



**REQUEST FOR PROPOSALS FOR  
FIBER OPTICS MASTER PLAN**

**RFP NO. 56151**

**RFP Issue Date:**  
**March 22, 2017**

**Proposal Submittal Due Date:**  
**5:00 P.M. PST, Friday April 28, 2017**

Purchasing Office, San Leandro City Hall,  
835 E. 14th Street, San Leandro, CA 94577

## Contents

I.	INTRODUCTION.....	4
II.	PROJECT OVERVIEW AND OBJECTIVES .....	4
III.	BACKGROUND .....	4
	3.1 City-Owned Fiber Optics Network.....	4
	3.2 Lit San Leandro Fiber Optics Network.....	4
	3.3 Federally Funded EDA Expansion.....	5
	3.4 San Leandro Commercial Broadband Strategy .....	5
	3.5 Broadband Strategy Accomplishments to Date .....	6
IV.	SCOPE OF SERVICES .....	7
	PROJECT DESCRIPTION .....	7
	4.1 Areas of Focus .....	7
	4.2 Deliverables .....	8
	4.3 Project Management .....	9
	4.4 Documentation.....	9
V.	PROPOSAL REQUIREMENTS.....	9
	5.1 Assignment and Subcontracting.....	10
	5.2 Right to Refuse Personnel.....	10
	5.3 Joint Ventures and Partnering.....	10
	5.4 Non-Collusion Affidavit .....	11
VI.	SUBMITTAL REQUIREMENTS .....	11
VII.	ESTIMATED SCHEDULE .....	12
VIII.	EVALUATION OF PROPOSALS .....	12
IX.	DELIVERABLES REQUIRED OF SUCCESSFUL CONSULTANT .....	14
X.	CONDITIONS.....	14
	10.1 Permits and Codes.....	14
	10.2 City of San Leandro Living Wage Ordinance.....	14
	10.3 Insurance Requirements.....	15
	ATTACHMENT A – CITY FIBER CONDUIT.....	16
	ATTACHMENT B – CITY STREET LIGHT POLES .....	17
	ATTACHMENT C – CITY TRAFFIC SIGNALS.....	18
	ATTACHMENT D – LIT SAN LEANDRO CONDUIT LATERALS.....	19

ATTACHMENT E – CITY CSA.....	20
ATTACHMENT F - CITY OF SAN LEANDRO LIVING WAGE ORDINANCE (LWO) .....	38
ATTACHMENT G – LWO SELF VERIFICATION FORM.....	43

# REQUEST FOR PROPOSALS

## **I. INTRODUCTION**

The City of San Leandro desires to solicit qualified proposals for a consultant team to lead staff through the creation of a Fiber Optics Master Plan to guide the design, construction, implementation, maintenance, regulation, and funding of its fiber optics assets and related technologies in accordance with this Request for Proposals (RFP). Award resulting from this RFP will be a fixed contract with a prospective initial term of June 19, 2017 through June 18, 2018.

## **II. PROJECT OVERVIEW AND OBJECTIVES**

The driving questions behind the need for this plan are:

- 1) How can the City better utilize its available fiber optics capacity within both the public and privately owned networks?
- 2) Where and how should the City expand its fiber optics network?
- 3) What funding opportunities exist for future expansion?
- 4) What options are available for the City to monetize its fiber optics assets?

The City is currently undertaking several “Smart City” projects that have a fiber optics component (see Project Description section) and the Master Plan should articulate a mission and vision that unifies these projects (and others) around its fiber optics network. In addition, the plan should include specific recommendations for appropriate policies and funding mechanisms to enable it.

The process should include the City Council, staff, the community, and private industry. The Consultant will work primarily with a Planning Committee made up of City management.

The City has allotted \$60,000 for this project and any proposals greater than this amount will not be considered.

## **III. BACKGROUND**

### **3.1 City-Owned Fiber Optics Network**

The City of San Leandro owns its own fiber optics network, consisting of approximately 14 miles of conduit and fiber strands throughout the city. These fibers can be accessed in various ways including within traffic signal boxes, splice boxes, and at City Hall, the Main Library and other termination points. See Attachment A.

### **3.2 Lit San Leandro Fiber Optics Network**

In 2011, the City entered into a License Agreement with San Leandro Dark Fiber to build a commercial fiber optic network using the City’s existing 10.5-mile conduit. San Leandro Dark Fiber, and [Lit San Leandro](#), were created by Dr. Patrick Kennedy, CEO and Founder of [OSIsoft](#), the City’s largest tech company, to own and lease the dark fiber network. In exchange, the City

has ownership of 10% of the fiber (approximately 30 strands ) installed by San Leandro Dark Fiber. There are no use restrictions related to the City's ownership of these fibers. See Attachment D.

### **3.3 Federally Funded EDA Expansion**

In 2012, the U.S. Economic Development Administration (EDA) announced that the City of San Leandro had applied for, and received, a \$2.12 million matching grant to expand the conduit network for fiber optics an additional 7.5 miles. This expansion was needed to extend Lit San Leandro into commercial and industrial areas where broadband access was unacceptably limited. Due to a favorable construction bidding environment, the expansion loop was extended to 10 miles; 9 miles are complete, and an additional 1-1.5 miles will be completed in 2017.

