to improve the conditions of the streets.

NOW, THEREFORE, the City Council of the City of San Leandro does **RESOLVE** as follows:

That said City Council hereby authorizes the City Manager to reject all of said proposals except that herein mentioned; negotiate, approve, and execute the agreement for topographic survey and civil engineering design services with NCE for an amount not to exceed \$691,511; and

That the City Manager or his designee is authorized to negotiate and approve individual agreement amendments to the consulting services agreement up to 10% (or \$69,151) of the original agreement amount; and

That the City Manager or his designee is authorized to negotiate and approve agreement amendments to the consulting services agreement up to a cumulative value not to exceed 15% (or \$103,726) of the original agreement amount.

Introduced by Councilmember Lopez and passed and adopted this 6th day of April 2020, by the following vote:

Members of the Council:

AYES: Councilmembers Aguilar, Ballew, Cox, Hernandez, Lee, Lopez, Mayor Cutter (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: 

Leticia I. Miguel, City Clerk

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NICHOLS CONSULTING ENGINEERS
FOR
ANNUAL STREET OVERLAY/REHABILITATION 2019-21 PROJECT**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Nichols Consulting Engineers ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2020 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2021, 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 **Seven Hundred Seventeen Thousand, One Hundred Ninety-One Dollars and No Cents (\$717,191.00)**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal 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, et
 - 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;

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 **\$7,400**. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

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

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

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

4.1 Workers' Compensation.

- 4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative,

Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

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

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

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

4.3 Professional Liability Insurance.

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

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

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

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

4.4 All Policies Requirements.

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

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

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

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

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

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

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

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

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

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

Section 6. STATUS OF CONSULTANT.

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

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

Section 7. LEGAL REQUIREMENTS.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

Consultant may cancel this Agreement upon 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.

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.

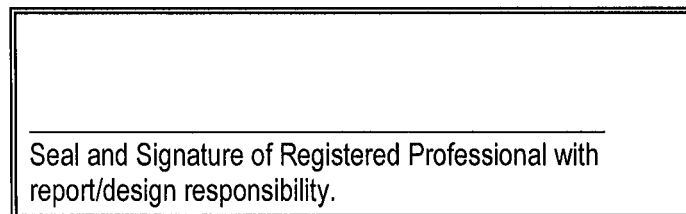
10.9 Contract Administration. This Agreement shall be administered by Austine Osakwe ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:
J. Ryan Shafer
Nichols Consulting Engineers
5253 College Avenue #B
Oakland, CA 94618
rshafer@ncenet.com

Any written notice to City shall be sent to:
Austine Osakwe
City of San Leandro
Engineering and Transportation Department
835 East 14th Street
San Leandro, CA 94577
aosakwe@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.



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

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

Nichols Consulting Engineers

Jeff Kay, City Manager



~~J. Ryan Shafer, Principal~~
MARGOT YAPP, PRESIDENT

Attest:

Consultant's DIR Registration Number
(if applicable)

Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

Elizabeth Warmerdam, Interim Finance Director

210-38-419-5120
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7:
 Form 700 Not Required
 Form 700 Required

Keith R. Cooke, Director
Engineering and Transportation Department

EXHIBIT A**SCOPE OF SERVICES****PROJECT BACKGROUND**

The City of San Leandro annually allocates funds toward street maintenance and rehabilitation. The total budget for the Annual Street Overlay/Rehabilitation 2019-21 Project, including design, construction, inspection, construction management, and contingency is \$11,400,000. This project will involve extensive paving work on street sections comprising of 2 arterial streets, 2 collector streets, and 10 residential streets. Street sections included in the project are listed as follows:

Arterial and Collector Streets

Street Name	Start Location	End Location
Manor Boulevard	Kesterson St	Farnsworth Boulevard
Grand Avenue	Joaquin Avenue	Sybil Avenue
Hesperian Boulevard	Thornally Drive	CV Freeway
Bancroft Avenue	Lee Avenue	Sybil Avenue

Residential Streets

Street Name	Start Location	End Location
Corbet Court	Thornally Drive	North End (Cul De Sac)
Olive Court	Hesperian Boulevard	East End (Cul De Sac)
Norene Way	Benedict Drive	Sandelin Avenue
Fordham Avenue	Corvallis St	Rollins St
Rollins St	Ottawa Avenue	Fordham Avenue
Pleasant Way	Stoakes Avenue	Bellview Drive
Fleming St	Fargo Avenue	Manor Boulevard
West Avenue 130 th	Neptune Drive	Aurora Drive
Marina Court	West Avenue 130 th	South End (Cul De Sac)
Thornally Drive	Hesperian Boulevard	Central Avenue

The streets were selected based on their Pavement Condition Index rating, and by visual inspection of road surface deficiencies.

