



City of San Leandro

Meeting Date: November 19, 2012

Staff Report

File Number: 12-511

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Uchenna Udemezue
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving a Consulting Services Agreement with Construction Testing Services, Inc. for the Water Pollution Control Plant (WPCP) Rehabilitation Project, Project No. 08-593-52-239

SUMMARY AND RECOMMENDATIONS

Staff recommends approval of a consulting services agreement with Construction Testing Services, Inc. in the amount of \$94,000 for the subject project.

BACKGROUND

The City awarded a construction contract to S. J. Amoroso Construction Company, Inc. on July 5, 2011 for construction of the subject project. The nature of the project and current building codes require special inspection and testing of certain materials and procedures used in the work. Six firms responded to a Request for Proposals (RFP) seeking special inspection and testing services that was published in February 2011. Construction Testing Services, Inc. (CTS) was selected as the most qualified firm and was awarded a contract for special inspection and testing on July 5, 2011. CTS is a special inspection and testing firm with over 20 years of experience. CTS is on the City Building Division's list of approved special inspection firms and was selected because of its extensive experience on wastewater facility projects.

Analysis

The project has been in construction for 14 months and is over one-third complete. CTS have met expectations to date by providing special inspection and testing services and preparing written reports documenting the results of their work. A new contract is required with CTS for special inspection and testing because construction sequencing that is required to keep the plant in full operation during the work has resulted in more special inspection costs than originally anticipated. This consulting services agreement with CTS contains sufficient testing and inspection fees to cover the remaining two-thirds of the construction.

Current Agency Policies

Ensure well-maintained sewer facilities.

Previous Actions

- On July 5, 2011, by Resolution No. 2011-132, the City Council awarded a construction contract to S.J. Amoroso Construction Company, Inc., for the Water Pollution Control Plant (WPCP) Rehabilitation Project, Project No. 08-593-52-239
- On July 5, 2011, by Resolution No. 2011-134, the City Council approved a consulting services agreement with Construction Testing Services, Inc. for the Water Pollution Control Plant (WPCP) Rehabilitation Project, Project No. 08-593-52-239

Committee Review and Actions

Several updates on the project have been presented to the City Council Facilities and Transportation Committee, including the last presentation on January 11, 2011.

Applicable General Plan Policies

Policy 52.05: Maintain adequate capacity at the San Leandro Wastewater Treatment Plant to accommodate projected levels of growth within the service area and encourage the Oro Loma Sanitary District to do the same.

Permits and/or Variances Granted

- City Building Permits have been issued
- An FAA permit was obtained on March 1, 2012 for the construction of the new Fixed Film Reactor

Environmental Review

The project was determined to be categorically exempt from CEQA pursuant to section 15301 (b) "Existing Facilities".

Code Compliance Review

Code review was completed as part of the permit approval from the City of San Leandro Building Division and the Alameda County Fire Department.

Fiscal Impacts

The total cost of this project is estimated to be \$50,000,000. This contract is for \$94,000.

Budget Authority

The cost of this contract will be funded by an existing appropriation in Account No.

593-52-252-5240.

ATTACHMENT

None

PREPARED BY: Kevin Chun, Associate Engineer, Engineering & Transportation Department



City of San Leandro

Meeting Date: November 19, 2012

Resolution - Council

File Number: 12-512 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Uchenna Udemezue
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: ADOPT: Resolution Approving a Consulting Services Agreement with Construction Testing Services, Inc. for the Water Pollution Control Plant (WPCP) Rehabilitation Project, Project No. 08-593-52-239 (provides for inspection services for material and construction testing of critical structural components to meet building permit requirements at a cost of \$94,000 from account number 593-52-252-5240)

WHEREAS, an agreement between the City of San Leandro and Construction Testing Services, Inc., a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager has recommended approval of said agreement.