In January 2015, a First Amendment to License Agreement between the City of San Leandro and San Leandro Dark Fiber LLC was executed to include the EDA expansion areas. Most notably, the amended Agreement clearly identified ownership of the conduit, laterals and equipment related to the Lit San Leandro network; established a Service Level Agreement to identify maintenance responsibilities in case of damage to the network; and provides the City with ownership of 72 strands of fiber in the expansion conduit. There are no use restrictions related to the first 30 fibers. The remaining 42 strands are restricted to internal communications needs and public projects, exclusively.

### **3.4 San Leandro Commercial Broadband Strategy**

Anticipating development of Lit San Leandro, in 2011 the City hired Tellus Venture Associates to assess priority business areas for fiber optic expansion; to review City policies and practices impacting broadband service development; and to make recommendations regarding specific policy and infrastructure initiative recommendations.

The [San Leandro Commercial Broadband Strategy](#) was adopted by the City in July 2012, with the following policy and infrastructure initiative recommendations:

Recommendation	Description
1. Formalize and promote existing broadband-friendly practices	Capitalize on the City of San Leandro's competitive advantages regarding development to attract new business and investment
2. Make broadband a standard planning review criterion	Encourage the growth and universal availability of commercial-grade service by treating broadband similarly to other utilities.
3. Adopt a comprehensive open trench policy	Reduce costs and traffic disruption and encourage forward-thinking broadband construction through cost sharing and joint planning of street-cut projects.
4. Pursue opportunities for lateral connections to major fiber routes	Extend the benefits of San Leandro's long haul and local dark fiber networks to under and unserved businesses by assisting construction of links to commercial areas and properties.

5. Support Lit San Leandro on a non-discriminatory basis	Lit San Leandro's dark fiber network, including fiber strands owned by the City, is a resource few cities can offer and is a competitive advantage in attracting expanding and relocating businesses.
6. Develop WiFi hotspots in Downtown San Leandro	Encourage foot traffic and attract connected business people and consumers by providing WiFi Internet access as a free amenity.
7. Support business connections to broadband services	Add a broadband connection component to the City's existing business incentive programs.

### 3.5 Broadband Strategy Accomplishments to Date

**Creation of Chief Innovation Officer role:** The CIO's task is twofold: (1) develop the Lit San Leandro 10 Gbps fiber optic network as a unique infrastructure tool to attract, expand and retain innovative tech businesses and businesses in need of fast connectivity; and (2) to cultivate a healthy tech and innovation ecosystem designed to attract investment, companies and jobs to San Leandro.

**Broadband Forgivable Loan Program:** [The City provides matching funds](#) (in the form of a forgivable loan) of up to \$10,000 to reduce the cost of connecting a commercial or industrial building to broadband infrastructure. Since the program's inception in 2012, \$82,501 of broadband loans have been disbursed to assist 10 businesses with lateral construction.

**Network Expansion:** (See Federal EDA Expansion Section).

**Fiber to Schools:** As of September 1, 2016, all 17 San Leandro Unified School Districts sites are [connected to the internet](#) with a dedicated, synchronous 10 gbps connection through City fibers acquired through the Lit San Leandro License Agreement. The City donated up to 10 strands of its allotment of fiber optics in the Lit San Leandro agreement and four were used for this purpose.

**Launch of City Downtown Wi-Fi:** The [free Downtown "Wi-Fiber" network](#) was launched in July 2015 with a network gateway device connected to City fibers installed atop an existing shopping center gateway sign at Pelton Plaza on E. 14<sup>th</sup> Street. Multiple access points on nearby street lights provide free, high-speed wireless internet access within an approximate four block radius. Since then, new access points have been installed along W. Estudillo to serve Casa Peralta and the San Leandro Museum.

**First Amendment to License Agreement:** In January 2015, the City approved adoption of an Amended License Agreement that includes, among other changes, expansion of the City's

License Agreement to include San Leandro Dark Fiber/Lit San Leandro's access to the newly installed conduit.

**Assembly Bill 2292:** Authored by Assembly member Rob Bonta this state bill expanded the list of eligible projects for Infrastructure Financing Districts (IFDs) to include broadband development . This will provide a much needed tool to fund fiber optic network construction throughout the State. San Leandro's work on the Lit San Leandro project played a lead role in helping shape this bill and the City was a vocal supporter of it.

#### **IV. SCOPE OF SERVICES**

##### **PROJECT DESCRIPTION**

The following list will highlight the technology projects the City of San Leandro is currently pursuing and is interested in managing under a cohesive Fiber Optics Master Plan.

##### **4.1 Areas of Focus**

**Street Lights and Poles:** The City has executed an agreement with Climatec to replace all City-owned street lights with "smart" LED lighting. The lighting system will be centrally controlled, communicate wirelessly via 6LoWPAN and Wi-Fi, and can send alerts, as needed. This project, funded through a municipal lease, is forecasted to save the City hundreds of thousands of dollars per year in energy and maintenance costs. However, the street poles themselves are strategically important assets that can support additional technologies, such as Wi-Fi, sensors, and more. A Master Plan will help the City determine to the feasibility of connecting street poles to the fiber network to support additional technologies. It should address which areas of the City are of the highest strategic importance, which poles provide the best cost/benefit ratio for fiber connectivity, and the types of technologies that should be considered to be used on street poles, along with a simple pro forma cost analysis that can be applied for any pole. See Attachment B.

