



# City of San Leandro

Meeting Date: December 16, 2019

## Staff Report

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**File Number:** 19-657

**Agenda Section:** ACTION ITEMS

**Agenda Number:** 10.B.

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Keith Cooke  
Engineering & Transportation Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for a City of San Leandro City Council Resolution to Approve a Two-Year Extension of the Community Workforce Agreement with the Alameda County Building and Construction Trades Council and its Affiliated Local Unions Governing Labor Procedures for City Construction Projects Valued Above \$1,000,000; Approving a Consulting Services Agreement with Bay Area Business Roundtable for Workforce Development and Local Business Inclusion Services for an Amount Not to Exceed \$120,000; and Appropriate \$120,000 from General Fund Balance for Consulting Services for Fiscal Years 19-20 and 20-21.

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### SUMMARY AND RECOMMENDATIONS

Authorizes the City Manager to execute a side agreement to modify and extend for a two-year term the Community Workforce Agreement (CWA) with the Alameda County Building and Construction Trades Council (BTC), which governs labor procedures for City construction projects valued at or above \$1,000,000.

Approves a Consulting Services Agreement (CSA) with Bay Area Business Roundtable (BABRT) to provide outreach and education consulting for San Leandro residents, technical advisory services to local businesses and compliance assistance for the CWA to the City for a term of two years; and to appropriate \$120,000 from the general fund balance to cover these expenditures.

Staff recommends the City Council take the following actions:

- Authorize the City Manager to execute the side agreement to modify and extend the current term of the CWA with the BTC through December 31, 2021; and
- Appropriate \$120,000 from general fund balance for CWA consulting services; and
- Approve a CSA with BABRT in the amount of \$120,000 for workforce development and local business inclusion consulting services.

## **BACKGROUND**

On June 15, 2015, the City Council approved adoption of the Community Workforce Agreement (CWA) negotiated with the Alameda County Building and Construction Trades Council (BTC) and its affiliated local unions to govern labor procedures for City construction projects valued at or above \$1,000,000. Further, the Agreement set in place policies and goals related to the hiring of San Leandro residents to work on City construction projects and the hiring of San Leandro residents into the signatory unions' apprenticeship programs. The three-year term of the CWA began on January 1, 2016. City Council approved a twelve-month extension on December 17, 2018.

The basic provisions of the CWA agreement with the BTC are as follows:

Covered Work: The work covered under the draft CWA includes all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other related activities for the projects that is within the craft jurisdictions of one of the signatory unions and that is part of the projects, including, pipelines, site preparation, survey work, and demolition.

The agreement does not apply to projects for which there is a prohibition, exclusion or other limitation imposed because of a grant requirement, funding source agreement, or other agreement that creates a risk to the City of any repayment or return to source of any funds received.

Construction contracts that are governed by the CWA are still subject to competitive bidding laws and prevailing wages; the City is required by law and its own ordinances to select the lowest responsive and responsible bidder.

Minimum Cost Threshold: The CWA applies to City construction projects whose value meets or exceeds \$1,000,000.

Labor Peace: For all projects covered by the CWA, BTC agrees that there will be no strikes, sympathy strikes, work stoppages, picketing, hand billing, or slowdowns of any kind, for any reason, on the projects, at a project job site or at any other facility of the City.

Union Hiring Hall and Impact on Non-Union Contractors: Contractors working on covered projects are required, when filling craft job requirements, to utilize and be bound by the registration facilities and referral systems authorized by the signatory unions, commonly referred to as the union hiring hall.

The agreement does not prohibit non-union contractors from bidding on projects. However, the CWA allows non-union contractors to use no more than five of their own employees and only if those workers are San Leandro residents and an equal number of union workers are also retained by the contractor. This is known as the "Core Worker" provision. Non-union "core" workers hired under this provision are still required to register with the union hiring hall and the non-union contractor is required to pay into the union trust fund, covering health and pension benefits for these workers.

