



# City of San Leandro

Meeting Date: July 15, 2019

## Staff Report

---

**File Number:** 19-402

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.K.

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Jeff Kay  
City Manager

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for a City Council Resolution to Approve an Agreement with Ojo Technology to Upgrade Eleven Traffic Observation Cameras and Implement a Video Management System in an Amount Not to Exceed \$77,256.18 with Authorization for the City Manager or his Designee to Negotiate Contract Amendments Up to 15% (\$11,588.43) of the Not to Exceed Amount and Authorizing An Appropriation of \$77,256.18 with 15% Contingency of \$11,588.43 from the Information Technology Fund; and

Resolution to Approve an Agreement with Columbia Electric, Inc. to Install Eleven Traffic Observation Cameras At Specified Locations Within the City in An Amount of Not to Exceed \$56,000.00 With Authorization for the City Manager or his Designee to Negotiate Contract Amendments Up to 15% (\$8,400.00) of the Not to Exceed Amount and Authorizing An Appropriation of \$56,000.00 with a 15% Contingency of \$8,400.00 from the Information Technology Fund.

---

### SUMMARY AND RECOMMENDATIONS

Based on past feedback from the City Council and the Facilities and Transportation Committee, staff developed a plan to upgrade eleven traffic observation cameras at various locations throughout the City. Staff recommends:

- Approving an agreement with Ojo Technology to procure new cameras for those locations and to implement a centralized video management system (VMS);
- Authorize an appropriation of \$77,256.18 and a 15% contingency of \$11,588.43 from the Information Technology Fund Balance Unrestricted Reserves to operating account 688-13-121-7410;
- Approving an agreement with Columbia Electric, Inc., a San Leandro based company, to install the cameras at the locations specified by staff; and
- Authorize an appropriation of \$56,000.00 and a 15% contingency of \$8,400.00 from the Information Technology Fund Balance Unrestricted Reserves to operating account 688-13-

121-7410

Staff also recommends that the City Council review the City Manager's proposed administrative policy regarding City Departments' cameras. The policy, the key facets of which were previously presented to the Facilities and Transportation Committee, is intended to standardize procedures for use of cameras and handling of camera footage, while providing increased consistency and transparency.

## **BACKGROUND**

The City of San Leandro's Traffic Division in the Engineering and Transportation Department maintains an inventory of cameras used in normal day-to-day traffic operations. These observation cameras are typically mounted on traffic poles and provide a real-time view of traffic conditions.

The observation cameras are located at locations throughout the City. Staff recommends these cameras should be upgraded to provide higher resolution images and better-quality video.

## **Analysis**

Staff recognizes a need to upgrade current traffic observation cameras. The current cameras are pan-tilt-zoom ("PTZ") cameras that can be manipulated by staff to get views of an entire intersection. The cameras are located at the following intersections:

- Bancroft Ave & Estudillo Ave
- Davis St & Orchard Ave
- Davis St & San Leandro Blvd
- E 14th St & Davis St & Callan Ave
- Hesperian Blvd & Springlake Dr
- E 14th St & San Leandro Blvd
- E 14th St & Hesperian Blvd & Bancroft Ave\*
- Marina Blvd & Teagarden St\*
- Marina Blvd & Merced St\*
- Hesperian Blvd & Halcyon Dr & Fairmont Dr\*
- Washington Ave & Springlake Dr & Heather Glenn Ln\*

These cameras are intended for connection to City fiber so that video can be transmitted and saved to a central City location. However, five locations (denoted by \* in the list above) are not connected to City fiber and rely on an analog-to-digital converter. The video quality from the cameras at these locations is of low quality.

Staff identified a camera model that provides four discrete views (one in each direction) that is designed specifically for intersections. Staff recommends upgrading the PTZ cameras to standardize the City's cameras to the model and type recommended herein. In addition, Staff recommends pulling fiber to the currently unserved camera locations to facilitate transmission of

high-definition video to a centralized management system.

Following a competitive bidding process, the City previously awarded Ojo Technology a contract to manage the video management system currently used for Civic Center Security Cameras. This system was installed at the Police Department in 2014. Staff recommends implementing a second video management system at City Hall to manage non-Police Department cameras, such as the traffic observation cameras and the security cameras located at City Hall (and potentially other City facilities in the future).

Staff recommends that the City Council approve and authorize the City Manager execute an agreement with Ojo Technology to procure eleven cameras of the model described above, and to build a new, centralized video management system at City Hall. This agreement would be awarded through the State of California's Department of General Services' California Multiple Award Schedules (CMAS) in accordance with Public Contract Code Sections 10290 et seq. and 12101.5 (effective January 1994).