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

That said agreement is hereby approved and execution by the City Manager is hereby authorized.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
CONSTRUCTION TESTING SERVICES, INC.**

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

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on February 28, 2015, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8. Consultants schedule is dependent upon the City and General Contractors means, methods, and schedule, which Consultant does not control.
- 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 testing 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.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$94,000 [Ninety Four Thousand Dollars and Zero Cents], 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, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of

Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

- 2.2 Fiscal Year Billing.** Invoices shall not be submitted for work completed spanning two fiscal years. An invoice for work performed and reimbursable costs incurred up to and including June 30th shall be submitted. Work performed and costs incurred beginning July 1st shall be invoiced separately. Invoices received that span the City's two fiscal years will be returned to the consultant for separate re-invoicing.
- 2.3 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and are included in the total 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 beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount

not less than \$1,000,000 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 insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for 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.

4.4 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 insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of 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 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES. 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 included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

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

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

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

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

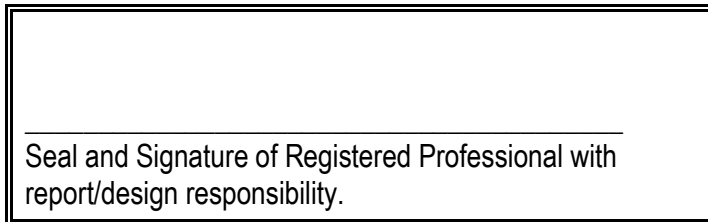
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Kevin Chun ("Contract Administrator"). All 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:

Construction Testing Services, Inc.
Attn: William Cale
2174 Rheem Drive, Suite A
Pleasanton, CA 94588

Any written notice to City shall be sent to:

City of San Leandro
Attn: Kevin Chun, P.E.
Engineering and Transportation Department
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, C, D, E represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	California Labor Code Section 1720 Information
<u>Exhibit E</u>	Special Inspection Letter

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

CONSULTANT

Chris Zapata, City Manager

Bill Cale, Project Manager

Attest:

Marian Handa, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number 593-52-252-5240

Approved as to Form:

Jayne W. Williams, City Attorney

1969630.1

EXHIBIT A

SCOPE OF SERVICES

1. UNDERSTANDING. The City of San Leandro (City) owns and operates a 7.6-mgd rated average dry weather flow (ADWF) Water Pollution Control Plant (WPCP) located in San Leandro, California. Carollo Engineers (Consultant) has completed design of the WPCP Rehabilitation Project to restore the capacity and function of the WPCP with improvements to various existing facilities and by adding new facilities. Construction of the project will be performed by S.J. Amoroso Construction Co., Inc. Construction Management of the project will be provided by the City. This contract is to provide additional Special Inspection as required for the construction of the aforementioned improvements. Inspections are to be performed as required by the plans and specifications, by code compliance, and by the project manager. This Scope of Services is based on a construction period of 690 working days (approximately 32 months) from Contractor's notice to proceed.

2. SCOPE OF WORK – INSPECTIONS.

Onsite Testing and Inspections (820 inspection hours have been budgeted for this task):

- a. Reinforced Concrete – Footings, grade beams, walls, columns, slab on grade, other
- b. Structural Masonry
- c. Epoxy Bolts/Proof Load
- d. Field Welding
- e. NACE coating inspections

Soils Testing and Inspections (483 inspection hours have been budgeted for this task):

- a. Earthwork/compaction

A 5% project management and admin fee will be charged monthly per invoice.

3. TIME OF PERFORMANCE.

- a. Job site inspection hours are Monday through Friday 6am to 6pm, observations and inspections will be scheduled during these hours. Observations or inspections scheduled outside of these hours shall be charged as described in Exhibit "B"
- b. Consultant shall be given a written schedule of work; changes to the schedule shall be issued at least 48 hours in advance of the work.
- c. Consultant shall perform observation and inspections within 48 hours of request by City.

4. CONSULTANT DELIVERABLES

The Consultant deliverables are as follows:

Daily Field Report – Due daily at jobsite
Mix Design Reviews by Engineer – Within 1 week of submittal
Weekly Typed Summary Reports – Weekly Basis
Weekly Laboratory Testing Results – Weekly Basis
Itemized Invoice with Budget Analysis – Monthly Basis
Final Affidavit in a format acceptable to the City per Exhibit “E”