**Traffic Signals:** Modern traffic lights can be monitored and controlled centrally, and transportation engineers can use them to control traffic flows, assist public safety and emergency services, and more. The Master Plan shall include a description of the fiber optic infrastructure required to support the traffic signal system. See Attachment C.

**Parking:** The City is nearing completion of a comprehensive study regarding its downtown parking strategy. A parking control system, which will include the downtown parking garage and nearby lots and metered spaces, will require a communications system to support it. The Master Plan shall include a description of the fiber optic infrastructure required to support the parking system.

**Wi-Fi:** The City installed Wi-Fi in the downtown core and has expanded it to both community centers and the museum area. However, there is more demand – such as parks and additional commercial and economic development areas. A Master Plan will provide guidance on where the City should deploy Wi-Fi in conjunction with its other projects and construction. Additionally, the report shall address new technological advances in wireless technology, especially where these technologies could provide a lower cost solution to the current expense of constructing laterals from the network to the end-user.

**Commercial Broadband:** Lit San Leandro is fundamentally a business-serving initiative. Working in partnership with the City, Lit San Leandro has been successful in getting dozens of businesses and buildings connected to the network. The Master Plan should include strategies for continuing this process and using Lit San Leandro as a business attraction tool.

**Residential Broadband:** The City is highly interested in a thorough evaluation of the different business models that could be used to deploy a residential broadband network and would like to understand the pros and cons of each model. In addition, the City would like to have a ballpark cost for each model to ascertain a basic understanding of the financial commitments required. The Master Plan should also provide a high-level assessment of other technologies (either presently available or anticipated in the future, such as wireless broadband) that might provide a comparable quality of residential service at a lower cost.

**Emerging Technologies:** Drones, driverless cars, advanced robotics, and mobile hotspots are technology areas the City is interested in having a high level understanding of as it related to City governance and management. A Master Plan should address, at least in brief, how the City should begin to prepare itself for these advances as it related to their fiber planning.

**Policy Guidance:** In general, the City would like an overview of broadband-friendly policies that can be used to support its Fiber Optics Master Plan. In particular, the City would like a detailed evaluation of “open trench” policies and clear guidance regarding how one should be structured in the City of San Leandro. A basic overview of how open trench policies have been structured in other cities and counties and an evaluation of their effectiveness, different models, and costs, is desired.

The City is also interested in guidance relating to telecommunications projects, such as small cell deployments and 5G, where City assets may be utilized by private firms in an asset sharing model with revenue potential for the City.

## **4.2 Deliverables**

A final Master Plan must include the following Deliverables



1. A “big picture” vision that unifies the City’s goal to become a center for innovation in the Bay Area with its current and future projects as it relates to fiber optics technology and a methodology to evaluate technologies from the perspective of its fiber optics vision.
2. Analysis of the Area of Focus, including how the city can utilize its fiber optics capacity by connecting its street poles and other assets, with specific recommendations regarding what the City’s fiber optics network connections should be over the next five-to-ten years (see #3).
3. A detailed map of the City showing locations where existing fiber optic cable is located and where future fiber optic cable should be located to achieve the goals listed above. Each present location should indicate the number of fibers in place, each future location should indicate the likely range of fibers needed.
4. A detailed analysis of the models available to deploy residential broadband, including an evaluation of costs and organizational capacity required to deploy each model.
5. A minimum of two community events to discuss the Master Plan and collect feedback from community members and local business owners. The feedback should be summarized in the report. There will also be at least one (and possibly more) public presentations to the City Council and Committees.
6. A policy section with clear guidance regarding broadband policies, such as open trench, and ordinances regarding monetization of City assets.

### **4.3 Project Management**

The selected Consultant shall work closely with the City to provide project management.

### **4.4 Documentation**

The selected Consultant shall be responsible for providing all reports, documents, and supporting materials to the City for future use.

## **V. PROPOSAL REQUIREMENTS**

Each response must include the following information in detail:

1. Summary
2. Description of Planning Activities
3. Work Plan, including schedule
4. Firm History/Background
5. Resumes of Staff Involved
6. Budget
7. Past Engagements and Examples of Previous Work
8. References (at least 3 names with contact information)

Any additional information the Consultant wants to include that may help the City's decision may be included in the proposal.

Any service that is referred to in the body of a proposal (does not pertain to attachments and brochures) will be considered included in the basic offer.

### **5.1 Assignment and Subcontracting**

The Consultant may not subcontract, transfer, or assign any portion of the contract without prior, written approval from the City. Each subcontractor must be approved in writing by the City. The substitution of one subcontractor for another may be made only at the discretion of the City and with prior written approval from the City.

If awarded a contract under this RFP, the Consultant, notwithstanding the use of approved subcontractors, shall be the Prime Consultant and shall be responsible for all work performed.

As part of response to this RFP, the Consultant must delineate the responsibility of any and all subcontractor(s) to be utilized for this project.

### **5.2 Right to Refuse Personnel**

The City reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the Prime Consultant or its subcontractors for cause.