Along with pavement construction, the project will address ADA accessibility along the selected street segments and new curb ramps and crossings shall be constructed where required. ADA compliant curb ramps and street crossings shall be designed at all corners of a four-way intersection, and at two crossings of a "T" intersection.

This contract is for consulting services to develop Plans, Specifications, and Engineer's Estimate for the Annual Street Overlay/Rehabilitation 2019-21 Project as described below. In addition, this CSA shall

provide construction documents for the Pedestrian Crossing Improvements 2020 project at the following intersections:

- Aurora Drive and Walnut Drive - includes curb bulb-outs, drainage improvements and Rectangular Rapid Flash Beacon (RRFB)
- Williams Street and Joyce Street- includes RRFB
- Monterey Boulevard and Anza Way – includes curb bulb-outs on the northwest and southeast corners, curb ramp on southwest corner, RRFB and drainage improvements

SCOPE OF SERVICES

The scope of services for this CSA shall include the following tasks:

Task 1 – Project Management & Meetings

1A) Project Kick-off Meeting/Progress Meetings:

Consultant will arrange a kick-off meeting with the City and other stakeholders to initiate work on the project. The objectives of the kick-off meeting will be:

- Review of the Scope of Work
- Establish Lines of Communication
- Confirm Deadlines
- Confirm Project Schedule and Milestones
- Define Design and Operation Criteria

In addition, consultant will research and coordinate, as-needed, with other City departments and other agencies, such as PG&E, AT&T, EBMUD, OLSD, School Districts, etc., to identify any potential conflicts, requirements, or design issues early to minimize delays (and costs) later in the design process or during construction. At the kick-off meeting, key deliverables for each Task and the Project Schedule will be reviewed and adjusted accordingly to meet City and stakeholder needs.

To keep the City aware of overall project costs and to closely monitor any potential funding issues, consultant will begin developing Preliminary Engineering Cost Estimates as soon as they develop the engineering design recommendations. During the course of the project, consultant will seek to develop the most appropriate and cost-effective pavement rehabilitation alternatives to stay within the planned project budget and schedule.

Throughout the project, consultant will attend regularly scheduled progress meetings with the City (estimated at 3), to maintain good communications. The purpose of the progress meetings will be to identify and resolve any design or funding issues that may surface in a timely manner, present design alternatives and recommendations to City, and continue coordination with project stakeholders, as necessary.

Deliverables: Kick-off/Progress Meeting Agendas and Minutes

1B) Utility Coordination:

Consultant will coordinate with utility agencies early in the design process to help avoid potential construction delays and unnecessary disruptions to public services. Utility coordination will be a critical item

to keep utility providers informed about the project and schedule to allow for proper notification and planning should utility providers have planned maintenance projects within the subject street sections and/or need to lower/adjust their utilities to accommodate street rehabilitation and particularly reconstruction. One of the first and earliest items that consultant will complete is to send notification letters to applicable utility providers with a preliminary project schedule for street rehabilitation and reconstruction. Consultant will also request utility as-builts and record drawings for street sections planned for reconstruction. As part of consultant's field investigations, as an optional task, consultant will locate utilities using GPR and coordinate with and provide this information to applicable utility providers. This GPR data is for initial planning purposes with utilities.

Consultant will also carefully document all utility coordination notifications, conversations, meetings and information in a dated matrix format with mailing details. Follow-up calls will be made for each of the above notifications to confirm receipt. Consultant will keep City informed of any project delays related to utilities.

Deliverables: Utility Notification Letters and Utility Contact Matrix.

