



City of San Leandro

Meeting Date: October 21, 2019

Minutes

File Number: 19-501

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.B.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: Not Applicable

TITLE: Minutes of the Facilities and Transportation Committee Meeting of September 4, 2019

.. ..Title

Minutes of the Facilities and Transportation Committee Meeting of September 4, 2019

..Body

CITY OF SAN LEANDRO

CITY COUNCIL FACILITIES AND TRANSPORTATION COMMITTEE

September 4, 2019

4:00 p.m. - 5:30 p.m.

**San Leandro City Hall
835 East 14th Street
San Leandro, California
(Sister Cities Gallery)**

MINUTES

1. CALL TO ORDER

The meeting was called to order at 4:08 p.m.

1.A. Attendance

COMMITTEE MEMBERS PRESENT:

Councilmember Deborah Cox

Mayor Pauline Cutter

Vice Mayor Corina Lopez

STAFF MEMBERS PRESENT:

Reh-Lin Chen

- Senior Transportation Engineer

Keith Cooke

- Engineering & Transportation Director

Kurry Foley

- Administrative Services Manager

Jeff Kay

- City Manager

Jeanie Lau

- Administrative Assistant III

John O'Driscoll

- Associate Engineer

Austine Osakwe

- Senior Engineer

Michael Stella

- Principal Engineer

Nick Thom

- City Engineer

Liz Warmerdam

- Assistant City Manager

1.B. Announcements

None.

2. DISCUSSION ITEMS

2.A. 19-454 Neptune Drive Shoreline Flood Protection

COMMITTEE REQUESTS/DIRECTION TO STAFF:

- a. *Mayor suggested residents living within the flood zones on the shoreline be contacted to ensure they are informed regarding the project.*

2.B. 19-455 Staff Update on Project Development Projects

COMMITTEE REQUESTS/DIRECTION TO STAFF:

- a. *For the Police Building expansion, the Mayor suggested staff provide language for a letter requesting expedited EBMUD services.*
- b. *The Committee supports the recommended road diet on Alvarado Street.*
- c. *Vice Mayor requested that staff look for opportunities to delineate the area between lanes at the west end of Best Ave to help control traffic flow better.*

2.C. 19-456 Staff update on Land Development Projects

COMMITTEE REQUESTS/DIRECTION TO STAFF:

- a. *Mayor prefers repairs related to the AC Transit Bus Rapid Transit Project be completed during the course of the project rather than at the end.*
- b. *Mayor would like staff to consider converting the 4 -hour parking to paid parking along the BART frontage on San Leandro Blvd once BRT is operational. Also, would like staff to explore parking issues around town.*
- c. *Vice Mayor would like an electronic version of the MYSL - Mobile 311 business card that was provided during the meeting.*

2.D. 19-457 Discussion Regarding Future Agenda Items

COMMITTEE REQUESTS/DIRECTION TO STAFF:

- a. *Mayor would like to discuss the status of Bridge Housing's promised daycare use as well as the Sidewalk Repair Program in future updates.*

3. PUBLIC COMMENTS

None

4. COMMITTEE MEMBER COMMENTS

None

5. ADJOURN

The meeting adjourned at 5:37 pm.



Wednesday, September 4, 2019

PUBLIC MEETING SIGN-IN SHEET

(This information may be used for future public hearing/meeting notification and may be published.)

PLEASE PRINT LEGIBLY. THANK YOU.

PLEASE PRINT LEGIBLY. THANK YOU.

[illegible]



City of San Leandro

Meeting Date: October 21, 2019

Staff Report

File Number: 19-528

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution to Approve a First Amendment to the Consulting Services Agreement with Keyser Marston Associates, Inc. for Shoreline Development Agreement and Ground Lease Negotiation Services

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve the attached Resolution amending the Consulting Services Agreement with Keyser Marston Associates, Inc. for Shoreline Development Agreement and Ground Lease Negotiation Services, increasing the amount of compensation from \$45,000 to \$90,000.

BACKGROUND

The Shoreline Development is a comprehensive master plan for the northern portion of the San Leandro Shoreline, which has a vision to create a regional destination that connects the community with the Bay and provides enhanced recreational and community amenities. The proposal includes a 200-220 room hotel, as well as two restaurants, a banquet facility, a 285 unit apartment complex, a small market, and up to 215 single family and town houses. Construction of a new park is proposed to include a pedestrian promenade, expanded Bay Trail path and bike lanes, a boat launch area, and opportunities for public art and environmental education. A new 2,500 square foot Mulford-Marina Branch Library will be constructed by the City in the area.

