

**NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
STORM WATER INSPECTION & MAINTENANCE SERVICES (SWIMS)  
FOR  
INSPECTION, COLLECTION AND PROCESSING DATA  
RELEVANT TO THE CITY'S CLEAN WATER PROGRAM**

THIS AGREEMENT for site assessment and management plan services is made by and between the City of San Leandro ("City") and Storm Water Inspection & Maintenance Services ("SWIMS") (together sometimes referred to as the "Parties") as of December 1, 2022 (the "Effective Date").

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, SWIMS 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, 2024, or at such time as funding is exhausted, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to SWIMS 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.** SWIMS 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 SWIMS is engaged.
- 1.3 **Assignment of Personnel.** SWIMS 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, SWIMS shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** SWIMS 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 SWIMS'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). SWIMS's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. SWIMS must submit completed self-certification form and comply with the LWO if covered.
- 1.6 **Public Works SWIMS Registration.** SWIMS 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 SWIMS or sub-Contractor 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. SWIMS 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 SWIMS up to a sum not to exceed \$49,500.00, notwithstanding any contrary indications that may be contained in SWIMS's proposal, for services to be performed incurred under this Agreement. In the event of a conflict between this Agreement and SWIMS's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay SWIMS 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 SWIMS for services rendered pursuant to this Agreement. SWIMS shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, SWIMS shall not bill City for duplicate services performed by more than one person.

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

2.1 **Invoices.** SWIMS 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 SWIMS and each employee, agent, and sub-Contractor of SWIMS performing services hereunder;
- SWIMS's signature;
- SWIMS shall give separate notice to the City when the total number of hours worked by SWIMS and any individual employee, agent, or sub-Contractor of SWIMS reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between SWIMS 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 SWIMS 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 SWIMS.

2.3 **Reserved.**

2.4 **Total Payment.** City shall pay for the services to be rendered by SWIMS pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by SWIMS 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 SWIMS 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 **Tiered Fees.** Fees for work performed by SWIMS shall not exceed the tier amounts shown on the compensation schedule attached hereto as Exhibit A.

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

2.7 **Payment of Taxes.** SWIMS 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 SWIMS terminates this Agreement pursuant to Section 8, the City shall compensate the SWIMS for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. SWIMS shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The SWIMS 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.

2.10 **Liquidated Damages.** Failure of SWIMS to respond to problems referred to it by City within the time limits established in Subsection 1.2 of this Agreement shall result in liquidated damages as set forth in Exhibit A.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, SWIMS 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 SWIMS only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. SWIMS shall make a written request to City to use facilities or equipment not otherwise listed herein.

3.1 **Safety Requirements.** In accordance with generally accepted construction practices and state law, SWIMS shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

SWIMS shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. SWIMS shall provide protection for all persons including, but not limited to, its employees and employees of its sub-Contractors; members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of SWIMS's performance is not intended to include review of the adequacy of SWIMS's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any SWIMS jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. SWIMS shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

SWIMS is hereby informed that work on City property could be hazardous. SWIMS shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, SWIMS shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

SWIMS shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. SWIMS IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

SWIMS shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times. If required by the City, toilets shall be furnished by SWIMS where needed for use of its employees and their use shall be strictly enforced. SWIMS shall not use the City's existing sanitary facilities, unless previously authorized by the City.

SWIMS shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

City reserves the right to require that SWIMS bring onto the project or engage the services of a licensed safety engineer at any time during the term of this Agreement. If SWIMS does not have a licensed safety engineer on staff, then City may require that SWIMS engage a sub-Contractor or subconsultant as the project's safety engineer. SWIMS shall bear all costs in connection with meeting the requirements of this section.

**Section 4. INSURANCE REQUIREMENTS.** Before fully executing this Agreement, SWIMS, 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 SWIMS and its agents, representatives, employees, and sub-Contractors. Consistent with the following provisions, SWIMS 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. SWIMS 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 SWIMS's bid. SWIMS shall not allow any sub-Contractor to commence work on any subcontract until SWIMS has obtained all insurance required herein for the sub-Contractor(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. SWIMS shall maintain all required insurance listed herein for the duration of this Agreement.