### **5.3 Joint Ventures and Partnering**

Proposals from joint ventures or entities partnering for a specific service must be designed to minimize any administrative burden on the City as a result of the participation of multiple entities.

The Proposal shall clearly set forth the respective responsibilities and functions that each Principal of the joint venture or partnering entities would perform if awarded a contract pursuant to this RFP.

The Proposal must include a copy of the joint venture or partnering agreements that identify the Principals involved as well as their rights and responsibilities regarding a contract pursuant to this RFP.

The Proposal transmittal letter must be signed by each Principal of the joint venture and include all required information.

#### **5.4 Non-Collusion Affidavit**

The Consultant declares, by signing and submitting a proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not directly or indirectly induced or solicited any other Consultant to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

#### **VI. SUBMITTAL REQUIREMENTS**

Consultants shall submit Items 1-8 as stated in ***Section V. - PROPOSAL REQUIREMENTS***. Consultant is required to indicate the *Designated Contact* in the proposal package. Include the designated contact individual's name, address, phone number(s) and email address.

One original and an electronic copy of the proposal shall be submitted. The original shall be printed double-sided on recycled-content paper. The original proposal must contain original signatures and must be easily reproducible on a standard copying machine. The proposal shall be signed by an individual(s) authorized to execute legal documents on behalf of the Consultant.

Proposals shall be received by the City of San Leandro Purchasing Office no later than **5:00 p.m. on April 28, 2017**. Late proposals will not be considered under any circumstance. Mail or deliver proposals to:

**City of San Leandro**  
Julie Jenkins, Purchasing Agent  
Finance Department  
835 E. 14<sup>th</sup> Street  
San Leandro, CA 94577  
(510) 577-3472 Voice

Failure to provide all required submittals in completed form and/or a clearly marked original with original signatures may result in a proposal being found non-responsive and given no consideration. Proposals must be neat, complete, and fully address all information specified in **Section V**.

For information concerning RFP questions, procedures and regulations (i.e., submission deadline, forms required, etc.) interested parties must contact the City's Purchasing Agent. All questions shall be submitted via email.

## **CITY OF SAN LEANDRO**

Julie Jenkins

Purchasing Agent

Email: [juliejenkins@sanleandro.org](mailto:juliejenkins@sanleandro.org)

## **VII. ESTIMATED SCHEDULE**

The following RFP Schedule of Events represents the City's best estimate of the schedule that will be followed. The City reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the RFP Schedule of Events will be provided in the form of an addendum, posted on the City's website:

[http://www.sanleandro.org/depts/finance/purchasing/quotes/current\\_rfps\\_rfqsasp.asp](http://www.sanleandro.org/depts/finance/purchasing/quotes/current_rfps_rfqsasp.asp)

<b>RFP Issue Date</b>	<b>3/22/17</b>
<b>Final Question Submission Deadline</b>	<b>4/14/17</b>
<b>Proposal Submittal Due Date (no later than 5:00 pm)</b>	<b>4/28/17</b>
<b>Proposal Evaluation Completion</b>	<b>5/15/17</b>
<b>Award of Contract (Tentative)</b>	<b>June 2017</b>

## **VIII. EVALUATION OF PROPOSALS**

Proposals must fully address the evaluation factors, contain complete technical submittals, references and data to verify qualifications and experience and include a statement that the City contract can be executed, listing any exceptions. Proposals without sufficient submittal data to provide a complete evaluation will be considered non-responsive. As part of the technical proposal, Consultants must evaluate the City's proposal terms and conditions. Any exceptions taken to the proposal specifications and/or the City's Consulting Services Agreement must be listed as a separate item as *Exceptions to Specifications*.

The Planning Committee will review all proposals and will consider all factors it deems relevant and proper, including but not limited to: price, quality of proposal, references, experience/resume of team members, reputation of the firm, and availability.

All proposals will be reviewed for compliance with specifications including documented capability to perform the prescribed work in a satisfactory manner. Proposals, which appear to be compliant, will be evaluated on a point system (0-100 points, with 100 being the best possible score) in accordance with the following:

<b>Criteria</b>	<b>Possible Points</b>
<b>Proposal Submission.</b> <ul style="list-style-type: none"> <li>• Quality of the proposal</li> <li>• Adherence to the requirements</li> <li>• Alignment with the Areas of Focus</li> </ul>	40
<b>Qualifications.</b> <ul style="list-style-type: none"> <li>• Expertise of the fields necessary to execute the proposal</li> <li>• Recent relevant experience of team members</li> <li>• Professional qualifications and education of team members</li> <li>• Verifiable record of past successes</li> <li>• References</li> </ul>	25
<b>Project and Implementation Plan.</b> <ul style="list-style-type: none"> <li>• Methodology for data collection, analysis, and reporting.</li> <li>• Approach for demands from diverse stakeholders</li> </ul>	25
<b>Pricing</b> <ul style="list-style-type: none"> <li>• The City has allocated \$60,000 for this project. Any Proposals exceeding this amount will not be considered.</li> </ul>	10
<b>TOTAL POINTS FOR WRITTEN PROPOSAL</b>	100

The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue the RFP at its sole discretion. Additionally, the City may seek clarification or additional information from Consultants. All Consultants shall verify if any addendum for this project has been issued by the City and shall respond to the final written RFP and any exhibits, attachments and amendments. It is the Consultant's responsibility to ensure that all requirements of contract addendum are included in their submittal. This RFP does not commit the City of San Leandro to sign an agreement, award a contract, or to pay any costs incurred in the preparation of a response to this RFP. All documents, conversations, correspondence, etc. with the City are subject to the laws and regulations that govern the City. All Proposals submitted in response to this RFP become the property of the City and public records, and as such may be subject to public review.