1C) Caltrans and Railroad Permitting (Optional Task):

At the kick-off meeting, consultant will discuss further the City's plans to extend rehabilitation and street improvements on Hesperian Boulevard into Caltrans ROW at Highway 238 and the railroad north of Springlake Dr. If the currently scoped roadway maintenance improvements are to extend into or impact Caltrans or Railroad ROW, consultant will setup a meeting with each of these stakeholders to confirm encroachment permit, or similar, requirements. Consultant will prepare the necessary encroachment permit application, on behalf of the City, for Caltrans review for the work at Hesperian Blvd and assume one resubmittal is necessary to address any comments from Caltrans. Consultant will utilize its railroad specialist, JMA Civil, to coordinate with the railroad owner on right-of-entry, preliminary engineering letter with UPRR, site visit, and CPUC Form G preparation and filing. Any additional work necessary to complete the coordination and permitting beyond what is stated above may be prepared for additional scope and fee.

Deliverables: Caltrans Encroachment Permit Application and Railroad Right-of-Entry Forms for Filing.

Task 2 – Pavement Rehabilitation Design

2A) Pavement and Curb & Gutter Condition Survey:

Consultant will perform a detailed pavement condition survey of each street section based on distresses concurrent with the deflection testing. The surveys will generally cover the travel and parking lanes. Pavement condition surveys serve the purpose of further refining the appropriate pavement rehabilitation treatments that are developed based on pavement deflection testing and coring.

This condition survey will generally note the presence of load related and environmental distresses, such as alligator cracking, longitudinal and transverse cracking, rutting, patches and utility cuts, distortions and depressions as they pertain to developing appropriate pavement treatments. In addition, potential base repairs will be identified in the condition survey. Base repairs will be measured in length and width to estimate base repair bid quantities and located on design sheets for all street sections. It is the intent that base repair quantities will be for bidding quantity purposes only, and that actual locations will be marked by Consultant with City's construction manager prior to construction.

A visual survey of all curb and gutters will be included to identify areas where drainage or the adjacent pavement has been compromised. Consultant's scope is limited to repair recommendations for sections of

curb and gutter that are damaged to the extent that they will affect pavement rehabilitation (i.e., tree root damage extending into pavement). Consultant will notify City of extensively damaged or offset curb and gutter, and discuss repair approaches to such locations; additional time may be required to complete the surveys.

Prior to survey of the curb and gutter, consultant will meet with the City and establish condition criteria for assessment and replacement. Based on the criteria established with the City, consultant will then determine what level of curb and gutter replacement will be pursued for design plans and documents.

Sidewalk replacement is not included in this scope of work but can be added, if required, for additional scope and fee.

2B) Pavement Deflection Testing:

Consultant will perform non-destructive pavement deflection testing in accordance with California Test Method (CTM) 356 to evaluate the structural capacity of the existing pavement section on the subject arterial and collector streets. The Falling Weight Deflectometer (FWD) is a conceptually simple yet powerful device for measuring the response of pavements under simulated wheel loads and estimating their structural capacities. All travel lanes of each arterial and collector street section will be tested at approximately 100-foot intervals that will be staggered at one-half the test interval length in adjacent lanes or the opposite lanes of traffic. Separate data files will be established for each travel direction so that separate analyses can be performed, if desired or warranted.

Approximately 410 data points will be collected; it is estimated that the FWD testing will take 2 days to complete. The final number of data points to be collected may change to accommodate field constraints. Consultant will arrange for traffic control services during the deflection testing to minimize any inconvenience to traffic, parking and public access. Traffic control will conform to the latest standards contained within the Manual of Uniform Traffic Control Devices (MUTCD) Part VI and the Caltrans Traffic Manual Chapter 5 "Traffic Control for Construction and Maintenance Work Zones," as well as any local requirements that exist.

Consultant will apply for and obtain a no-fee encroachment permit from the City prior to starting the deflection testing. Preparation of individual traffic control plans for deflection testing is assumed not to be required.

2C) Pavement Coring:

Consultant will collect pavement section core samples (4" – 8" diameter cores) on all street sections at locations determined by consultant. Pavement cores will be obtained approximately every 1,000 to 1,500 feet or less with a minimum of two core samples per street. A minimum of one pavement core at each intersection identified for the 2020 Pedestrian Crossing Improvements will be taken (Aurora Drive and Walnut Drive, Williams Street and Joyce Street, and Monterey Blvd and Anza Way) to support pavement design recommendations for potential pavement regrading to meet ADA requirements. It is estimated that up to 61 core locations will be performed. For each core sample, consultant will measure and record the thickness and material type of each layer encountered in the pavement structural section, including the presence of any pavement reinforcing fabric.