Staff also recommends approving a sole-source procurement with Columbia Electric, Inc. to install the eleven traffic observation cameras at the locations specified above. Staff recommends awarding this as a sole-source procurement based on Columbia Electric's long history and track record of satisfactory projects for the Public Works Department, particularly for electrical work related to traffic signals, which is relevant to the scope of this project so that all of the electrical connections and related work are consistent in use amongst all of the relevant City facilities. In addition to installing the cameras, Columbia Electric would pull the fiber to the unserved locations and install dedicated power lines, as needed, and to be consistent with City facilities already in use. Columbia Electric, Inc. is a local, San Leandro business.

Staff has also developed proposed administrative procedures regarding City Departments' cameras, including retention, access, maintenance, and management of cameras and related systems.

### **Previous Council Actions**

- At the June 5, 2019 City Council Facilities & Transportation Committee meeting, the Committee heard a presentation for the project and recommended moving it to a future meeting of the full City Council.
- At the May 3, 2017 meeting, the City Council heard and commented on a presentation for Discussion Regarding City Camera Systems.
- At the July 21, 2014 City Council meeting, the City Council unanimously approved an Agreement with Odin Systems to Replace the Civic Center Security Camera System.

### **Legal Analysis**

The City Attorney approved as to form the Consulting Services Agreements with Ojo Technology and Columbia Electric, Inc. The City Attorney, in consultation with the City Manager and staff, drafted the City Manager's proposed administrative policy for City Departments' cameras.

**Fiscal Impacts**

The agreement with Ojo Technology is in an amount of \$77,256.18 with a 15% contingency. The agreement with Columbia Electric is in an amount of \$56,000.00 with a 15% contingency. The combined amount of both agreements is \$133,256.18.

**Budget Authority**

Staff requests authority for an appropriation of funds from the Information Technology Fund Balance Unrestricted Reserves (Fund 688) of a combined not-to-exceed \$133,256.18 and for a combined 15% contingency amount of \$19,988.43 to the Operating Account (688-13-121-7410). The Finance Director has determined there are sufficient funds in the 688 Fund Balance for the combined not-to-exceed plus the 15% contingency of \$153,244.61 appropriation.

**Current Agency Policies**

- Maintain and enhance San Leandro's infrastructure.


**Current Agency Policies**

- Maintain and enhance San Leandro's infrastructure.

**Attachment(s) to Staff Report**

- Administrative Procedure: Procedures for Camera Recording & Use

**PREPARED BY:** Tony Batalla, Chief Technology Officer, City Manager's Office

<p style="text-align: center;"><b>CITY OF SAN LEANDRO</b></p>  <p style="text-align: center;"><b>ADMINISTRATIVE PROCEDURE</b></p>	<b>AP-0000: PROCEDURES FOR CAMERA RECORDING &amp; USE</b>
	<b>DATE ISSUED: X/X/XX</b>
	<b>DATE REVISED:</b>
	<b>APPROVED BY CITY MANAGER:</b>

**I. APPLICABLE TO**

All City employees, contract workers and volunteers.

**II. PURPOSE**

Separate from the City of San Leandro Police Department, the City of San Leandro’s other departments (“the City”) maintain and operate various cameras in their day-to-day operations. This policy applies to the use of such cameras by the City, including when and how such cameras are to be installed, how videos and images are to be stored and recorded, whom shall have access to video recordings and images, and the conditions under which stored videos or images are to be retrieved.

**III. DEFINITIONS**

- A. “Closed Circuit Television (CCTV)”** is a system that includes cameras, a video recorder, and video monitoring functionality for security or traffic monitoring purposes; CCTV may be analog or digital.
- B. “Public Safety Camera”** is a recording device used for public safety purposes and can include: body-worn cameras; audio/video recording equipment in police vehicles; security cameras in highly sensitive areas, such as the City jail, evidence locker, etc.; devices equipped with a license plate reader (LPR); traffic enforcement cameras (i.e., “red light cameras”); and others.
- C. “Monitoring Camera”** is a video camera that records a defined outdoor or indoor location.
- D. “Traffic Camera”** is a video camera that observes and records vehicular traffic, incidents, and movements on a road. May also be referred to as a “traffic monitoring camera.”
- E. “Video Management System (VMS)”** is a centralized system that collects, makes a record of, stores, and allows for retrieval of video from City cameras and other digital sources connected on a computer network.

#### IV. POLICY

The function of monitoring cameras is to assist in protecting the safety and property of the City. The function of traffic cameras is to observe traffic conditions on City streets. The primary use of monitoring cameras will be to record videos and images for future identification of individuals, objects, or animals for the investigation and analysis of civil liability, criminal activity, or City policy violations. The primary use of traffic cameras is to record videos and images for analysis of traffic conditions, incidents, and movements on City streets and roads. Some cameras, it should be noted, may function as both traffic and monitoring cameras in that they can serve both purposes.