The City reserves the right to reject any or all proposals and the right to waive minor irregularities in any proposals. Waiver of one irregularity does not constitute waiver of any other irregularities.

***Because this proposal is negotiable, all pricing data will remain confidential until after award is made, and there will be no public opening and reading of proposals.***

## **IX. DELIVERABLES REQUIRED OF SUCCESSFUL CONSULTANT**

The successful Consultant(s) shall enter into a Consulting Services Agreement with the City of San Leandro and submit the following items ***within ten (10) days of notice of award:***

1. City of San Leandro business license; to be maintained throughout length of contract
2. Copy of Certificate(s) of Insurance and endorsements in compliance with the requirements of Section 4. of ***Attachment E, Consulting Services Agreement (CSA)***, and naming the City of San Leandro as an additional insured.
3. Completed IRS W-9 tax form
4. Self-verification form which shows compliance with the City of San Leandro Living Wage Ordinance

## **X. CONDITIONS**

### **10.1 Permits and Codes**

The selected Consultant will comply with all laws, codes, rules and regulations of the State, County, and City, applicable to the work to be performed at the City's location(s). The Consultant, who shall pay all lawful charges, shall obtain all permits lawfully required.

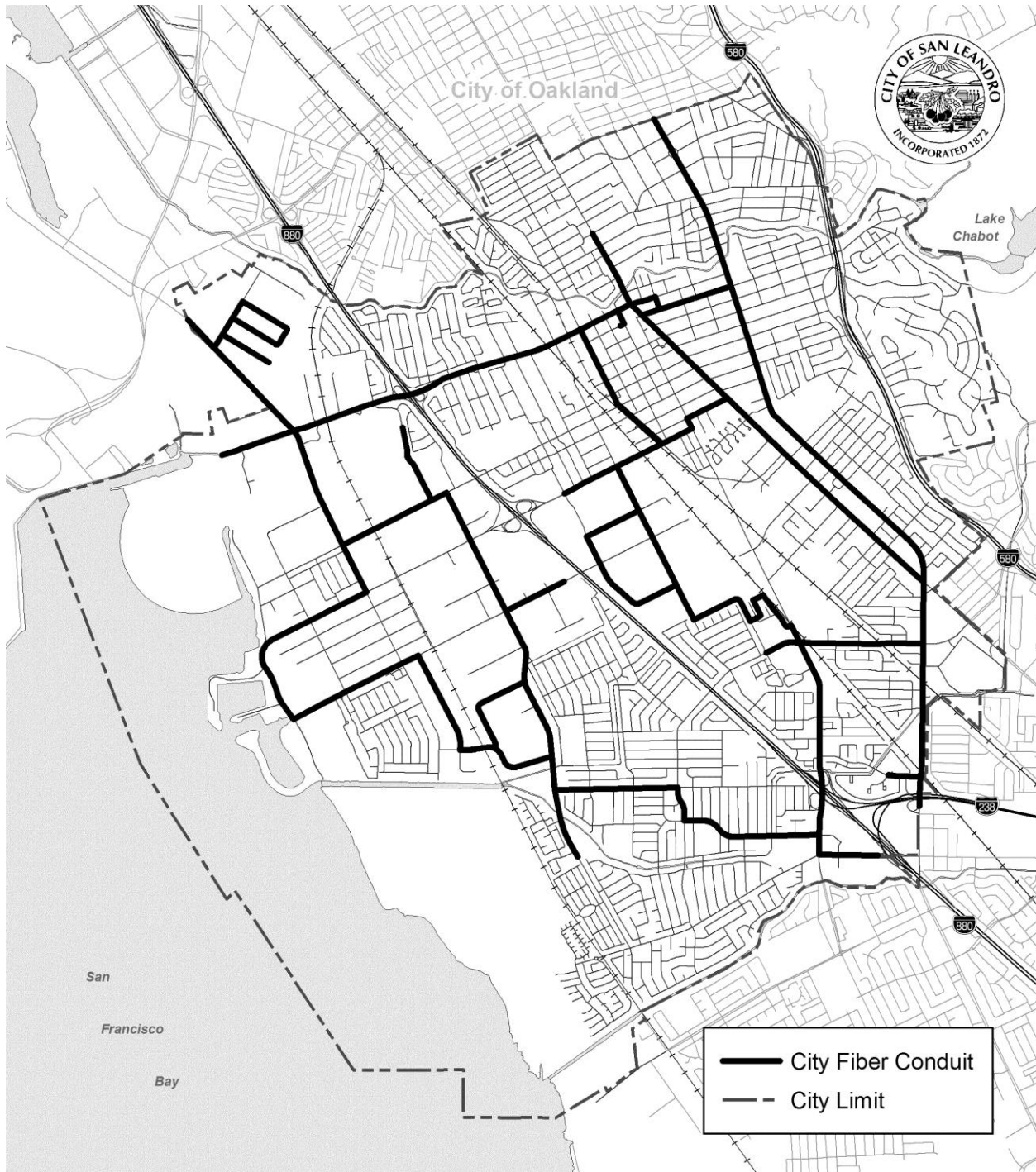
### **10.2 City of San Leandro Living Wage Ordinance**