Consultant will collect bulk samples of subgrade in support of potential street reconstruction. Consultant will collect bulk samples of subgrade materials at the core locations for laboratory testing such as R-value, moisture content and Atterberg Limits (plasticity index) determinations. It is assumed that up to 20 bulk

samples will be obtained for testing. Aggregate base (AB) thickness will be measured at all core locations. A dynamic cone penetrometer may also be advanced at critical core locations to estimate AB and subgrade layer properties.

Consultant received pavement pothole data from the City in December 2019 from four locations within the project area of Hesperian Boulevard. Consultant recommends a total of nine core locations be sampled on this street. Therefore, this scope of work includes five additional core locations be sampled by Consultant for the purposes of pavement design on Hesperian Boulevard. Consultant will apply for and obtain a no-fee encroachment permit from the City prior to performing coring work. Preparation of individual traffic control plans for deflection testing is assumed not to be required.

2D) Pavement Design Recommendations:

Using the data obtained in tasks 2A – 2C, consultant will perform pavement analysis and design services and develop pavement rehabilitation and reconstruction recommendations for each street section and intersections identified for pedestrian crossing improvements. Consultant will perform its analysis in accordance with the Caltrans Highway Design Manual. Consultant will develop pavement structural section recommendations expressed in the form of a Traffic Index (TI) that will be provided by the City. Consultant will develop recommendations including, but not limited to the following:

- Reconstruction
 - Hot Mix Asphalt (HMA) over AB
 - Full Depth HMA
 - FDR
- Conventional HMA pavement overlays
- Warm Mix Asphalt (WMA)
- Rubberized Hot Mix Asphalt (RHMA) overlays
- Alternative rehabilitation methods (in-place recycling, mill & fill treatments, etc.)
- Quantities and treatments of failed pavement sections (base repairs)
- Full width milling and wedge grinding requirements

Consultant will summarize its recommendations in a Pavement Design Technical Memorandum to the City that at a minimum, will include the following:

- Results of deflection testing, coring and laboratory analyses
- Description of testing procedures and analysis performed for the project
- Recommended alternatives for pavement rehabilitation and reconstruction
- Summaries of the cost-effectiveness, sustainability, greenhouse gas reduction potential and other information pertinent to submitting an application for the Local Street and Roads Award Program sponsored by Save California Streets.

Consultant will submit two (2) paper copies and an electronic version of its draft technical memorandum to the City for initial review. Upon receipt of any comments from the City, consultant then prepare the final technical memorandum, which will be signed and stamped by consultant's Pavement Engineer. Two (2) copies and an electronic version of the final technical memorandum will then be provided to the City reflecting any comments on the draft technical memorandum.

Deliverables: Draft & Final Pavement Technical Memoranda.

Task 3 – Plans, Specifications & Estimates (PS&E)

The work that will be performed during the development of design PS&E are outlined in the subsequent tasks.

3A) Design Data Gathering:

Consultant will review relevant available data and records from the City, public and private utility providers, and other sources that may be appropriate to support the preparation of project contract documents. These may include but are not limited to the City drainage structure inventory maps, aerial photographs of the City, as-built street improvement and infrastructure plans, striping and markings, as-built plans from utility providers, including any preliminary plans for future work that may conflict with this project. The gathered information will be compiled and included in the topographic surveys used for design.

Consultant has assumed that the City will be able to provide the following:

1. Any information readily available regarding utilities (i.e., water, sanitary sewer, electrical, and storm drain), boundary and property limits (if available), tree locations, site features and existing construction as is available from City.
2. Readily available aerial maps.
3. As-built drawings for existing lighted pedestrian crossing facilities (i.e. wiring, structures) on the overlay program street list and the 2020 Pedestrian Crossing Improvements.
4. Indicate any other planned improvements adjacent to the 2020 Pedestrian Crossing Improvements.

3B) Topographic Survey and Preliminary Design:

Consultant will complete monument/control recovery, field investigation and field surveys sufficient to prepare a topographic mapping product for all streets in the project. The mapping shall be compiled at an agreed upon scale with a 1' contour interval and will be based on the City Datum.