**4.1 Workers' Compensation.**

**4.1.1 General Requirements.** SWIMS 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 SWIMS. 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, SWIMS 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 City for all work performed by the SWIMS, its employees, agents, and sub-Contractors.

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

- a. Certificate of Workers' Compensation 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.** SWIMS, 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 SWIMS; or automobiles owned, leased, hired, or borrowed by the SWIMS.
- c. SWIMS hereby agrees to waive subrogation which any insurer or SWIMS may require from vendor by virtue of the payment of any loss. SWIMS agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the SWIMS'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 SWIMS's insurance and shall not contribute with it.

4.2.4 **Submittal Requirements.** To comply with Subsection 4.2, SWIMS 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 **All Policies Requirements.**

4.3.1 **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.

4.3.2 **Verification of Coverage.** Prior to beginning any work under this Agreement, SWIMS shall furnish City with complete copies of all Certificates of Liability Insurance delivered to SWIMS 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 SWIMS beginning work, it shall not waive the SWIMS's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

- 4.3.3 **Deductibles and Self-Insured Retentions.** SWIMS 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 SWIMS shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.3.4 **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).
- 4.3.5 **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.
- 4.3.6 **Sub-Contractors.** SWIMS shall include all sub-Contractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each sub-Contractors. All coverages for sub-Contractors shall be subject to all of the requirements stated herein.

4.4 **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, EBIX. SWIMS shall comply with all requirements provided by City related to the EBIX program.

4.5 **Remedies.** In addition to any other remedies City may have if SWIMS 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 SWIMS’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 SWIMS to stop work under this Agreement or withhold any payment that becomes due to SWIMS hereunder, or both stop work and withhold any payment, until SWIMS demonstrates compliance with the requirements hereof; and/or
- Terminates this Agreement.

**Section 5. INDEMNIFICATION AND SWIMS’S RESPONSIBILITIES.** SWIMS shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, 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 SWIMS's performance of the Services 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.

SWIMS shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of SWIMS's services under this Agreement, however, the cost to defend charged to SWIMS shall not exceed SWIMS's proportionate percentage fault.

The SWIMS's obligation to defend and indemnify shall not be excused because of the SWIMS's inability to evaluate Liability or because SWIMS evaluates Liability and determines that the SWIMS is not liable to the claimant. The SWIMS must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the SWIMS 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 SWIMS 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 SWIMS accepts or rejects the tender of defense, whichever occurs first.

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 SWIMS to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

If this Agreement involved construction or maintenance then all provisions of this Agreement pursuant to which SWIMS agrees to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, shall not apply to damages caused by or resulting from the active or sole negligence or willful misconduct of the City. The indemnifications provided herein shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts, or other employees' benefit acts.

In the event that SWIMS or any employee, agent, or sub-Contractor of SWIMS providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, SWIMS shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of SWIMS or its employees, agents, or sub-Contractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF SWIMS.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, SWIMS shall be an independent Contractor and shall not be an employee of City. City shall have the right to control SWIMS only insofar as the results of SWIMS'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 SWIMS accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, SWIMS and any of its employees, agents, and sub-Contractors 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 **SWIMS Not an Agent.** Except as City may specify in writing, SWIMS shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. SWIMS 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.** SWIMS and any sub-Contractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, SWIMS and any sub-Contractors 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.** SWIMS represents and warrants to City that SWIMS and its employees, agents, and any sub-Contractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. SWIMS represents and warrants to City that SWIMS and its employees, agents, any sub-Contractors 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, SWIMS and any sub-Contractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** SWIMS 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, sub-Contractors, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by SWIMS under this Agreement. SWIMS 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 SWIMS thereby.

SWIMS 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 SWIMS.