Local Hire and Apprentices: The current CWA has a goal of 10% participation by San Leandro residents as apprentices on construction projects that are covered by the CWA. Contractors are required to make good faith efforts to reach this goal through utilization of the BTC affiliated Unions' hiring hall procedures. The agreement also requires contractors to hire one San Leandro resident as a New Apprentice for the first \$1 million of the bid amount. A New Apprentice is defined as a San Leandro resident who is indentured in a State of California approved apprenticeship program that is a joint labor-management apprentice program for no more than twenty-four months. Thereafter, for every \$5 million of project monies, the contractor would be required to hire one additional New Apprentice. The intent of the clause is to increase pathways for San Leandro residents into the building trades. For San Leandro journeymen-level workers, the CWA sets a 20% goal of total project hours, for a total local hire goal of 30%. After the contractor uses the Unions' hiring hall procedures and if qualified workers from San Leandro are not available, workers who reside in Alameda County can be hired to meet the apprentice goal of 10% and the journeymen goal of 20%.

Joint Administrative Committee: City staff coordinates the activities of the five-person Joint Administrative Committee. This Committee is comprised of two representatives selected by the City; two representatives of the signatory Unions and BTC; and one industry representative, mutually selected by the City and the BTC. The Joint Administrative Committee meets monthly, but not less than once each quarter, to review the implementation of the Agreement and the progress of the CWA projects including, but not limited to, compliance with the Agreement's Referral and Local Hire Program, prevailing wage, safety, craft workforce levels and construction progress.

Since commencement of the CWA on January 1, 2016, the City Council awarded fourteen projects under the CWA and the City Council accepted the work as completed for six of those projects. The fourteen awarded projects are:

- 2016: Citywide Energy and Water Efficiency Upgrades (Climatec) - \$5.2m
- 2016: Annual Overlay / Rehabilitation 2015-16 Project - \$3.5m
- 2017: Annual Street Overlay / Rehabilitation 2016-17 Project (Phase I) - \$3.395m
- 2017: Sanitary Sewer Line Replacement/Repair 2017 Project - \$1.16m
- 2018: Water Pollution Control Plant Asphalt Replacement Project - \$1.605m
- 2018: Annual Overlay / Rehabilitation 2016-2017 Project (Phase II) - \$1.754m
- 2018: Annual Street Sealing 2017-18 Project - \$1.894m
- 2018: Annual Overlay / Rehabilitation 2017-18 Project - \$10.163m
- 2018: Police Building and South Offices Modification Project - \$6.268m
- 2019: Curb Ramp Upgrades 2018-19 Project - \$799,373\*
- 2019: Farrelly Pool Demolition Project- \$134,185\*
- 2019: Annual Street Sealing 2018-19 Project - \$1.720m
- 2019: Farrelly Pool Replacement Project - \$6.22m
- 2019: Sidewalk Repair Program 2019-20 - \$1.17m

\*: Contracts awarded under CWA because they were part of larger projects that met CWA threshold.

**Local Hire Participation Rates:**

The total value of CWA projects awarded since its execution is \$44.98m. As approximately 60% of the projects awarded are for street reconstruction, rehabilitation and sealing, similar trades, such as operator/engineers, laborers, cement masons and electricians, are used for each contract. For those projects accepted by the City Council thus far, there has been no participation by San Leandro apprentices.

## **Analysis**

### **Creation of Data Driven Local Hire Goals**

Staff noticed failure to meet the CWA goals early in the first year of the CWA and began working with the Joint Administrative Committee union representatives as well as pre-apprenticeship and training programs to identify solutions to address the low rates of resident participation. Staff determined that acquiring data that accurately captures the current labor market is critical to creating informed local hire goals that could potentially be more realistic for contractors to achieve. Towards that end, the City is currently partnering with other local agencies who have project labor agreements to procure data that elucidates trends for San Leandro and the region for current and near future East Bay construction labor supply and demand and summarizes best practices related to Project Labor Agreements/CWAs. This data will be available in August 2020 and will be helpful in creating data-driven local hire goals and realistic provisions in the future iterations of the CWA. The City's CWA Administrator was selected to sit on the advisory board for this project and as such, is positioned to advocate for data that will be most useful for San Leandro.

### **Efficacy of Alameda County Second Tier Local Hire Goal**

Maintaining a second tier, "back up" goal of Alameda County resident hires is problematic for several reasons. The amount of effort required of City staff to ensure compliance for the current two-tiered local hire system is unrealistic and thus a challenge.