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

The topographic data to be collected for the Annual Overlay/Rehabilitation street list is more specifically defined as:

- Cross-sections at 50' intervals along with detailed surface topography and/or additional spot elevations as required defining the longitudinal and cross slope grade breaks. Typically the cross section will include back of walk, top of curb, flowline and lip of gutter, pavement ¼ point (if one exists), and pavement centerline.
- Surveyed locations for significant surface features, such as curbs, gutters, sidewalks, driveways, misc. concrete, pavement, striping, fences, surface utilities, trees, signs, street lights and signals will be included. A structure inventory for sanitary and storm drain facilities reflecting rim elevations, invert elevations, pipe direction and pipe size will be provided for accessible structures within the mapping limit. To the extent visible, consultant will obtain a measurement from the top of manhole rim to the top of cone, and note any adjustment rings. Consultant shall not enter a manhole to obtain any data.

- Location of all surface evident street monumentation within the mapping corridor (for preservation and Record R/W purposes).
- Location of underground utility locator markings.
- Provide a finished draft topographic survey for each area of work.
- Provide AutoCAD Civil3D DTM surface for each street section.
- Any observed water meter or sewer cleanout behind the back of walk (up to 5' behind walk) will also be surveyed.

The topographic data to be collected for intersections of Aurora Dr and Walnut Drive, and at Monterey Blvd and Anza Way will follow the same scope as above, with the following exceptions:

- Topographic survey will extend 100' beyond curb returns where bulb outs are to be constructed and 50' into all other adjacent streets.
- Cross-sections at 25'-50' intervals along with detailed surface topography and/or additional spot elevations as required defining the longitudinal and cross slope grade breaks.

Topographic survey information for Hesperian Boulevard and Grand Avenue were provided by the City in December 2019. After further review, the topographic survey file for Grand Avenue is lacking much of the general and detailed information necessary for the proposed design project and a new survey is recommended. The survey provided for Hesperian Blvd has adequate general data and will require additional survey to missing information such as, but not limited to full roadway cross sections, storm and sewer structure elevations, and extending limits of survey to what is needed for the project design. Consultant's topographic surveyor will conduct spot checks of the Hesperian survey file to verify information is still accurate and complete. Underground utilities collected by Consultant's private utility locator will also be added to the Hesperian survey drawing.

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

Based on topographic survey data with existing right-of-way, consultant will develop preliminary design documents that depict basic street and/or pedestrian crossing improvements layout, and preliminary pavement treatments with pertinent geometric information. Consultant will submit preliminary technical specifications and an engineer's estimate. It is assumed that the City will require a 10-day review/comment period once the preliminary PS&E package is submitted.

Consultant has assumed that the City will be able to provide the following:

1. Upfront specifications including General Provisions and Special Provisions.
2. City Standard Provisions and Standard Design Criteria.
3. Electronic files of City cover sheet template, if preferred.

Deliverables: Topographic Survey, Six (6) full size and an electronic version Preliminary Plan Sets, outline of Technical Specifications, and Engineer's Estimate (PS&E).

3C) Utility Location:

Using GPR, consultant's utility locator will field locate utility alignments and depths for utility mains and laterals for utilities within all streets and two of the 2020 Pedestrian Crossing Improvement intersections in accordance with key assumptions to the extent that GPR methods can detect utilities. If GPR cannot establish utility alignments and or depths, potholing may need to be completed for additional scope and fee. GPR along utility mains will be marked at various locations along each street section. Traffic control will consist of a 1-man crew with traffic control arrow board and signs. Items excluded from work are as follows:

- Cost of permits and inspection of any kind on this project
- Night shift or overtime
- Certified or stamped traffic control plans
- Lane closures
- Pressure washing paint marks

Utility location markings from the GPR investigation will be included in topographic surveys.

No utility potholing is included in this scope of work.

Deliverables: Marked Utility Depth and Alignments and Electronic Collection of Utility Information.