The San Leandro Municipal Code Title 1, Chapter 6, San Leandro's Living Wage Ordinance (LWO), provides that Consultants who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City during the City's fiscal year shall comply with all provisions of this ordinance. The LWO requires a City Consultant to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, the selected Consultant must submit a completed self-verification form. Please note that the LWO applies to those contracts where the Consultant has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, change orders to this contract or the entering into of subsequent contracts may make them subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Consultant's employees change (i.e. additional employees are hired) so that Consultant falls within the scope of the Ordinance.

### **10.3 Insurance Requirements**

Requirements are incorporated in Section 4 of **Attachment E**, *Consulting Services Agreement (CSA)*.

## ATTACHMENT A – CITY FIBER CONDUIT





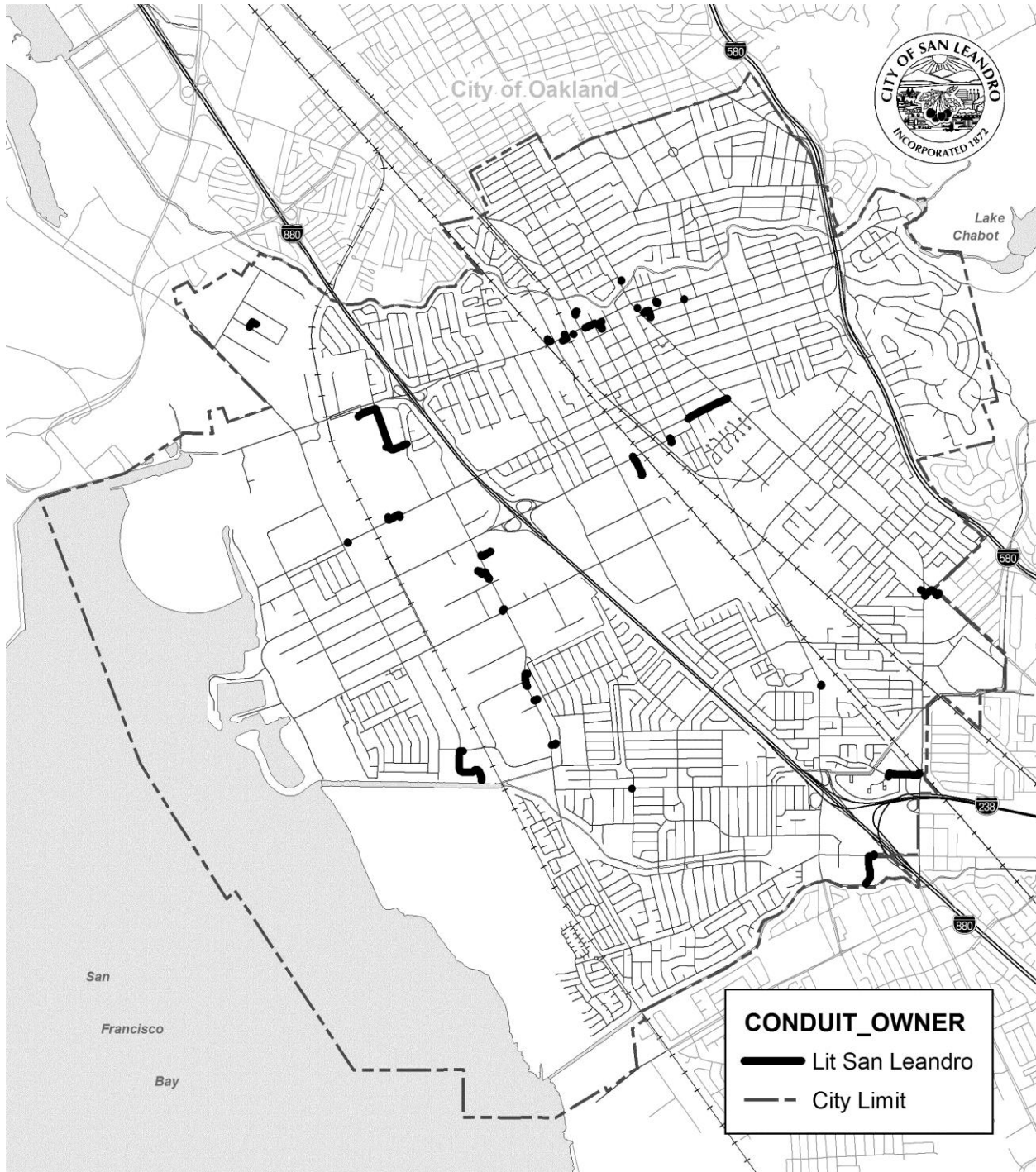
## ATTACHMENT B – CITY STREET LIGHT POLES



## ATTACHMENT C – CITY TRAFFIC SIGNALS



## ATTACHMENT D – LIT SAN LEANDRO CONDUIT LATERALS



## ATTACHMENT E – CITY CSA

### CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND [NAME OF PROFESSIONAL CONSULTANT] FOR [NAME OF PROJECT]

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and \_\_\_\_\_ (“Consultant”) (together sometimes referred to as the “Parties”) as of \_\_\_\_\_, 20\_\_ (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 \_\_\_\_\_, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant’s obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder’s attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

**Section 2.      COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \_\_\_\_\_, 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.