The following classes of cameras and devices are exempt from this policy:

1. Public Safety Cameras;
2. Audio/Video Recording Equipment in the City Council Chambers and other City-owned event rooms;
3. Cameras subject to separate policies, such as unmanned aerial systems, and sewer inspection cameras;
4. Cameras on City issued communications devices (e.g., mobile phones, tablets), which are subject to City equipment use policies;
5. Cameras on employee personal communications devices, which are subject to personnel policies.

##### A. Application

This City camera recording & use policy (the “Policy”) shall apply to video and image recordings from all cameras operated, controlled, or maintained by City Departments, except the Police Department (collectively, the “Departments”).

##### B. Retention

Video recordings and images from cameras subject to this Policy shall be retained as follows: a) fifteen (15) days from the date of recording, or b) the maximum time allowable given the capacity of the recording system, if said time is less than fifteen (15) days. Thereafter, video recordings and images shall be deleted, overwritten, or otherwise discarded.

Video recordings and images may be retained by the City for longer than fifteen (15) days if the footage is part of a civil or criminal investigation, is subject to a valid court or administrative order, is subject to a litigation hold as determined by the City Attorney, or upon direction by the City Manager. Video recordings and images may only be shared by the City through a valid court or administrative order, or for a civil or criminal investigation, but only upon a finding by the City Manager that no other City ordinances, administrative procedures, resolutions, or policies will be violated. Video recordings and images that are retained for longer than fifteen (15) days may be downloaded and removed from their original location and retained in a different storage medium, as long as such

medium is within the City's immediate custody or control. Video recordings and images shall be treated as public records, subject to disclosure, and any and all exemptions from disclosure, and redaction permitted by State or Federal law.

**C. Administration**

Administration of City cameras, including responsibility for technical configuration, access protocols, and policy compliance of security cameras is set forth herein. The Information Technology Division shall have administration over cameras connected to the City's VMS. The Engineering & Transportation Department shall have administration over traffic cameras (unless connected to the City's VMS). The Public Works Department shall have administration over CCTV security cameras at City facilities (unless connected to the City's VMS). The IT Division shall maintain a master list of all camera inventory.

**D. Access**

Access to video recordings from cameras maintained by the Departments shall be limited as set forth herein. Only those individuals within the Departments with immediate and primary responsibility for operation of the cameras and the respective Department Head shall have permission to access, view or retrieve video recordings or images. Individuals within the Departments designated by the Department Head shall receive training regarding the use of the cameras and related video footage and image capture functions prior to accessing, viewing, or retrieving video footage or images. In addition to such individuals, the Director of the Engineering & Transportation Department, and the Director of the Public Works Department, in consultation with or with the assistance of the Chief Technology Officer, may access and retrieve video footage and images from cameras maintained by the Departments. No other person shall access, view or retrieve video recordings from any Departments' cameras without the prior written approval of the City Manager.

The City Manager and the City Attorney shall have access to all monitoring and traffic camera recordings. Should CCTV, monitoring cameras, or traffic cameras reveal activity that presents potential civil liability to the City, or activity that violates criminal laws or City ordinances, the City's Codes, administrative regulations, or City policy, access to the recording shall be granted to the City Manager, City Attorney, or the Police Department for investigatory purposes, including retention as evidence.

**E. Use**

Video cameras operated and maintained by the Departments shall only be used for official purposes and will be conducted in a legal and professional manner. Monitoring individuals based on protected class or characteristics including but not limited to race, gender, sexual orientation, disability or other protected classification is prohibited. Recordings and images will not be routinely monitored and will only be checked in the event the City has a need, or probable cause, or reasonable suspicion to review

recordings. Furthermore, no City camera or recording equipment used by the Departments shall have audio recording capability. If any equipment has audio recording capability, that capability shall be disabled or turned off. Any person who tampers with or destroys City cameras or related equipment will be subject to criminal prosecution and civil liability.

2927516.1





# City of San Leandro

Meeting Date: July 15, 2019

## Resolution - Council

---

**File Number:** 19-403

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Jeff Kay  
City Manager

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION of the City of San Leandro City Council to Approve an Agreement with Ojo Technology to Upgrade Eleven Traffic Observation Cameras and Implement a Video Management System in An Amount Not to Exceed \$77,256.18 With Authorization for the City Manager or his Designee to Negotiate Contract Amendments Up to 15% (\$11,588.43) of the Not to Exceed Amount and Authorizing the Appropriation of \$77,256.18 from the Information Technology Fund Balance Unrestricted Reserves to the Operating Account 688-13-121-7410

---

WHEREAS, an agreement between the City of San Leandro and Ojo Technology has been presented to this City Council; and

WHEREAS, the agreement is to be awarded through the State of California's Department of General Services' California Multiple Award Schedules (CMAS) in accordance with California Public Contract Code Sections 10290 et seq. and 12101.5 (effective January 1994); and

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

WHEREAS, the City Manager recommends approval of said agreements.