SWIMS may cancel this Agreement upon 30 (thirty) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, SWIMS shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon SWIMS delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to SWIMS or prepared by or for SWIMS 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. SWIMS understands and agrees that, if City grants such an extension, City shall have no obligation to provide SWIMS 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 SWIMS 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 SWIMS recognize and agree that this Agreement contemplates personal performance by SWIMS and is based upon a determination of SWIMS'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 SWIMS. SWIMS may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. SWIMS shall not subcontract any portion of the performance contemplated and provided for herein, other than to the sub-Contractors 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 SWIMS shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by SWIMS.** If SWIMS materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
  - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by SWIMS pursuant to this Agreement;
  - 8.6.3 Retain a different SWIMS to complete the work described in Exhibit A not finished by SWIMS; or
  - 8.6.4 Charge SWIMS 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 SWIMS pursuant to Section 2 if SWIMS had completed the work.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of SWIMS'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 SWIMS prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. SWIMS 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 SWIMS 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 **SWIMS's Books and Records.** SWIMS 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 SWIMS to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires SWIMS 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 SWIMS Court for the Northern SWIMS 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 **Conflict of Interest.** SWIMS may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place SWIMS in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

SWIMS 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.*

SWIMS 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 SWIMS was an employee, agent, appointee, or official of the City in the previous 12 months, SWIMS warrants that it did not participate in any manner in the forming of this Agreement. SWIMS understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and SWIMS will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and SWIMS will be required to reimburse the City for any sums paid to the SWIMS. SWIMS understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

- 10.7 **Solicitation.** SWIMS agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.8 **Contract Administration.** This Agreement shall be administered by Debbie Pollart, Public Works Director, City of San Leandro ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or their designee.
- 10.9 **Notices.** Any written notice to SWIMS shall be sent to:

Todd Hudson, VP  
SWIMS  
PO Box 1627  
Discovery Bay, CA 94505  
[todd@swimsclean.com](mailto:todd@swimsclean.com)

Any written notice to City shall be sent to:

Debbie Pollart, Public Works Director  
14200 Chapman Road  
San Leandro, CA 94578  
[dpollart@sanleandro.org](mailto:dpollart@sanleandro.org)

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

10.10 **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 SWIMS and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services and Compensation Schedule
<u>Exhibit B</u>	COVID-19 Compliance Requirement
<u>Exhibit C</u>	California Labor Code Section 1720 Information

10.11 **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.

10.12 **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 SWIMS's signature below SWIMS certifies that SWIMS, and any parent entities, subsidiaries, successors or subunits of SWIMS 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

SWIMS

DocuSigned by:  
*Fran Robustelli*  
C063C023AF624E3...  
\_\_\_\_\_  
Frances Robustelli, City Manager

DocuSigned by:  
*Todd Hudson*  
2D5B3900B5C94FD...  
\_\_\_\_\_  
Todd Hudson, Vice President

Attest:

DocuSigned by:  
*Kelly B. Clancy*  
F31B2CC6C7F54D8...  
\_\_\_\_\_  
Kelly Clancy, Acting City Clerk



Budget Approved:

Approved as to Fiscal Authority:

DocuSigned by:  
*Mayette Bailey*  
CFC89F52427D423...  
\_\_\_\_\_  
T. Michael Yuen, Finance Director

For

010-17-001-5120  
\_\_\_\_\_  
Account Number

Approved as to Form:

DocuSigned by:  
*Richard Pio Roda*  
7B41338F8D3F470...  
\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

DocuSigned by:  
**Debbie Pollart**  
79A870E06F05400...  
\_\_\_\_\_  
Debbie Pollart, Director, Public Works Dept.



## EXHIBIT A

### SCOPE OF SERVICES AND COMPENSATION SCHEDULE

Scope of Work for

#### **SWIMS**

to provide inspection/reporting support to

#### **City of San Leandro Public Works Department**

in support of the Alameda County Clean Water Program

and City's required annual report

December 2022 – June 2024

SWIMS will be responsible for site inspections (for those properties with bioswales) and collecting and processing C3 (storm water) data relevant to the City's participation in Alameda County's Clean Water Program. SWIMS will bill the City at the tiers indicated below once all data has been collected, reviewed, and proper reporting forms handed over to the City. The City has approximately 36 active C3 inspection properties (subject to change, based on new projects completing their construction phase and becoming operational), and is required to report annually to the ACCWP on inspection activities.