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

ITEM: I		ESTIMATED	UNIT	ESTIMATED
ONSITE TESTING & INSPECTIONS		HOURS	PRICE	TOTAL
	CONCRETE <i>(Includes Rebar)</i>	160	\$65	\$10,400
	FOOTINGS/GRADE BEAMS			
	WALLS & COLUMNS			
	SLAB ON GRADE			
	OTHER			
	MASONRY	80	\$65	\$5,200
	EPOXY BOLTS/PROOF LOAD	100	\$65	\$6,500
	FIELD WELDING	240	\$65	\$15,600
	NACE COATING INSPECTIONS	240	\$85	\$20,400
	<i>Sub-Total of On-Site Testing & Inspection</i>			<i>\$58,100</i>
ITEM: II		ESTIMATED	UNIT	ESTIMATED
SOILS TESTING AND INSPECTIONS		HOURS	PRICE	TOTAL
	EARTHWORK/COMPACTION	483	\$65	\$31,395
	<i>Sub-total of Soils Testing & Inspection</i>			<i>\$31,395</i>
			<i>Subtotal</i>	<i>\$89,495</i>
			<i>Project Management & Administration 5%</i>	<i>\$4,505</i>
			<i>Total</i>	<i>\$94,000</i>

2011 FEE SCHEDULE - P6260 4/19/11
PERSONNEL FEES AND BASIS OF CHARGES
INSPECTIONS, ENGINEERING & SPECIAL SERVICES

* FIELD INSPECTION AND LABORATORY SERVICE	Rate/Hour
Steel	\$65.00
Nondestructive - UT, MT, PT	\$65.00
Steel Visual/UT Combination	\$65.00
Concrete ACI	\$65.00
Concrete ICC	\$65.00
Pre-stressed Concrete	\$65.00
Masonry	\$65.00
Soil Technician w/Nuclear Gauge and/or Sand Cone <i>(portal-to-portal)</i>	\$65.00
Roofing & Waterproofing	\$100.00
NACE Coating Inspections	\$85.00
Specialty Inspector/or where formal certification is required	\$100.00
Field Inspector with Special Enhancement	\$100.00
Laboratory Technician	\$100.00
Technician Typist	\$100.00
**PROFESSIONAL ENGINEERING SERVICES	
Principal Engineer (Civil-Structural)	\$250.00
Geotechnical Engineer	\$200.00
Consulting Engineer (Civil-Structural)	\$160.00
Associate Engineer, Licensed	\$150.00
Staff Engineer/Project Manager	\$130.00
Field Supervision	\$120.00
ASNT Level III	\$120.00
Drafting	\$110.00
Quality Control Manager	QOR
SPECIAL SERVICES	
Portable and mobile laboratories, NDT and Soils	QOR
* Insert Pull-Out Testing (including normal equipment)	\$120.00
* Coring, 1 Person (including equipment)	\$160.00
* Coring, 2 Persons (including equipment)	\$210.00
Project Research	QOR
Ultrasonic Testing for Non-Metallic Materials	QOR
Pavement Rehabilitation Analysis using Deflections	QOR
Roof Moisture Survey	QOR
Soil Drilling Equipment	QOR
Geotechnical Site Investigations/Foundation Reports	QOR
Pachometer, Schmidt Hammer, Windsor Probe	\$150.00
Floor Flatness Testing FfI - Equipment Fee \$100/Day	\$150.00
Slab Moisture Testing - \$30/kit	ASTM F1869 \$150.00
Ferrosan/GPR - Equipment Fee \$100/day	\$150.00
Administration, Secretarial, Special Projects, Notary, Certified Payroll	\$75.00
Concrete/Grout/Mortar Mix Design Review (less than 48 hours notice - \$500)	\$100.00
Welding Procedure Review (less than 48 hours notice - \$500)	\$100.00
Welder Qualification Test	\$150.00
Geotechnical Pad Letter (less than 48 hours notice - \$500)	\$250.00
Final Letter, each (less than 48 hours notice - \$500)	\$200.00
EXPERT WITNESS TESTIMONY	
Court appearance, per day	\$1,160.00
Court appearance, per half day	\$860.00

* Field inspection services will be billed in accordance with minimums shown on Basis of Charges.
**Professional engineering services and laboratory technician services will be billed at actual time.