**[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]**

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

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

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

- 2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$\_\_\_\_\_. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**[NOTE TO STAFF: SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]**

**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 to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

#### **4.1 Workers' Compensation.**

**4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The 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, agendas, and subcontractors.

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



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

#### **4.2 Commercial General and Automobile Liability Insurance.**

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

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

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

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects



the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

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

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

**4.3 Professional Liability Insurance.**

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

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 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 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 \_\_\_\_\_ 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.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by \_\_\_\_\_ (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

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

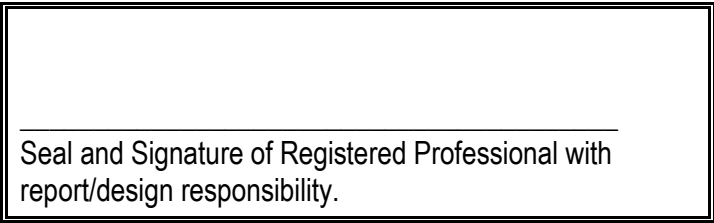
Any written notice to City shall be sent to:

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

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

**10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional

responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C 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 <b>[NOTE TO STAFF: USE VERSION 1 OR 2]</b>

**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

[NAME OF CONSULTANT]

\_\_\_\_\_  
Chris Zapata, City Manager

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

Attest:

\_\_\_\_\_  
Consultant's DIR Registration Number, if applicable

\_\_\_\_\_  
Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

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

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

Approved as to Form:

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

Per Section 10.7:

☐ Form 700 Not Required

☐ Form 700 Required

\_\_\_\_\_  
[Name]

[Title of Department Head]

**EXHIBIT A**

**SCOPE OF SERVICES**

**EXHIBIT B**

**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES**

## EXHIBIT C

### INDEMNIFICATION

**NOTE TO STAFF: INDEMNIFICATION EXHIBIT VERSION 1, PROFESSIONAL**  
**USE THIS VERSION FOR ALL CONTRACTS WITH LICENSED ARCHITECTS, LANDSCAPE**  
**ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS ONLY. IF THIS**  
**VERSION 1 IS USED, DELETE VERSION 2 ON THE NEXT PAGE.]**

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

## EXHIBIT C

### INDEMNIFICATION

**[NOTE TO STAFF: INDEMNIFICATION EXHIBIT VERSION 2, TECHNICAL CONSULTANT USE THIS LANGUAGE FOR ALL OTHER TECHNICAL AND LICENSED CONSULTANTS THAT ARE NOT LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS. IF THIS VERSION 2 IS USED, DELETE VERSION 1 ON THE PREVIOUS PAGE.]**

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 active 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.

## **Guidelines for Compliance & Frequently Asked Questions July 2016**

### **Guidelines for Compliance with the Living Wage Ordinance (LWO)**

#### **Service Providers**

##### For Profit Service Providers

Affects for-profit entities that provide services to the City valued at \$25,000 or greater within the City's fiscal year; and which has six (6) or more employees.

Any employee working on City services under contract with the City is covered by the LWO for the time spent performing said services.

##### Non-Profit Service Providers

Affects non-profit entities that provide services to the City valued at \$100,000 or more within the City's fiscal year; and which has six (6) or more employees

Any employee working more than 25% of their time on the City-contracted services being procured by the City under the contract with the employer is subject to.

#### **Lessees**

Affects lessee's of public property, licensees, concessionaires and franchises that generate \$350,000 or more in annual (calendar) gross receipts.

Any employee who spends more than 25% of their working time on the leased property or engaged in work directly related to the license, concession or franchise is subject to.

#### **Financial Aid Recipients**

Affects any entity receiving more than \$100,000 in City grants, loans, or other cash/non-cash assistance within the City's fiscal year. Compliance is required for the duration of one year for each \$100,000 of assistance, pro-rated up to a maximum duration of five (5) years after receiving said aide.

Any employees who spend more than 25% of their working time engaged in work directly related to the purposes for which the City's aid was provided are subject to.

#### **Subcontractors/Sub-Lessees**

Affects both for-profit and non-profit employers that enter into a subcontract with the primary employer/contractor and assumes some of the obligations of the primary employer/contractor.

Subcontractor's and sub-lessee's are also subject to the same living wage provisions and requirements as the primary employer or lessee. Employees who are or would be covered under the state prevailing wage rate requirement would only be covered by the Ordinance if their current prevailing wage rate was lower than the living wage rate.

**Compensation**

Covered businesses are required to pay no less than \$15.28 per hour or \$13.78 with health benefits valued at least \$1.50 per hour, subject to annual CPI adjustment.

**Reporting and Compliance**

Covered businesses self-verify compliance and are subject to periodic re-verification and audit of living wage related records.