If the City only has one local hire goal, and contractors meet that goal, then compliance efforts evaluating contractors' Good Faith Efforts (GFE) are significantly reduced or eliminated. If the contractors request San Leandro residents from the hall and there are none available, then a simple GFE check will suffice.

The second tier local hire goal is also a challenge as it is currently difficult to identify how successful efforts by the City, the Trades Council and contractors are at meeting the San Leandro local hire goal because the goal is diluted. If the Alameda County Hire tier was eliminated, then all of the contractors' and trades' efforts would be focused on preparing, recruiting and hiring only San Leandro residents and demand for those workers would thus increase. The City would have better data to ascertain whether the current local hire goal is reasonable given trends observed over a period of time with a single local hire goal in place.

The current process requires a significant amount of effort for a contractor and for City staff. Instances of contractors only using Alameda County workers without requesting San Leandro residents have occurred repeatedly during the current CWA's term. In recent cases, repeated failure by the contractor to provide adequate GFE while using Alameda County workers has caused project delays and withholding of payments per the articles of the CWA.

### **Impacts of Pre-Apprenticeship Training on Apprentice Local Hire Goal**

In order for qualified San Leandro residents to be available for requests made by contractors to meet the local hire goal for CWA projects, they must already possess either an apprentice or a journey level certification from the hall for their trade. To successfully gain access to a trade's apprenticeship, applicants must have completed a pre-apprenticeship program or met the prerequisites for training by the time the apprenticeship opens (which occur at various times annually and are not always synchronized with pre-apprenticeship programs). Applicants must successfully pass the requisite tests to secure an apprenticeship in highly competitive recruitments. Under the terms of the current CWA, the City does not require that the local trade unions in San Leandro or Alameda County reserve apprenticeships for San Leandro residents. As apprenticeship periods are typically at least four years, the effect of not having enough San Leandro resident apprentices year over year only compounds the lack of journey level workers who reside in San Leandro available for work on City projects.

In order for San Leandro resident apprentices to be available in hiring halls for trades such as operator/engineers, laborers, cement masons and electricians, they must successfully pass the apprenticeship exam and recruiting process. There are twelve pre-apprenticeship programs in the Bay Area that are certified by local trades' councils, two of which are near San Leandro. The programs can last between nine and sixteen weeks, require a high school diploma or GED and driver's license and often focus on recruiting women, people of color and/or low-income people.

The City does not currently have control or influence over how many San Leandro residents graduate from those programs. Forging partnerships with local, certified pre-apprenticeship programs, a strategy adopted by various public agencies in Alameda County, has successfully bolstered the number of qualified resident candidates testing for limited apprenticeship slots.

### **Staff Level of Effort and Impacts to Project Delivery**

Presently, there is a lack of sufficient staff to perform compliance and administration required for the current volume of CWA projects. The CWA covers the prime contractor and all subcontractors working on the project. Each contractor is required to submit GFE documentation proving that they complied with the local hire request process. As of December 2019, there are more than eighty contractors and subcontractors working on CWA projects. Implementation of the CWA has impacted staff's ability to deliver projects as there is increased amount of time spent on pre-bid activities and compliance as well as technical assistance efforts.

In the first year of the CWA, approximately 0.25 FTE was spent on CWA administration. With the increase in the number of CWA projects as well as the broader scope of these projects and attendant increase in types of trades used, the percentage FTE currently spent on administration, compliance and technical assistance is between 0.4 and 0.5. This does not include effort expended by project managers or other staff nor does it include consultant hours spent by BABRT, the consultant the City hired for workforce development, marketing, data and trend analysis and outreach to support both the implementation of the CWA and the City's Local Business Preference policy.

Based upon the observations outlined above, staff recommends:

- 1) Agree to a two-year extension of the current terms of the CWA with the exception of the

modifications proposed below;

- 2) In the next term of the CWA, eliminate Alameda County Hire goal as second tier for the Local Hire apprenticeship and journey level workers;
- 3) BTC agrees to create and reserve not less than ten and not more than fifteen apprenticeship slots for San Leandro residents in trades that are affiliates of the BTC per calendar year;
- 4) Create a Construction Trades Workforce Development Trust Fund, to which contractors will pay \$.30/hour for every hour worked on CWA projects. The average contribution to the Fund will be approximately \$3,000 and funds will be available to organizations who prioritize placement of San Leandro residents in pre-apprenticeship programs;
- 5) Addition of a community member representative to the Joint Administrative Committee which will facilitate community input and oversight for the disbursement of funds from the Construction Trades Workforce Development Trust Fund; and
- 6) Appropriate \$120,000 from general fund balance for a two year period for consulting services, outreach and education for workforce development and local business inclusion; and
- 7) Renew for a two-year term the City's current contract with the BABRT to continue to provide outreach and education consulting for San Leandro residents, technical advisory services to local businesses and compliance assistance to the City.