All fees subject to Basis of Charges

BASIS OF CHARGES

GENERAL

Fees for tests and inspection include cost of technician, normal equipment and regular reports. Engineering services other than supervisory will be charged at applicable rates. Soils testing with nuclear gauge and/or sand cone equipment may require applicable travel and mileage charges for equipment transport and storage per code. Fees for special projects, services overseas, or elsewhere in the United States, will be quoted on request. Any yearly increase in hourly fees shall be tied to the Oakland/San Francisco/Oakland/San Jose cost of living index for the 12 months ending in October, not to exceed 1.5%. The CPI index to use is at the following link:

<http://www.abag.ca.gov/planning/research/cpi.html>

MINIMUM HOURLY CHARGES – INSPECTION

Technician personnel and the following minimum charges are contractual commitment:

One-half day or less	4 Hours
Over one-half day	8 Hours
Show-up time (less than 2 hours notice = 4 hour charge)	2 Hours

WORKING HOURS AND PREMIUM TIME

Regular workday is the first 8 hours between 6:00 am and 6:00 pm Monday through Friday. Premium time is as follows:

Overtime, Weekdays and Saturdays (first 8 hours)	1.5 x quoted hourly rate
Overtime Saturdays (over 8 hours) and Sundays (first 8 hours)	2 x quoted hourly rate
Overtime Sundays (over 8 hours) and Holidays	3 x quoted hourly rate
Shift differential, swing and graveyard - (Work performed between 2:00 pm and 4:00 am)	12.5%/hour additional to base or quoted rate.

MISCELLANEOUS CHARGES - Only Where Applicable

Facsimile charges. Plus 1.00/page (n/c for cover page)	\$5.00 minimum
Parking Fees	At Cost
Air Travel	Cost Plus 5%
Outside Services	Cost Plus 20%
Subsistence (per union contract)	\$85.00/day
Mileage outside of Northern California (50 mile radius of Pleasanton)	Standard Federal Rate
Project Management & Administration	5% of Monthly Invoice
Samples Made by Others: Concrete Cylinders	\$100 + Test
Samples Made by Others: All Other Tests	\$40 + Test
Returned Check Fee	\$100

TESTS

Testing fees shown include normal time for performing test. Samples requiring special preparation will be charged at the laboratory technician rate. Fees for tests not listed will be quoted upon request. There will be a minimum charge of \$100.00 for any engineering report. Please note some tests maybe tested by subconsultants.

CONCRETE AND MASONRY TESTS

PORTLAND CEMENT CONCRETE		Standard Rate/Each	Discounted Rate/Hour
Compression test. 6" x 12" cylinder (including mold)	ASTM C-39	\$10.00	
Cylinder molds. 6" x 12"	ASTM C-470	\$40.00	
Cylinders stored and cured. not tested (including mold)		\$40.00	
Compression test. Gunitite (including sample prep)		\$55.00	
Compression test. Cores	ASTM C-42	\$60.00	
Lightweight insulating concrete. 3" x 6" cylinders	ASTM C-495		
Compression test, including mold		\$60.00	
Unit Weight test, including mold		\$60.00	
Flexural test. 6" x 6" x 18"	ASTM C-78	\$200.00	
Splitting tensile test, 6" x 12" cylinder	ASTM C-495	\$150.00	
Unit Weight, concrete cylinder		\$50.00	
Modulus of elasticity (static)	ASTM C-469	\$210.00	
Laboratory trial batch (mixing and molding only)	ASTM C-192	\$460.00	
Drying shrinkage (3 specimens – 28 days, including prep)	ASTM C-157 Mod	\$370.00	
Unit Weight – fireproofing, each	ASTM E-605	\$100.00	
Sample pickup		NO CHARGE	
High Strength Concrete – Mix Designs/trial batches/and other considerations		QOR	
Compression tests (over 8000 p.s.i. or 400 k) each		\$100.00	
Grab sample, sealing and storing for 2 months in a humidity and temperature controlled room.		\$35.00	