In October 2008, following a Request for Proposal process, the City entered into an Exclusive Negotiating Rights Agreement (ENRA) with Cal-Coast Development, LLC for the development of an approximately 75-acre opportunity site at the City's Shoreline. A second ENRA was established on April 2, 2012 and has been amended two times, with the current term ending on February 28, 2020.

During the term of this agreement, the City and Cal-Coast have worked to prepare plans, studies, and financial analyses in order to fine-tune the scope of the project and negotiate terms and

conditions for its development. Based on public input, negotiations, staff analysis, Bay Conservation and Development Commission (BCDC) review, and CEQA environmental analysis to date, the scope of the project has evolved and changed to reflect the priorities of the community.

Over the past years, the many steps taken to further the project include:

- Numerous public meetings with the Shoreline Development Citizens Advisory Committee (CAC) and other groups;
- Certification of the Shoreline Development Project Environmental Impact Report;
- General Plan Map Amendment and Rezoning for future development of the Shoreline Development Project;
- Review by the San Francisco Bay Conservation & Development Commission;
- Updates to project elements and details based upon various factors, including feasibility and market analysis, environmental review, and BCDC review;
- Successful conclusion of lawsuit filed by the Coalition for the San Leandro Shoreline;
- Negotiation of term sheets for Development Agreement and associated agreements;
- Planning and funding of public improvements associated with the project, including construction of a new Mulford-Marina Branch Library and harbor decommissioning;
- Appraisal to obtain the market value of a portion of the executive (9-hole) golf course land for proposed sale for the development of housing;
- Draft Development Agreement;
- Draft Purchase and Sale Agreement; and
- Draft Lease Document, which will be utilized for the hotel, multifamily, restaurant, and market elements.

In the coming months, staff will continue to work with Cal-Coast to finalize project details and agreement terms so that the following items may be brought forward for public review:

- Updated Zoning Applications, including General Plan and Zoning Map Amendments;
- Tentative Map creating new parcels for the development;
- Addendum (or other necessary changes) to Environment Impact Report to reflect current project scope;
- Final Development Agreement and associated documents, including Public Improvement Agreement, Scope of Development, Schedule of Performance, and Impact Fees;
- Final Purchase and Sale Agreement for a portion of the Golf Course Property; and
- Final Lease Agreements for the hotel, multifamily, and restaurant/banquet elements.

If these agreements are approved, the project will then go through a second stage of Zoning approvals and site plan review for specific development details for each project element (hotel, multifamily, etc). The proposed park and public elements will also be required to go through review and approval by BCDC. Following all agency approvals, the project will then go through Building and other permit review processes, with construction beginning following the issuance of applicable permits.

Analysis

Given the size and complexity of the project, the significant investment it represents, and the

long-term nature of the lease, staff has utilized the assistance of Keyser Marston Associates (KMA) throughout the development of the Shoreline Project. Keyser Marston has assisted with evaluation of project feasibility and business terms, as well as negotiations with Cal-Coast and development of the agreements for the project. KMA has expertise in financial and market analysis, public-private and ground lease negotiations and experience working with cities in negotiating leases. KMA specializes in public-private real estate development, specifically the evaluation and negotiations of transactions that achieve the goals and objectives of both the public sector and private developer.

An initial Consulting Services Agreement (CSA) was established with Keyser Marston in 2008 to assist with review and evaluation of developer proposals. Following selection of Cal-Coast Development, a second CSA was established with KMA in 2015 to assist staff in evaluating the project and developing terms and agreements. Following expiration of this agreement, the current CSA was established in 2018 to continue such work.

Since 2008, Keyser Marston has assisted with the following tasks for the project:

- Review and evaluation of developer proposals for the Master Developer for the project;
- Review City goals and objectives and help establish a negotiating strategy;
- Evaluate financial return on the publicly owned asset and identify possible public financing;
- Review financial information from the developer and equity partner and other submittals, including market studies, conceptual programs and phasing, development pro forma by land use, site development costs, and debt and equity requirements;
- Review financial feasibility based on development program and pro forma;
- Assist in preparing business terms for agreement term sheets;
- Assist in negotiation of agreements, assisting in establishing primary and secondary negotiating positions, updating business terms, and attending negotiating meetings;
- Review Development Agreement, Ground Lease Agreements, and Purchase and Sale Agreement, provide feedback based on financial and feasibility analysis; and
- Assist in preparation of presentations to the City Council.