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

The City Council approves, and the City Manager is hereby authorized and directed, on behalf of the City Council of the City of San Leandro, to execute a consulting services agreement on behalf of the City, in a form approved by the City Attorney; and

The City Manager is authorized to take all actions necessary or appropriate to carry out and implement the terms of the consulting services agreement and to administer the City's obligations, responsibilities and duties to be performed under the agreement; and

That said agreement with Ojo Technology is in an amount not to exceed \$77,256.18 50 and the City Manager or his designee is authorized to negotiate contract amendments up to 15% (11,588.43) of the not to exceed amount; and

That an appropriation of funds in the amount of \$77,256.18 plus the 15% contingency of \$11,588.43 from the Information Technology Fund Balance Unrestricted Reserves (fund 688) to the IT Operating Budget (Account 688-13-121-7410) is hereby authorized for spending, per said agreement.

**Attachment to Resolution**

- Consulting Services Agreement between the City of San Leandro and Ojo Technology to Upgrade Eleven Traffic Observation Cameras and Implement a Video Management System in An Amount not to exceed \$77,256.18 with authorization for the City Manager to negotiate contract amendments up to 15% of the not to exceed amount

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
OJO TECHNOLOGY  
FOR  
SECURITY CAMERA UPGRADES & SYSTEMS CONFIGURATION**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and Ojo Technology (“Consultant”) (together sometimes referred to as the “Parties”) as of July 15, 2019 (the “Effective Date”).

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on October 30, 2019, 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.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant’s obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder’s attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum of \$77,256.18 with up to 15% of the amount for contingency purposes, 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 B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

- 2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$0.00. 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 \$1,000,000.00 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 \$1,000,000.00 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 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 \$1,000,000.00 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 90 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 Tony Batalla ("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:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**[EMAIL ADDRESS MUST BE INCLUDED]** \_\_\_\_\_

Any written notice to City shall be sent to:

Tony Batalla  
c/o Information Technology  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
tbatalla@sanleandro.org

With a copy to:

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

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

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

**10.12 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.

**10.13 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

[NAME OF CONSULTANT]

\_\_\_\_\_  
Jeff Kay, City Manager

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

Attest:

\_\_\_\_\_  
Consultant's DIR Registration Number  
(if applicable)

\_\_\_\_\_  
Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

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

\_\_\_\_\_  
Account Number

Approved as to Form:

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

Per Section 10.7:

- Form 700 Not Required
- Form 700 Required

\_\_\_\_\_  
[Name, Title of Department Head]