In conjunction with the City, all existing properties will be prioritized, and SWIMS will commence working on the list in order of priority. Once funds are exhausted (or no later than June 30, 2024), the Agreement will be considered successfully completed. It is acknowledged that the not-to-exceed budget may not allow for review of all properties.

- **Tier 1: \$500.00 per property** For sites that are responsive and able to provide requested reporting data in a timely manner.
- **Tier 2: \$1,000.00 per property** For sites that require additional administrative work to track down/contact owners, or provide additional support in gathering reporting data.
- **Tier 3: \$2,000.00 per property** For sites that are non-responsive and/or on-site field work (inspection) is required to gather information.

## EXHIBIT B

### REQUIREMENTS RELATED TO THE COVID-19 PANDEMIC AND THE CITY OF SAN LEANDRO'S EMERGENCY DECLARATION

The novel coronavirus ("COVID-19") has been declared a worldwide pandemic by the World Health Organization. The City of San Leandro is currently in a local emergency and state of emergency due to the COVID-19 pandemic.

COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact, through touched surfaces, and in airborne particles. As a result, federal, state, and local governments, including the City of San Leandro, and federal, state, county, and local health agencies recommend social distancing and additional cleaning protocols to limit the spread of the disease. The City has taken steps and put in place preventative measures recommended by federal, state, county, and local health agencies to reduce the spread of COVID-19. These measures include steps each person must take to prevent the spread of COVID-19 and include, but are not limited to, requiring face coverings, frequent hand washing and/or use of hand sanitizer, social distancing where possible, limiting of person-to-person contact, frequent cleanings of high-touch surfaces, and avoiding entering any building if they have COVID-19 symptoms.

SWIMS shall obey all local orders and abide by all applicable preventative measures recommended by federal, state, county and local health agencies and any preventative measures specifically implemented by the City. This includes, but is not limited to, the guidance for best construction practices published by California Department of Public Health and Cal OSHA, Alameda County Order 20-14a Appendix B1 (Updated Small Construction Safety Protocol), and Appendix B2 (Updated Large Construction Safety Protocol), and all other applicable orders and guidance promulgated by federal, state, and local government agencies. In addition, SWIMS agrees when entering any City buildings, SWIMS will follow all COVID-19 related signage, wear a face covering, follow all social distancing protocols, and abide by any other COVID-19 preventative measure that are in place when performing the services described in this Agreement. SWIMS shall also adhere to any subsequently communicated COVID-19 preventative measures as directed by City staff. The COVID-19 preventative measures are subject to change over time, and SWIMS shall maintain knowledge of and adhere to the current COVID-19 preventative measures when interacting with City employees, officials, volunteers, agents, and representatives, when entering City buildings, and while performing the services described in this Agreement.

## EXHIBIT C

### PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

#### HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The SWIMS and its sub-Contractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

#### WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The SWIMS and sub-Contractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services or work.
- B. In accordance with California Labor Code Section 1775, the SWIMS and any sub-Contractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes penalties per day for each worker engaged in the performance of the services described in Exhibit A that the SWIMS or any sub-Contractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the SWIMS or sub-Contractor in failing to pay the correct rate of prevailing wages, or the previous record of the SWIMS or sub-Contractor in meeting applicable prevailing wage obligations, or the willful failure by the SWIMS or sub-Contractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the SWIMS or sub-Contractor had knowledge of their

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

1. The contract executed between the SWIMS and the sub-Contractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
  2. The SWIMS shall monitor payment of the specified general prevailing rate of per diem wages by the sub-Contractor by periodic review of the sub-Contractor's certified payroll records.
  3. Upon becoming aware of a sub-Contractor's failure to pay the specified prevailing rate of wages, the SWIMS shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the sub-Contractor for performance of the services described in Exhibit A.
  4. Prior to making final payment to the sub-Contractor, the SWIMS shall obtain an affidavit signed under penalty of perjury from the sub-Contractor that the sub-Contractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the SWIMS and each sub-Contractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
  2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and sent directly to the Labor Commissioner, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the SWIMS, on behalf of the SWIMS and any sub-Contractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
  
- E. In case it becomes necessary for the SWIMS or any sub-Contractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the SWIMS or sub-Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

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