All fees subject to Basis of Charges



MASONRY

Compression test		
mortar 2" x 4" cylinder, U.B.C. (including mold)		\$20.00
mortar molds, 2" x 4". Single use		\$40.00
grout, U.B.C.		\$20.00
mortar or grout, stored and cured not tested (including mold)		\$20.00
non-shrink grout		\$20.00
2" x 2" x 2" cubes		\$50.00
cores (including sample prep)		\$100.00
composite grouted prism, each		\$100.00
Shear test – bed joint – Preece method (including sample prep)		\$170.00
Compression test, gross area only each	ASTM C-140	\$85.00
Compression test, net area and gross area each	ASTM C-140	\$105.00
Absorption, Moisture content and unit weight	ASTM C-140	\$105.00
Linear shrinkage	CMA Rapid Method	\$110.00
Linear Shrinkage	British Method	\$130.00
Tensile test	CMA Method	QOR
Non-standard block (all tests)		QOR
* BRICK		
Modulus of rupture	ASTM C-67	\$100.00
Compression	ASTM C-67	\$100.00
Saturation coefficient (including absorption)	ASTM C-67	\$100.00
Suction rate	ASTM C-67	\$100.00
Efflorescence	ASTM C-67	\$100.00

**Unusual sample preparation for brick specimen will be charged at the established hourly rate.*

All fees subject to Basis of Charges

SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS

SOILS		Standard Rate/Each
Plasticity index	ASTM D-4318	\$100.00
Expansion Index	ASTM D-4829/UBC18.2	\$220.00
Laboratory moisture - density tests	ASTM D-1557/D-698	\$100.00
	Calif. 216 (Wet Method)	\$260.00
* "R" (Resistance) value (minimum 3 pts) Untreated	Calif. 301	\$350.00
California bearing ratio, with curve	ASTM C-1883	\$225.00
Cement treated base laboratory design (3 specimens)	Calif. 312	\$300.00
Cement treated base field control (3 specimens)	Calif. 312	\$250.00
(Aggregate quality test <i>not included</i> .)		
Cement treated base Mix Design (additional cement content)		\$105.00
Moisture Content Determination & Dry Density	ASTM D-2216/D-2937	\$50.00
Moisture Density Check Point		\$100.00
Unconfined Compressive Strength	ASTM D-2166	\$160.00
Triaxial Compression Test		\$500.00
Direct Shear Test		\$300.00
Consolidation		\$500.00
pH of Soil		\$260.00
Hydraulic Conductivity	ASTM D-5084	\$300.00
Sieve Analysis –		
Coarse Retained on No. 4 Sieve	ASTM C-136/Calif.202	\$60.00
Fine Passing No.4 Sieve	ASTM C-136/Calif.202	\$160.00
Combined with 200 Wash		\$190.00
200 Wash Only	ASTM C-117	\$120.00
Hydrometer analysis - includes fine sieve	ASTM D-422	\$320.00
Specific gravity, Bulk SS.D. –		
Coarse (includes absorption)	ASTM C-127	\$130.00
Fine (includes absorption)	ASTM C-128	\$130.00
Corrosivity Tests on Soils	ASTM/Caltrans	\$275.00
AGGREGATES		
Cleanness value	Calif. 227	\$200.00
Sand equivalent (average of 3)	Calif. 217	\$100.00
Durability factor-course	Calif. 229	\$255.00
Durability factor-fine	Calif. 229	\$240.00
Durability factor-combined	Calif. 229	\$270.00
Crushed particles. Coarse and fine	ASTM D-693/Calif. 205	\$200.00
** Sodium sulfate soundness, per size fraction (5 cycles)	ASTM C-88/Calif. 214	\$140.00
Low Angles Rattler C535	ASTM C-131/Calif. 211	\$285.00
Unit weight of aggregate	ASTM C-29/Calif. 212	\$105.00
Organic impurities		\$95.00
Wetting/drying		\$350.00
Flat and elongated particles	D4791, CE119, CE120	\$200.00

* Unusual sample preparation (dried clays, saturated clays, etc.) and all other tests for treated or untreated soils, aggregate subbase and aggregate base will be charged at established rates for laboratory technician.

** Does not include sample preparation or sieve analysis

All fees subject to Basis of Charges

SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS Continued...