## EXHIBIT A

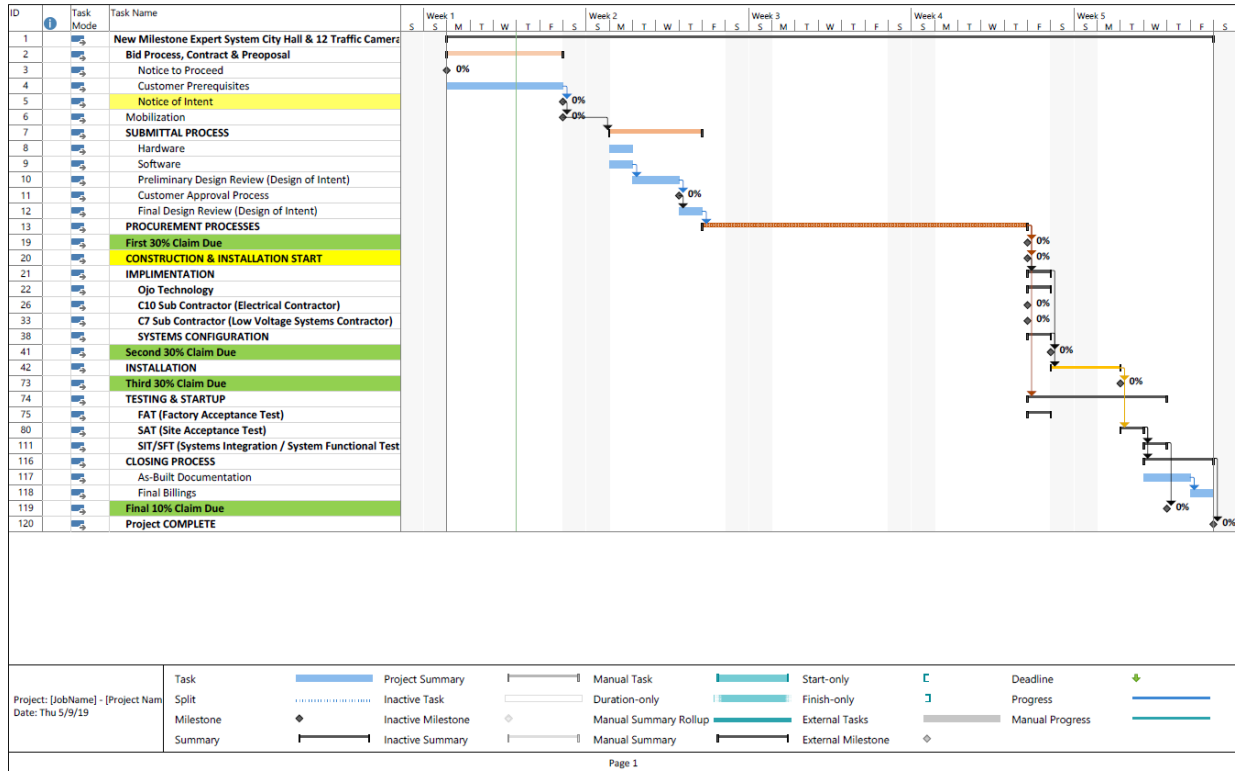
### SCOPE OF SERVICES

#### **Project Summary:**

Ojo Technology will provide Milestone Expert for City Hall; 835 East 14<sup>th</sup> Street, Room 202; San Leandro, CA 94577. The new Milestone Expert Software will be Federated with the existing Milestone Corporate Software. The goal is to get the City on a platform that best fits your needs while reducing the annual cost of ownership which will allow you to take full advantage of the latest and greatest technology, understand the ability of integrating systems and video analytics.

- EXISTING Milestone Corporate:
  - Jail Cameras (Approximately 12) will remain on the Milestone Corporate Software and will remain on the existing servers and storage array.
- NEW Milestone Expert System (Support to Co-Term with Corporate)
  - The City to provide and rack and stack NEW Servers & Storage Servers
    - Minimum 19TB usable storage required based on parameters and camera counts listed below.
    - Ojo to provide specification.
    - Ojo to configure and program servers and storage.
  - Ojo to Test, Program and Configure 11 NEW PNM-9081VQ Traffic Light Surveillance Cameras
    - Ojo to assist Public Works with Aiming & Focusing Cameras.
    - Storage Calculations based on 7 days Storage, 15ips, 75% Motion
    - The City to provide installation at the traffic lights through Public Works.
    - The City will replace existing COAX with CAT5 or CAT6 cable.
  - 35 EXISTING Mobotix Cameras
    - Ojo to move over (Test, Configure & Program) to the Milestone Expert System
    - Storage calculations Based on 7 days of Storage, 7ips, 40% Motion Only
      - 14 – M15D 2X6MP (12MP) /1 – T25 (5MP)/ 2 – D15D (5MP)/ 18 – D25M (5MP)