### **Current Agency Policies**

- Place San Leandro on a firm foundation for long-term fiscal sustainability.
- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation.
- Maintain and enhance San Leandro's infrastructure.

### **Previous Actions**

- On February 10, 2015, the City Council held a Work Session to review options related to the adoption of a potential CWA and receive feedback from stakeholders.
- On April 20, 2015, the City Council adopted Resolution No. 2015-086, appropriating \$100,000 in one-time funding for outreach and implementation of a CWA.
- On June 15, 2015, the City Council adopted Resolution No. 2015-104 and approved the Community Workforce Agreement that was negotiated with the Alameda County Building and Construction Trades Council (BTC) and its affiliated local unions to govern labor procedures for City construction projects valued above \$1,000,000.
- On May 16, 2016, staff provided an update on implementation of the CWA.
- On December 5, 2016, staff provided an update on the first year of projects constructed under the CWA.

- On December 17, 2018, the City Council adopted Resolution No. 2018-161 and approved a twelve-month extension of the original terms of the CWA.

### **Committee Review and Actions**

- At meetings on March 17, 2015 and April 21, 2015, the City Council Finance Committee discussed the CWA and indicated support for bringing the item back to the City Council for adoption.
- On March 7, 2017, staff updated the City Council Finance Committee on the implementation of the CWA and subsequent impact on City projects.
- On December 5, 2018, staff updated the City Council Facilities and Transportation Committee on the ten projects awarded under the first term of the CWA.

On December 4, 2019, staff updated the City Council Facilities and Transportation Committee on the negotiations and recommendations for a potential next term of the CWA. The committee accepted the recommendations and also noted that San Leandro Unified School District should be part of the partnership with the BTC, particularly as an integral part of the pipeline to the pre-apprentice programs.

### **Applicable General Plan Policies**

- Policy CSF-6.8: Maintenance: Ensure that sufficient funding is provided for the ongoing maintenance of City owned facilities, including streets, street lights, traffic signals, landscaping, street trees, storm drains, public buildings and other infrastructure.
- Policy ED-6.6: Job Training: Support job training initiatives which prepare local residents for local jobs.
- Policy ED-6.7: Job Opportunities for Residents: Support programs that encourage San Leandro employers to hire local residents.
- Policy ED-6.8: Labor: Engage organized labor, labor unions, and labor advocates in the economic development process.
- Policy ED-6.11: Career Ladders: Encourage career advancement programs to provide opportunities for upward mobility among the city's workforce. Support the growth of businesses that provide career advancement or "ladder" opportunities for employees.

### **Summary of Public Outreach Efforts**

Throughout the one year extension of the original CWA terms, BABRT built strategic partnerships with San Leandro Unified School District, Chabot-Las Positas and Peralta Community College Districts, local business councils, regional agencies such as BART and AC Transit as well as the State of California's Community College Chancellor's office to bolster the City's efforts in creating a functional pipeline for entry into the construction trades through apprenticeship. BABRT also provided technical assistance to bidders for all City projects that were bid during this period and consulted regularly with representatives from BTC trades and local community-based organizations to advance the City's local hire objectives.

### **Legal Analysis**

The City Attorney’s Office reviewed the proposed side letter, and consulting services agreement and approved both as to form.

**Fiscal Impacts**

The total estimated cost for outreach, educating and consulting services for workforce development and local business inclusion for the two-year term of the proposed CWA is \$160,000 as detailed below:

<u>BABRT Consulting Contract</u>	<u>\$120,000</u>
<b>Total</b>	<b>\$120,000</b>

Annually, total estimated cost for staff time for administration, compliance and project management, CWA labor compliance software and the proposed contractor contribution for the Construction Trades Workforce Development Trust Fund for an average of six projects per fiscal year is \$150,000. These costs are charged to the individual CWA projects as part of each project budget.