3D) 70% PS&E:

Preliminary PS&E will be revised to incorporate comments received from the City. Consultant will meet with the City to review these comments, from which the 70% PS&E will be prepared. Consultant will provide a response to each comment that is included in a comment table provided by the City. Consultant will prepare the 70% PS&E for the planned pavement reconstruction street sections and the three intersections identified for pedestrian crossing improvements. The 70% plans will incorporate typical design elements including layout plans for reconstruction street sections, pavement treatments, right-of-way parcel lines, preliminary design, wedge grinds, conform grind locations at intersecting side streets, typical cross-sections, curb and gutter repairs (adjacent to curb ramps), gutter flow line for drainage repairs, and limits of work. The plans will be prepared in AutoCAD format on 24" x 36" sheets, drawn at a scale of 1"=20'. Rehabilitation plan sheets will include base repair schedules and will show individual base repair locations. Base repairs will be marked in the field on the pavement in white paint, numbered, and verified prior to construction with the City's construction manager. Additionally, a table summarizing major work items (e.g., HMA tonnage, base repair area, etc.) and their estimated quantities will be developed and included on the respective plan sheets. This information is particularly useful to contractors when assembling construction bids and schedules, thus resulting in more competitive bids, and to the City for verifying pay quantities during construction.

Traffic striping plans will be developed for all street section plans. Traffic striping is assumed to match existing conditions and traffic patterns unless minor changes are requested by the City Traffic Engineering Group or are required to be revised to meet current CA MUTCD standards. This may include alteration or addition of bicycle lanes, which it is assumed that the City Traffic Engineering Group will provide all appropriate details and lane configurations. Minor changes to traffic striping at the 2020 Pedestrian Crossing Improvement locations to accommodate the City's proposed improvements noted in the City's RFP are included in this scope. Otherwise, no significant traffic striping changes or design requiring traffic studies or assessment of traffic impacts is planned or included as a part of this scope. The 70% PS&E striping plan submittals will include City standard improvements in a layer/color separate from the existing

striping to indicate the difference between proposed and existing. Existing striping will be shown outside of the paving limits up to 25 feet into begin, end and cross streets.

Traffic control plans are not included in this scope of work. The City desires to have the contractor prepare traffic control plans in accordance with project technical specifications and requirements and submit to the City's traffic engineering group for review.

Technical specifications for traffic control will be further refined to add additional language regarding early submittal of traffic control plans by the contractor and that plans are street specific. The City's traffic engineering group will edit and provide comments to meet their requirements.

It is assumed that all non-compliant curb ramps will be replaced or retrofitted (e.g., detectable warning surface embedded in concrete) in accordance with Greenbook or City based standards. Curb ramps will be replaced or retrofitted based on guidance from the Department of Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are altered through Resurfacing dated July 8, 2013.

Curb ramps will be identified as either Caltrans standard case or custom on the plans. Custom ramps will be detailed in the construction drawings. Ramps that can be replaced using a Caltrans or City standard case layout will not be included as a detail in the construction drawings.

A topographic survey has been proposed for all curb ramps identified for replacement.

The project will, to the extent possible and within the context of proposed rehabilitation, address visible drainage issues. No major drainage improvements are assumed for this project which require significant stormwater drain and pipe alteration and/or reconstruction. Green infrastructure design improvements are not included in this scope of work but can be added for additional scope and fee, as needed.

Drainage improvements are expected for the two intersections (Aurora Drive at Walnut Drive and Monterey Blvd at Anza Way) where bulb outs are to be installed. The drainage improvements are expected to be limited to a trench drain and minor relocation of a drain inlet.

The 70% PS&E will include the City's 2020 Pedestrian Crossing Improvements RFP which includes new RRFB systems, bulb outs, crosswalk improvements, and signage improvements for three intersections (Aurora Drive at Walnut Drive, Williams Street at Joyce Street, and Monterey Blvd at Anza Way).

Consultant will prepare the Technical Specifications in MS Word format and will follow the City's formatting conventions. The Technical Specifications and details will reference the City's standard provisions and Greenbook Standards (including subsequent updates). Consultant will, however, recommend deviating from Greenbook Standards where necessary, if such changes will improve the likelihood of achieving a successful construction project without compromising the integrity of the design.

Consultant will prepare Engineer's Cost Estimate in MS Excel format based on the most recent construction cost data available to consultant. This estimate will be updated and refined as the design effort progresses.

It is assumed that the City will require a 15-day review/comment period once the 70% PS&E package is submitted.

Deliverables: Six (6) copies of 70% PS&E with full size plan sets.