**Projected Project Schedule: 5 Weeks**



**EXHIBIT B**

**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES**

**Equipment List:**

Traffic Camera Equipment and Materials (TAXABLE)							
ITEM	QTY	UNIT	Type	PART No.	DESCRIPTION	UNIT SELL	EXT. SELL
1	10	ea	Camera	PNM-9081VQ	Network vandal outdoor Multi-sensor Multi-Directional dome camera, (5MP X 4 sensors) 20MP @ 30fps, motorized vari-focal lens 2.6x (3.6 ~ 9.4mm) (102.5" ~ 38.7"), triple codec H.265/H.264/MJPEG with WiseStream II technology, 120dB WDR, defocus detection, built in analytics, true D/N, 4x SD card, hallway view, HLC, defog detection, DIS(Gyro Sensor), 12VDC/HPoE (Power adaptor is included), IP66/IK10, -40°C ~ +55°C (-40°F ~ +131°F) NOTE: 11 Traffic Cameras - Customer has 1 Camera on-site.	\$ 2,280.82	\$ 22,808.20
2	11	ea	Mount	SBP-329HM	Large Cap adaptor (outdoor) for the Multi-Directional cameras PNM-9080VQ and PNM-9081VQ (Will fit the following accessories: SBP-300WM, SBP-300LM, SBP-300CM)	\$ 46.23	\$ 508.53
3	11	ea	Mount	SBP-300WM	Wall Mount Accessory, (SCP-3430H/2430H, SCP-3370TH/3370H, SCP-2370TH/2370H, SCP-3250H/2250H, SCP-3120VH, SNP-5430H/6320H/6320RH, SNP-5200H/3302H, SNP-6321H/5321H/SNP-L6233H/L5233H/L6233RHH/SNP-3371TH/3371H, SNP-3120VH, All caps except SBP-329HM, SHP-	\$ 48.70	\$ 535.70
4	11	ea	Mount	SBP-300NB	Installation Back box compatible with (SBP-300WM, SBP-300WM1, SBP-300KM, SBP-300PM)	\$ 184.93	\$ 2,034.23
5	11	ea	Mount	SBP-300PM	Pole Mount Adapter Accessory, use with SBP-300WM, Ivory	\$ 48.70	\$ 535.70
6	11	ea	NEMA	A808CHNF	Continuous Hinge w Clamps 4, Size/Dims: 8.00x8.00x4.00, Material: Mild Steel, Finish: Gray	\$ 139.81	\$ 1,537.91
7	11	ea	NEMA	A8P8	CONDUCTIVE PANELS 6.75X6.88 FITS 8X8 BOXES PNLJ, PAINTED STEEL	\$ 9.70	\$ 106.70
Milestone EXPERT Software & Support Traffic cams & 35 Existing Mobotix Cams (New SLC to be provided)							
ITEM	QTY	UNIT	Vendor	PART No.	DESCRIPTION	UNIT SELL	EXT. SELL
1	1	ea	Milestone	XPETBL	XProtect Expert Base License	\$ 1,865.73	\$ 1,865.73
2	46	ea	Milestone	XPETDL	XProtect Expert Device License	\$ 251.07	\$ 11,549.22
3	1	ea	Milestone	Y2XPETBL	Two years SUP for XProtect Expert Base License	\$ 336.00	\$ 336.00
4	46	ea	Milestone	Y2XPETDL	Two years SUP for XProtect Expert Device License	\$ 45.73	\$ 2,103.58
5	79	ea	Milestone	DXPETBL	One day SUP for XProtect Expert Base License, single day purchase	\$ 0.92	\$ 72.68
6	3634	ea	Milestone	DXPETDL	One day SUP for XProtect Expert Device License, single day purchase	\$ 0.13	\$ 472.42

<b>Materials Total:</b>	\$28,066.97
<b>Milestone Software &amp; Support</b>	\$16,399.63
<b>Professional Services Total:</b>	\$20,792.65
<b>Sales Tax 9.75%:</b>	\$2,736.53
<b>Shipping &amp; Handling</b>	\$561.34
<b>Bronze Maintenance Co-Term with Existing plan: June 20, 2021</b>	\$8,699.06
<b>Grand Total:</b>	<b><u>\$77,256.18</u></b>

This proposal covers only the direct costs described above. Should other conditions change to our base contract (e.g. time of completion, schedule, sequence of work, etc.) as a result of this revision, we reserve the right to re-quote this proposal when these additional costs can be determined.

## Exclusions & Clarifications:

---

1. CMAS Terms and Conditions Apply
2. Assumes PoE switches and / or midspan PoE injectors shall be provided by others
3. Assumes electrical circuits (if required), shall be provided by others
4. Assumes UPS power shall be provided by others
5. Assumes use of existing server, or server shall be provided by others
6. Assumes viewing workstation exists or shall be provided by others
7. Assumes use of existing equipment rack, or rack shall be provided by others
8. Assumes the City will install the traffic light cameras through Public Works.
9. Assumes The City will remove the 11<sup>th</sup> Samsung Multi Image camera that was used as a test and hand it to the installers along with the PoE injector.
10. Assumes The City will re-install the Mobitix camera that was taken down for the test of the Samsung Multi Image camera mentioned above.
11. Prevailing wage not included
12. Bond not included

- Alameda County Small, Local, Emerging Business (SLEB): # 10-00193
- California Small Business Certification: #1064041
- DBE Certification #: 39125DIR #: 1000001115
- C-7 CA Contractors License #: 891252

### California Multiple Award Schedules (CMAS)

- Milestone CMAS - 3-17-84-0022S
- Samsung CMA – 3-16-84-0022K
- Professional Services: 3-19-70-2890G

## EXHIBIT C

### INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first



# City of San Leandro

Meeting Date: July 15, 2019

## Resolution - Council

---

**File Number:** 19-404

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Jeff Kay  
City Manager

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION of the City of San Leandro City Council to Make a Sole Source Justification under California Public Contract Code section 3400, and Approve An Agreement with Columbia Electric to Install the Eleven Traffic Observation Cameras At Specified Locations in An Amount Not to Exceed \$56,000.00 With Authorization to the City Manager or his Designee to Negotiate Contract Amendments Up to 15% (\$8,400.00) of the Not to Exceed Amount; Authorizing the Appropriation of \$56,000.00 from the Information Technology Fund Balance Unrestricted Reserves to Operating Account 688-13-121-7410

(Approves One Agreement Totaling \$56,000.00 and Authorizes Appropriation in the Amount of \$56,000.00 including up to a 15% Contingency of \$8,400.00, if needed)

---

WHEREAS, an agreement between the City of San Leandro and Columbia Electric, Inc. has been presented to this City Council; and

WHEREAS, the Columbia Electric, Inc. has done similar work on other City facilities, such that it is in the City's best interest to procure such work from a sole source to match work currently in use or to be used on existing facilities; and

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

WHEREAS, the City Manager recommends approval of said agreements.