CWA Administration & Compliance	\$90,000
Project Management	\$35,000
Labor Compliance Software	\$25,000
<u>Construction Trades Workforce Dev. Fund</u>	<u>\$20,000</u>
<b>Total</b>	<b>\$170,000</b>

**Budget Authority**

Appropriation requested by this action from general fund balance for consulting services, outreach and education for workforce development and local business inclusion is as follows:

<u>Account No.</u>	<u>Source</u>	<u>Fiscal Year</u>	<u>Amount</u>
010-42-021-5120	General Fund-Community Investment	FY19/20	\$60,000
<u>010-42-021-5120</u>	<u>General Fund-Community Investment</u>	<u>FY20/21</u>	<u>\$60,000</u>
<b>Total Appropriation</b>			<b>\$120,000</b>

**ATTACHMENTS**

**Attachments to Related Legislative Files**

- CSA - Bay Area Business Roundtable Workforce Development and Local Business Inclusion Services

**PREPARED BY:** Kirsten Foley, Administrative Services Manager, Engineering and Transportation Department





# City of San Leandro

Meeting Date: December 16, 2019

## Resolution - Council

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**File Number:** 19-659

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Keith Cooke  
Engineering & Transportation Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION of the City of San Leandro City Council Approving and Authorizing the City Manager to Execute a Side Agreement to Extend the Term of the Community Workforce Agreement with the Alameda County Building and Construction Trades Council and Its Affiliated Local Unions

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WHEREAS, successful completion of the City's construction projects is of the utmost importance to the City of San Leandro; and

WHEREAS, on June 15, 2015 the City of San Leandro entered into a Community Workforce Agreement with the Alameda County Building and Construction Trades Council; and

WHEREAS, the Community Workforce Agreement was implemented in order to promote the efficiency of construction operations performed for and within the City of San Leandro and provide for peaceful settlement of labor disputes without strikes or lockouts; and

WHEREAS, the Community Workforce Agreement was intended to support the efforts of the City to increase training and employment opportunities for workers who reside in San Leandro; and

WHEREAS, on December 17, 2018 the City of San Leandro City Council authorized the City Manager to execute a side agreement to extend the term of the modified Community Workforce Agreement with the Alameda County Building and Construction Trades Council; and

WHEREAS, the Community Workforce Agreement has applied to fourteen projects during the first term and subsequent one year extension of the Agreement; and

WHEREAS, the City of San Leandro and the Alameda County Building and Construction Trades Council would like to continue to collaborate in order to improve the effectiveness of the Community Workforce Agreement.

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

That the City Council approves the side agreement and the City Manager is authorized to execute the side agreement to extend the term of the modified Community Workforce Agreement with the Alameda County Building and Construction Trades Council through December 31, 2021.



# City of San Leandro

Meeting Date: December 16, 2019

## Resolution - Council

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**File Number:** 19-658

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Keith Cooke  
Engineering & Transportation Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION of the City of San Leandro City Council to Approve a \$120,000 Two Year Consulting Services Agreement with the Bay Area Business Roundtable for Workforce Development and Local Business Inclusion Services and Appropriate \$120,000 From General Fund Balance to fund this Consulting Services Agreement

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WHEREAS, the successful completion of the City's construction projects is of the utmost importance and in the public interest and for the public welfare of the City of San Leandro; and

WHEREAS, on June 15, 2015 the City of San Leandro entered into a Community Workforce Agreement with the Alameda County Building and Construction Trades Council; and

WHEREAS, the Community Workforce Agreement was intended to support the efforts of the City to increase training and employment opportunities for workers who reside in San Leandro; and

WHEREAS, on March 17, 2014, the City Council amended Section 1-6-225 of Article 2 of Chapter 1-6 of the San Leandro Municipal Code, related to purchasing by competitive bid which expanded preference to local businesses in City purchasing and contracts which encourages large contractors to engage with local businesses and which helps keep local tax revenues within San Leandro; and