Under the current CSA, KMA is providing the following assistance to the City:

- Review of financial feasibility based on development program and pro forma;
- Review and provide comments on draft Development Agreement and its attachments, including Lease Agreements and Purchase and Sale Agreement;
- Assist in negotiations with Cal-Coast;
- Assist staff in preparation of documents for public hearing with the City Council;
- Participate in meetings with staff, legal counsel, development team and City Council; and
- Other tasks as may be requested.

An amendment to the current CSA in the amount of \$45,000 is requested at this time so that KMA may continue assisting in the completion of project negotiations, finalization of documents, and presentations to the City Council and public.

Previous Actions

- On May 5, 2008, the City entered into a Consulting Services Agreement (CSA) with Keyser Marston Associates, Inc. for Review and Evaluation of Developer Proposals for the Master

Developer for the Marina-Shoreline Area in the amount of \$20,000.

- On December 21, 2015, the City Council approved a CSA with Keyser Marston Associates, Inc. for Shoreline Development Agreement and Ground Lease Negotiations in the amount of \$110,980, which was amended on January 1, 2017 to increase the amount 25% to \$138,725 and extend the term to June 30, 2018.
- On August 1, 2018, the City entered into a CSA with Keyser Marston Associates, Inc. for continued Shoreline Development Agreement and Ground Lease Negotiations in the amount of \$45,000.

Legal Analysis

This Agreement was reviewed by the City Attorney and approved as to form.

Fiscal Impacts and Budget Authority

The current \$45,000 Consulting Services Agreement is included in the Capital Improvement Program Account No. 210-57-114-5120 - Marina Advanced Planning. This account has a balance of \$106,358 remaining from the 18-19 Fiscal Year, which is utilized for several consulting contracts for the Shoreline Project.

To fund this extension, staff will transfer \$40,000 from Economic Development Consulting Account No. 010-41-003-5120, with the remaining \$5,000 coming from existing balance in CIP Account No. 210-57-114-5120.

ATTACHMENT(S)

Attachment(s) to Resolution

- Consulting Services Agreement with Keyser Marston Associates, Inc. for Shoreline Development Agreement and Ground Lease Negotiation Services
- First Amendment to Consulting Services Agreement with Keyser Marston Associates, Inc. for Shoreline Development Agreement and Ground Lease Negotiation Services

PREPARED BY: Katie Bowman, Economic Development Manager



City of San Leandro

Meeting Date: October 21, 2019

Resolution - Council

File Number: 19-529

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a First Amendment to the Consulting Services Agreement with Keyser Marston Associates, Inc. for Shoreline Development Agreement and Ground Lease Negotiation Services (to increase contract by \$45,000 for a total amount of \$90,000)

WHEREAS, a Consulting Services Agreement was established between the City of San Leandro ("City") and Keyser Marston Associates, Inc. ("Consultant") for Shoreline Development Agreement and Ground Lease Negotiations on August 1, 2018; and

WHEREAS, City and Consultant have executed the Consulting Services Agreement, pursuant to which Consultant provided certain consulting services to City regarding the negotiations of the Shoreline Development Agreement and ground lease; and

WHEREAS, the Parties desire to amend the Agreement to request an increase to the original Agreement compensation in the amount of \$45,000 in order to provide continued services; and

WHEREAS, the First Amendment to the Consulting Services Agreement between the City of San Leandro and Keyser Marston Associates, Inc. ("Amendment"), a copy of which is attached and incorporated herein, is presented to this City Council; and

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

WHEREAS, the City Manager recommends approval of said agreement.

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

That said agreement is hereby approved, and execution thereof is hereby authorized for

continued Shoreline Development Agreement and Ground Lease Negotiations services, as provided in the associated staff report; and

That the City Manager or his designee is hereby authorized to negotiate and approve cumulative amendments to the agreement up to a maximum of 25% of the amended contract amount (for a not-to-exceed amount of an additional \$22,500) provided that the amended amount is budgeted and transfer \$40,000 from account 010-41-003-5120 to 210-57-114-5120 to provide funds for this Shoreline project.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
KEYSER MARSTON ASSOCIATES, INC.
FOR
SHORELINE DEVELOPMENT AGREEMENT AND GROUND LEASE NEGOTIATIONS**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Keyser Marston Associates, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of August 1, 2018 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2020, 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.
- 1.6 **Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed **Forty Five Thousand Dollars (\$45,000)** notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

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

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

2.2 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. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

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

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

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

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

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

4.1 Workers' Compensation.

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

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

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

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

4.3 Professional Liability Insurance.

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

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 3 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, with the exception of Consultant's Professional Liability policy, 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 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.