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

In accordance with California Public Contract Code section 3400, in order to match work currently in use or to be used on existing facilities, a sole source procurement for this work from Columbia Electric, Inc. is justified; and

The City Manager is hereby authorized and directed, on behalf of the City Council of the

City of San Leandro, to execute a consulting services agreement on behalf of the City, in a form approved by the City Attorney; and

The City Manager is authorized to take all actions necessary or appropriate to carry out and implement the terms of the consulting services agreement and to administer the City's obligations, responsibilities and duties to be performed under the agreement; and

That said agreement with Columbia Electric is in an amount not to exceed \$56,000.00 and the City Manager is authorized to negotiate contract amendments up to 15% (\$8,400.00) of the approved not to exceed amount; and

That an appropriation of funds in the amount of \$56,000.00 plus a 15% contingency of \$8,400.00 from the Information Technology Fund Balance Unrestricted Reserves (fund 688) to the Operating Budget Account 688-13-121-7410 is hereby authorized for spending per said agreement.

**Attachment to Resolution**

- Consulting Services Agreement between the City of San Leandro and \$56,000.00 to Install Eleven Traffic Observation Cameras.



**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
COLUMBIA ELECTRIC, INC.  
FOR  
INTERSECTION CAMERA INSTALLATION**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and Columbia Electric, Inc. (“Consultant”) (together sometimes referred to as the “Parties”) as of July 15, 2019 (the “Effective Date”).

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on October 15, 2019, 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.
- 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 \$56,000.00 with up to a 15% contingency, if needed, 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 B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;

- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

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

**2.3 Final Payment.** City shall pay the last 5% of the total sum due pursuant to this Agreement within 35 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 \$0.00. 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 \$1,000,000.00 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 \$1,000,000.00 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 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 \$1,000,000.00 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 \_\_\_\_\_ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

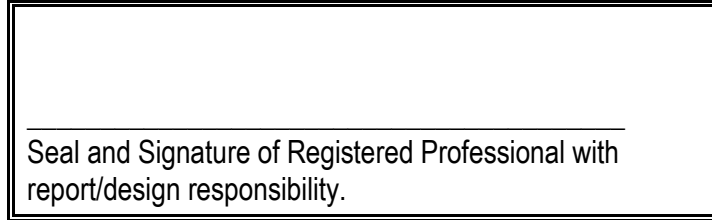
**10.10 Notices.** Any written notice to Consultant shall be sent to:  
Jo Anne Scruggs & Gerrod

Scruggs \_\_\_\_\_  
1980 Davis St. \_\_\_\_\_  
San Leandro, CA 94577 \_\_\_\_\_  
**[EMAIL ADDRESS MUST BE INCLUDED] [joscrudds@columbia-elec.com](mailto:joscrudds@columbia-elec.com) &  
[gscruggs@columbia-elec.com](mailto:gscruggs@columbia-elec.com)** \_\_\_\_\_

Any written notice to City shall be sent to:  
City of San Leandro  
Information Technology  
c/o Tony Batalla  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

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

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



**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C [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

Columbia Electric, Inc.

\_\_\_\_\_  
Jeff Kay, City Manager  
CEO

\_\_\_\_\_  
[NAME, TITLE] JoAnne Scruggs, President &

Attest:

1000001458 \_\_\_\_\_  
Consultant's DIR Registration Number  
(if applicable)

\_\_\_\_\_  
Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

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

\_\_\_\_\_  
Account Number

Approved as to Form:

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

Per Section 10.7:

- Form 700 Not Required
- Form 700 Required

\_\_\_\_\_  
[Name, Title of Department Head]



## EXHIBIT A

### SCOPE OF SERVICES

1. Replace eleven (11) cameras at intersections located through the City;
2. Connect cameras to Ethernet cabling and adjust, as requested by Staff during installation, to ensure proper viewing angles and coverage
3. Pull new Cat6 Ethernet cable in locations specified, using existing coax cable as a pull-rope to install new cabling
4. Check power at each site; pull new power circuit to the camera, where needed.