3E) Draft 100% PS&E:

Consultant will revise 70% PS&E to incorporate comments received from the City. Consultant will meet with the City to review these comments, from which the Draft 100% PS&E will be prepared. Consultant will provide a response to each comment that is included in a comment table provided by the City. The Draft 100% PS&E will include additional design information and details typically expected at this stage of completion, such as utility facilities (storm drain and sanitary sewer manholes, water and gas valves, and survey monuments) that will require adjustments to grade, traffic striping, and pavement legends. The Draft 100% PS&E will be packaged and submitted similar to the 70% PS&E, unless directed otherwise.

The Technical Specifications will be further refined at this stage of the design. Consultant will review and comment on the City's front end documents (bid and contract forms, General Provisions, Special Provisions, etc.), which the City will prepare. The Engineer's Cost Estimate will also be updated to reflect the revised quantities of work depicted on the plans.

It is assumed that the City will require a 10-day review/comment period once the Draft 100% PS&E package is submitted.

Deliverables: Six (6) copies of Draft 100% PS&E with full size plan sets.

3F) Final (100%) PS&E:

Consultant will revise the Draft 100% PS&E to incorporate comments received from the City. Consultant will again meet with the City to review these comments, from which the Final (100%) PS&E will be prepared. Consultant will provide a response to each comment that is included in a comment table provided by the City. The Final (100%) PS&E will include all notes and details necessary for construction

A final quantity calculation will be tabulated, and this will be entered into the final Engineer's Estimate for the project. All final documents will be reviewed, stamped and signed by consultant's engineer, and the final PS&E will be delivered to the City in both hard copy and electronic formats.

Deliverables: One (1) wet-signed and one (1) Electronic File of the Final (100%) Plans, Technical Specifications, and Engineer's Estimate.

The electronic files for the final construction plans, specifications, and engineer's estimate will be in AutoCAD 2018, MS Word, and MS Excel, respectively.

EXHIBIT B
COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES
FEE ESTIMATE

Task Description	NCE Labor Hours	NCE Labor Expenses	FWD/Coring Costs	Traffic Control Costs	Lab Testing Costs	Surveying Costs	Utility Location Costs	Railroad Specialist Costs	Reimbursable Expenses	Total Costs
1. Project Management & Meetings										
1A. Project Kick-off and Progress Meetings	90	\$14,900							\$200	\$15,100
1B. Utility Coordination	76	\$10,820							\$200	\$11,020
1C. Caltrans and Railroad Permitting (Optional)	56	\$7,940						\$16,500	\$200	\$24,640
Subtotal	226	\$34,700	\$-	\$-	\$-	\$-	\$-	\$-	\$600	\$51,800
2. Pavement Rehabilitation Design										
2A. Pavement and C&G Condition Survey	69	\$9,520							\$500	\$10,020
2B. Pavement Deflection Testing	10	\$1,620	\$7,000	\$3,520					\$200	\$12,340
2C. Pavement Coring	35	\$4,720	\$36,000	\$14,080	\$15,400				\$400	\$70,600
2D. Pavement Design Recommendations	144	\$23,200							\$400	\$23,600
Subtotal	258	\$39,060	\$43,000	\$17,600	\$15,400	\$-	\$-	\$-	\$1,500	\$116,560
3. Plans, Specs and Estimate										
3A. Design Data Gathering	28	\$3,790							\$100	\$3,890
3B. Topographic Survey & Preliminary Design	208	\$29,660				\$125,724			\$500	\$155,884
3C. Utility Location	12	\$1,630					\$61,837		\$200	\$63,667
3D. 70% PS&E	1073	\$148,140							\$1,500	\$149,640
3E. Draft 100% PS&E	742	\$102,665							\$1,500	\$104,165
3F. Final (100%) PS&E	507	\$70,085							\$1,500	\$71,585
Subtotal	2570	\$355,970							\$5,300	\$548,831

			\$429,730	\$43,000	\$17,600	\$15,400	\$125,724	\$61,183	\$16,500	\$7,400	\$717,191
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RATE SCHEDULE

<u>Staff</u>	<u>Hourly Rate</u>
Project Manager/ Senior Engr	\$175/hour
Principal Engineer & QA/QC	\$250/hour
Associate Engineer	\$200/hour
Project Engineer	\$150/hour
Staff Engineer	\$130/hour
CADD Designer	\$125/hour
Clerical	\$80/hour

EXHIBIT C

INDEMNIFICATION

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

EXHIBIT D

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.