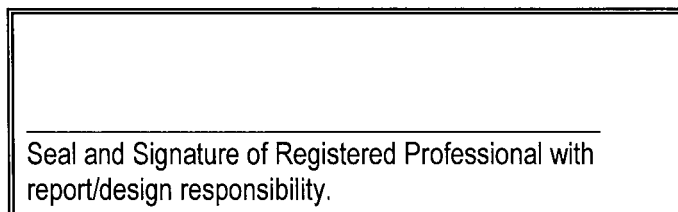
At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to 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 Katie Bowman, Economic Development Manager ("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:
Timothy C. Kelly, President
Keyser Marston Associates, Inc.
1299 Fourth Street, Suite 208
San Rafael, CA 94901
tkelly@keysermarston.com

Any written notice to City shall be sent to:
Katie Bowman, Economic Development Manager
City of San Leandro
835 East 14th Street
San Leandro, CA 94577
kbowman@sanleandro.org

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

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



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

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

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

SIGNATURES ON FOLLOWING PAGE

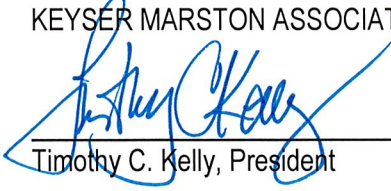
The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO



Jeff Kay, City Manager

KEYSER MARSTON ASSOCIATES, INC.



Timothy C. Kelly, President

Attest:



Marian Handa, Interim City Clerk

Consultant's DIR Registration Number
(if applicable)

Approved as to Fiscal Authority:



David Baum, Finance Director

210-57-114-5120
Account Number

Approved as to Form:



Richard D. Pio Roda, City Attorney

Per Section 10.7:

- ☐ Form 700 Not Required
☒ Form 700 Required



Tom Liao, Community Development Director

EXHIBIT A
SCOPE OF SERVICES

Keyser Marston Associates ("KMA") will continue to provide assistance in support of the negotiations pertaining to the public-private partnership with Cal Coast Companies LLC. The City-owned sites will be conveyed to Cal Coast by means of a Purchase and Sale Agreement and by ground leases for apartments, hotel, and restaurants. Public improvements (including the reconstructed golf course, the Shoreline Park, and backbone infrastructure), their financing, and implementation are important components of the development program for the project.

As directed by staff, KMA will provide the following services:

- Review of financial feasibility based on development program and pro forma
- Review and provide comments on draft development agreement and its attachments, including ground leases and Purchase and Sale Agreement
- Assist in negotiations with Cal Coast
- Assist staff in preparation of documents for public hearing with the City Council
- Participate in meetings with staff, legal counsel, development team, and City Council
- Other tasks as may be requested

EXHIBIT B

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 negligence or willful misconduct in the 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.

AMENDMENT NO. 1 TO CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
KEYSER MARSTON ASSOCIATES, INC.
FOR
SHORELINE DEVELOPMENT AGREEMENT AND GROUND LEASE NEGOTIATIONS

This Amendment No. 1 ("Amendment") is made by and between the City of San Leandro ("City") and Keyser Marston Associates, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of November 1, 2019, and amends that certain Consulting Services Agreement ("Agreement") dated August 1, 2018, between the Parties.

WHEREAS, City and Consultant have executed the Agreement, pursuant to which Consultant has provided certain consulting services to City with regard to the negotiations of the shoreline development and ground lease; and

WHEREAS, the Parties desire to amend the Agreement to request an increase to the original Agreement compensation in the amount of \$45,000.

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

1. Section 2 of the Agreement entitled "Compensation" is hereby amended to pay Consultant a sum not to exceed \$90,000; and
2. All other terms shall remain in full force and effect.

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

SIGNATURES ON FOLLOWING PAGE

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

CITY OF SAN LEANDRO

KEYSER MARSTON ASSOCIATES, INC.

Jeff Kay, City Manager

Timothy C. Kelly, President

Attest:

Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

210-57-114-5120

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

(2015)