Location	Camera Type	Monitoring Street	Pull CAT6
Bancroft Ave & Estudillo Ave	CCTV	Bancroft Ave (north leg)	No
Davis St & Orchard Ave	CCTV	Davis St (west leg)	No
Davis St & San Leandro Blvd	CCTV	Intersection	No
E 14th St & Davis St & Callan Ave	CCTV	E 14th St (north leg)	No
Hesperian Blvd & Springlake Dr	CCTV	Hesperian Blvd (north leg)	No
E 14th St & San Leandro Blvd	CCTV	E 14th St (north leg)	No
E 14th St & Hesperian Blvd & Bancroft Ave	CCTV	E 14th St (north leg)	Yes*
Marina Blvd & Teagarden St	CCTV	Marina Blvd (west leg)	Yes*
Marina Blvd & Merced St	CCTV	Marina Blvd (east leg)	Yes*
Hesperian Blvd & Halcyon Dr & Fairmont Dr	CCTV	Hesperian Blvd (south leg)	Yes*
Washington Ave & Springlake Dr & Heather Glenn Ln	CCTV	Washington Ave (south leg)	Yes*

**\*THE EXISTING CABLE / WIRE CAN BE USED AS A PULL ROPE TO INSTALL THE NEW CABLING.**

**EXHIBIT B**

**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES**

**COLUMBIA ELECTRIC, INC**  
**1980 DAVIS STREET**  
**SAN LEANDRO, CA 94577**  
**510 430-9505**  
**510 430-1860 (FAX)**

**BID**  
**BID DATE: 5/7/19**  
**JOB NAME: City of San Leandro PTZ Camera Install**  
**at Various Locations**

**Tony Batalla**  
**City of San Leandro**

ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
1	Bancroft Ave & Estudillo Ave - (No CAT 6 needed)	EA	1	4,500.00	4,500.00
2	Davis St & Orchard Ave - (No CAT 6 needed)	EA	1	4,500.00	4,500.00
3	Davis St & San Leandro Blvd - (No CAT 6 needed)	EA	1	4,500.00	4,500.00
4	E 14th St & Davis St & Callan Ave - (No CAT 6 needed)	EA	1	4,500.00	4,500.00
5	Hesperian Blvd & Springlake Dr - (No CAT 6 needed)	EA	1	4,500.00	4,500.00
6	E 14th St & San Leandro Blvd - (No CAT 6 needed)	EA	1	4,500.00	4,500.00
7	E 14th St & Hesperian Blvd & Bancroft Ave - (Add CAT 6 Cable back to Controller Cabinet)	EA	1	5,500.00	5,500.00
8	Marina Blvd & Teagarden St - (Add CAT 6 Cable back to Controller Cabinet)	EA	1	5,500.00	5,500.00
9	Marina Blvd & Merced St - (Add CAT 6 Cable back to Controller Cabinet)	EA	1	5,500.00	5,500.00
10	Hesperian Blvd & Halcyon Dr & Fairmont Dr - (Add CAT 6 Cable back to Controller Cabinet)	EA	1	5,500.00	5,500.00
11	Washington Ave & Springlake Dr & Heather Glenn Ln - (Add CAT 6 Cable back to Controller Cabinet)	EA	1	5,500.00	5,500.00
Add Alt 1	Columbia will check power at each site. Where needed CEI will pull new power circuit to the camera. This price will be an adder to each location where needed.	EA	1	1,500.00	1,500.00
<b>TOTAL</b>					<b>56,000.00</b>

**WE EXCLUDE:**

- 1 AC / CONCRETE REMOVAL & RESTORATION
- 2 PAINTING
- 3 CONTAMINATED MATERIAL HANDLING
- 4 PERMITS OF ANY KIND (CITY, COUNTY, AND OR STATE)
- 5 UTILITY FEE OF ANY KIND (POWER, TELEPHONE, ETC.)
- 6 STAKING
- 7 BONDS OR BOND COST
- 8 OVERTIME
- 9 ENGINEERING / ENGINEERED PLANS
- 10 OCIP & CCIP COSTS
- 11 OFFHAUL OF SPOILS
- 12 REMOVAL OF USA PAINT MARKINGS
- 13 ADA PEDESTRIAN RAMP IMPROVEMENTS
- 14 SIGNING & STRIPING IMPROVEMENTS
- 15 COST FOR STORM WATER POLLUTION PREVENTION

CL # 765902 C-10, A

**STATE OF CALIFORNIA DBE / WBE CERTIFICATION #38529**

**STATE OF CALIFORNIA CERTIFIED SMALL BUSINESS #1035003**

DIR CONTRACTOR REGISTRATION # 1000001478

GERROD SCRUGGS - 510-913-2050 CELL

## 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.

## 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.

3008145.1