WHEREAS, the Bay Area Business Roundtable is a regional leader in workforce and business development and has been key in creating strategic partnerships that support both the implementation of the Community Workforce Agreement and the City's Local Business Preference policy; and

WHEREAS, during the three-year term of the Community Workforce Agreement, the Bay Area Business Roundtable provided critical services to the City, identified opportunities for local

businesses, and worked to overcome employment barriers for San Leandro residents; and

WHEREAS, this service is needed during the extension of the Community Workforce Agreement; and

WHEREAS, an agreement between the City of San Leandro and Bay Area Business Roundtable, a copy of which is attached, 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 two year agreement between the City of San Leandro and Bay Area Business Roundtable for \$120,000 is hereby approved and execution by the City Manager is hereby authorized; and

That \$120,000 shall be appropriated from general fund balance into expenditure account 010-42-021-5120 for FY19/20 and FY 20/21 for this Consulting Services Agreement.

CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
The Bay Area Business Roundtable  
FOR  
WORKFORCE DEVELOPMENT AND LOCAL BUSINESS INCLUSION SERVICES  
FOR THE CITY OF SAN LEANDRO'S LOCAL INCLUSION PROGRAM AND COMMUNITY  
WORKFORCE AGREEMENT

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Bay Area Business Roundtable ("Consultant") (together sometimes referred to as the "Parties") as of January 1, 2020 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on end on December 31, 2021, 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 **Reserved.**

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \$120,000, 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 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.** There shall be no reimbursable expenses.

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 Kirsten "Kurry" Foley ("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:

Bay Area Business Roundtable  
Bernard Ashcraft, CEO  
8517 Earhart Road  
Oakland, CA 94621  
bashcraft@babrt.org

Any written notice to City shall be sent to:  
City Manager  
City of San Leandro  
City Hall  
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 **Reserved.**

10.12 **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

10.13 **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

BAY AREA BUSINESS ROUNDTABLE

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

\_\_\_\_\_  
Bernard Ashcraft, CEO

Attest:

\_\_\_\_\_  
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

\_\_\_\_\_  
Keith Cooke, Engineering and Transportation Director

## EXHIBIT A

### SCOPE OF SERVICES

1. Conduct marketing and outreach services to promote and market the City's Local Inclusion Policy (LIP). Outreach deliverables shall include but are not limited to:
  - a. Attendance and participation at each of the City's pre-bid meetings during which resources and assistance shall be offered to bidders, potential bidders, and agents and representatives of firms towards successful achievement of the LIP;
  - b. Attendance and participation at each of the City's pre-bid meetings during which resources and assistance shall be offered to bidders, potential bidders, and agents and representatives of firms towards successful achievement of the LIP;
  - c. Provision of technical assistance to bidders seeking to identify and negotiate with appropriate San Leandro businesses for City public works contracts; and
  - d. Execution of community outreach activities that provide comprehensive information on how to compete successfully for City contracts, specifically focused on outreach to businesses owned by women, people of color and San Leandro small businesses; and
  - e. Provide monthly reports on marketing and outreach services conducted, and results of each outreach deliverable.
  
2. Conduct outreach services to promote and educate residents about the City's Community Workforce Agreement (CWA). Deliverables shall include but are not limited to:
  - a. Attendance and participation at each of the City's pre-bid meetings during which resources and assistance shall be offered to bidders, potential bidders, and agents and representatives of firms towards adherence by bidders to the provisions of the CWA;
  - b. Identify San Leandro residents who meet disadvantaged worker criteria and provide outreach, education and referral to local workforce development partners for pre-apprenticeship opportunities;
  - c. Compilation of lists of San Leandro residents who are employed in building, infrastructure and industrial construction and are union and non-union to enable effective outreach pursuant to the CWA;
  - d. Partner with local workforce development agencies identified by the City to promote success of San Leandro resident participants; and
  - e. Provide monthly reports on outcomes identified above including but not limited to:
    - graduation from pre-apprenticeship programs
    - amount of and type of apprenticeships considered
    - assessment of and verification that program participants meet apprenticeship minimum requirements
    - applications to apprenticeship programs; and/or
    - ranking of program participant on eligible lists.

## EXHIBIT B

### COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Bay Area Business Roundtable will be compensated \$5,000 per month for provision of services outlined in Exhibit A.

## 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.