ASPHALTIC CONCRETE	Standard	Rate/Each
Stability tests, premixed per samples –		
Hveem (2 specimens)	Calif. 366	\$365.00
Marshall (3 specimens)	ASTM D-1559	\$575.00
Marshall (1 specimen)		\$75.00
Swell (in conjunction with Hveem stabilometer)	Calif. 305	\$190.00
Moisture content, xylene rafflux	ASTM D-2172	\$205.00
Extraction, % asphalt - Method B	ASTM D-2172	\$220.00
Extraction with Gradation		\$350.00
Asphalt Specific Gravity and Unit Weight	ASTM D1188	\$100.00
Asphalt stripping	ASTM D-1664/Calif. 302	\$100.00
Centrifuge kerosene equivalent. percent oil retained	Calif. 303	\$175.00
Lab Test Maximum Density - LTMD	Calif. 375	\$360.00
Marshall Maximum Density	Calif. 304	\$285.00
Rice Maximum Theoretical Specific Gravity	ASTM D-2041/Calif. 309	\$195.00
Unit weight compacted sample	Calif. 308	\$130.00
Unit weight compacted core	Calif. 308	\$130.00
Thickness of asphalt concrete cores		\$100.00
Complete asphalt design for given asphalt and aggregate by one of the following methods: (includes aggregate gradings)		QOR
1. Hveem TM CA 367		
2. Marshall. Asphalt Inst. MS-2		
MATERIALS MECHANICAL TESTS		
#3 to #8 Rebar Tensile Tests	ASTM A-615	\$125.00
#9 to #11 Rebar Tensile Tests	ASTM A-615	\$150.00
#14 Rebar Tensile Tests	ASTM A-615	QOR
#9 and Smaller Rebar Bend Tests	ASTM A-615	\$100.00
Mechanical Couplers		QOR
High Strength Bolt Test		
Bolts: Proof Load & Ultimate Load		\$150.00
Hardness		\$40.00
Nuts: Proof Load		\$150.00
Hardness		\$40.00
Washers: Hardness		\$100.00
Fastener Set (1 bolt, 1nut & 1 washer)		\$175.00
Tensile & Elongation Test		\$270.00
CONTACT INFORMATION		
Headquarters: 2174 Rheem Drive, Suite A • Pleasanton, CA 94588 • P 925.462.5151 • F 925.462.5183		
Peninsula: One Embarcadero Center, Suite 535 • San Francisco, CA 94111 • P 415.438.2357 • F 415.334.4747		
Oakland: 246 30th Street • Oakland, CA 94601 • P 510.444.4747 • F 510.835.1825		
San Jose: 2033 Gateway Place, #500 • San Jose, CA 95110 • P 408.573.6992 • F 408.437.1201		
Stockton: 343 East Main Street, #711 • Stockton, CA 95202 • P 209.507.7555 • F 209.507.7554		
Sacramento: 4770 Duckhorn Drive • Sacramento, CA 95834 • P 916.419.4747 • F 916.419.4774		
Chico: 2260 Park Avenue, Suite B • Chico, CA 95928 • P 530.345.2355 • F 530.666.4749		
Las Vegas: 3842 E. Post Road • Las Vegas, NV 89120 • P 702.257.4747 • F 702.257.4718		

All fees subject to Basis of Charges

EXHIBIT C

INDEMNIFICATION

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

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.

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 of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

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

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

**EXHIBIT E
SPECIAL INSPECTION LETTER**

Date

[Your company file number]
Permit No. _____

Mr. William Schock
Chief Building Official
Civic Center
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

RE: Final Letter for _____
XYZ Company
1234 Main Street
San Leandro, CA

Dear Mr. Schock:

This is to certify that, as defined in Section 1702 of the Uniform Building Code and the City of San Leandro Municipal Code, we have provided those structural observations listed below:

1. Reinforcing Steel Inspection
2. Structural Concrete
3. Structural Welding Inspection
4. Epoxy Anchors, Wedge Anchors, and Anchor Bolts
5. Field and Shop Welding

The completed observations noted above were performed by personnel under the supervision of the undersigned Registered _____ Engineer in the State of California. Based both upon observations performed and upon our substantiating reports, it is our professional judgment that, to the best of our knowledge, the observed work was performed in accordance with industry standards and practices, and the approved plans and specifications.

If you have any questions, or if we may be of further assistance, please do not hesitate to contact our office at (____) ____ - _____.

Respectfully submitted,
[Company Name]

Insert
Registered
Professional
Engineer
Seal

[Type Your Name Here]
[Job Title]
[R__E No. _____]