Certificate Of Completion

Envelope Id: ED47EDB6D5FB447E840F3678525A6505

Status: Completed

Subject: Please DocuSign: NCE CSA Amendment 1 for Annual Street Overlay/Rehabilitation 19-21

Source Envelope:

Document Pages: 68

Signatures: 6

Envelope Originator:

Certificate Pages: 6

Initials: 0

Estela Ramirez

AutoNav: Enabled

Stamps: 1

835 E 14th St

Envelope Stamping: Enabled

San Leandro, CA 94577

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

eramirez@sanleandro.org

IP Address: 192.83.149.200

Record Tracking

Status: Original

Holder: Estela Ramirez

Location: DocuSign

4/21/2021 5:12:41 PM

eramirez@sanleandro.org

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of San Leandro

Location: DocuSign

Signer Events

J. Ryan Shafer

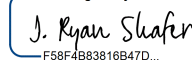
rshafer@ncenet.com

Principal

Security Level: Email, Account Authentication (None), Access Code

Signature

DocuSigned by:



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Timestamp

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Kurry Foley

kfoley@sanleandro.org

Administrative Services Manager

City of San Leandro

Security Level: Email, Account Authentication (None)

Completed

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Signed: 5/3/2021 11:21:49 AM

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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Keith R. Cooke

kcooke@sanleandro.org

Security Level: Email, Account Authentication (None)

DocuSigned by:



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Electronic Record and Signature Disclosure:

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Richard Pio Roda

rpioroda@meyersnave.com

Signing Group: City Attorney

Security Level: Email, Account Authentication (None)

DocuSigned by:



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Electronic Record and Signature Disclosure:

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<p>Chui Mun (Susan) Hsieh shsieh@sanleandro.org Signing Group: Finance Director Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 5/4/2021 1:54:14 PM ID: 3ab78497-30ef-435f-96ee-97018d90588a</p>	<p>DocuSigned by: <i>Chui Mun (Susan) Hsieh</i> 838644B85C6F48C...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 192.83.149.200</p>	<p>Sent: 5/4/2021 7:37:22 AM Viewed: 5/4/2021 1:54:14 PM Signed: 5/5/2021 4:55:51 PM</p>
<p>Fran Robustelli frobustelli@sanleandro.org Interim City Manager Signing Group: City Manager Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 5/12/2021 12:59:47 PM ID: ee565562-acdf-4c40-a174-6e05285164c3</p>	<p>DocuSigned by: <i>Fran Robustelli</i> C063C023AF624E3...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 192.83.149.200</p>	<p>Sent: 5/5/2021 4:55:58 PM Viewed: 5/12/2021 12:59:47 PM Signed: 5/12/2021 1:00:11 PM</p>
<p>Leticia I. Miguel LMiguel@sanleandro.org Signing Group: City Clerk Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 5/12/2021 12:59:47 PM ID: ee565562-acdf-4c40-a174-6e05285164c3</p>	<p>DocuSigned by: <i>Leticia I. Miguel</i> 575DDE0FDA5642B...</p>  <p>Signature Adoption: Pre-selected Style Using IP Address: 209.58.196.114</p>	<p>Sent: 5/12/2021 1:00:18 PM Resent: 5/19/2021 8:59:33 AM Viewed: 5/19/2021 12:09:38 PM Signed: 5/19/2021 12:10:03 PM</p>
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Agent Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Austine Osakwe aosakwe@sanleandro.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 4/21/2021 5:28:49 PM Viewed: 4/21/2021 9:11:51 PM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of San Leandro (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of San Leandro:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: clerk@sanleandro.org

To contact us by paper mail, please send correspondence to:

City of San Leandro

835 E 14th St

San Leandro, 94577

To advise City of San Leandro of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at tbatalla@sanleandro.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of San Leandro

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to clerk@sanleandro.org and in the body of such request you must state your email address, full name, mailing address, and telephone number.

To withdraw your consent with City of San Leandro

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to clerk@sanleandro.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of San Leandro as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of San Leandro during the course of your relationship with City of San Leandro.