## **Frequently Asked Questions**

### **1. What is the City of San Leandro's Living Wage Ordinance?**

"Living wage" is an hourly wage level that sets wages at a level higher than the Federal or State minimum wage. The City of San Leandro Ordinance specifies that an hourly wage and a health benefit dollar level be applied to certain contracts, agreements and leases between the City and for-profit and non-profit entities. It does not apply to every business in the City.

### **2. When does the Living Wage take effect and when do businesses have to start complying and provide higher wages to their employees?**

September 1, 2007 is the effective date. Applicable businesses must comply with the Ordinance when they enter into a lease, contract or concessionaire or other agreement with the City of San Leandro, or when an existing agreement is amended to benefit the business.

For example, if a lease contract expires in two years, compliance would not be required for the two years the lease remains in effect and unchanged. New contracts entered into or amended thereto affecting financial aid or expending the term after the effective date are subject to the Ordinance. Covered employees would be entitled to the higher wage on the effective date of the new or modified contract or agreement.

All contracts and agreements with the City of San Leandro will include the requirement that the Living Wage Ordinance shall be complied with.

### **3. What is the required Living Wage rate?**

Covered businesses are required to pay no less than \$15.28 per hour, which includes wages and employer health benefits. Health benefits must be valued at \$1.50 per hour in order to be counted towards the requirement. In other words, an employee not receiving any employer health benefits would receive an hourly wage of at least \$15.28, while one receiving health benefits would receive an hourly wage of at least \$13.78.

The living wage rate will be adjusted annually in July to reflect the consumer price index.

### **4. Are there any other required employee benefits specified?**

Yes. It specifies that employees must receive at least 22 days off per year (calendar) for sick leave, vacation, holiday, or personal necessity. At least 12 of the required days off shall be compensated at the same rate as regular compensation while 10 of the required 22 days may be uncompensated days off. Part-time employees shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first 6 months of satisfactory employment or in accordance with the employer's policy, whichever is sooner.



**5. What types of employee's are covered by the Ordinance? And does it cover full-time and part-time employees?**

Employees spending at least 25% of their work time on a City of San Leandro contract are covered, as long as they work for a business applicable under the terms of a covered agreement or contract. Both part-time and full-time employees are covered if they meet those criteria. Employees who are or would be covered under the state prevailing wage rate requirement would only be covered by the Ordinance if their current prevailing wage rate was lower than the living wage rate.

Please see "Guidelines for Compliance" for additional detail.

**6. What types of businesses are covered by the San Leandro Living Wage Ordinance?**

The Living Wage Ordinance applies to entities providing services to the City of San Leandro via contract or agreement, lessees of the City and recipients of City financial aid. Please see "Guidelines for Compliance" for the thresholds and criteria for each type of employer, lessee, financial aid recipient, or subcontractor and lessee.

**7. Does the Living Wage Ordinance apply to sub-contractors or sub-lessees?**

Subcontractor's and sub-lessee's are also subject to the same living wage provisions and requirements as the primary employer or lessee. Employees who are or would be covered under the state prevailing wage rate requirement would only be covered by the Ordinance if their current prevailing wage rate was lower than the living wage rate. For example, employees of a firm hired to do building improvements for the contractor would be subject to the prevailing wage requirements under state law.

**8. Does the Living Wage Rate affect tenants of a financial aid recipient?**

It depends on the circumstances, for example, if a developer receives a \$500,000 city loan to rehab a commercial building and the tenants pay the market rate, they would not be subject to the LWO. However, the benefitting developer or business (and successors) would be subject to the LWO.

**9. What types of employees are exempt?**

The Ordinance shall not be applicable to employees under 18 years of age, volunteers, qualified temporary employees working for the City of San Leandro, other government employees, employees that participate in a job training program, qualified disabled employees covered by a sub-minimum wage certificate or equivalent, interns or employees receiving academic credit through a job training program, employees already subject to the State's prevailing wage requirement (if living wage rate is higher than the prevailing wage rate, then the living wage rate would apply) , employees while working stand-by or on-call duty, and any other employee where the application of the Ordinance would be prohibited by State or Federal law.

**10. Are any exemptions or waivers allowed for a business?**

Following City Manager review and recommendation, the City Council may approve waivers with or without conditions to any of the Living Wage provisions, upon determination that such action is in the best interest of the City.

**11. What other types of businesses are not covered by the City of San Leandro Living Wage Ordinance?**

Commodity suppliers and suppliers of goods (paper, office supplies, equipment, etc.) and their employees are not covered.

**12. What steps are in place to prevent discrimination or employer retaliation against the provisions of the Ordinance?**

Retaliation and discrimination against any person on account of having inquired into or having claimed a violation of the Ordinance is unlawful. Any employee who alleges violation of any of the Living Wage requirements may report such acts to the City. The City may investigate such complaints and take appropriate action to enforce the Ordinance.

**13. How do the worker retention provisions of the Ordinance work?**

Briefly, any business that replaces another business in a lease, contract, subcontract, etc. is required to offer employment to the employees of the prior tenant or contractor for a period of 90 days. If the new business already has its own employees, then employment must be offered on the basis of seniority to its own and the prior employees. Managerial, supervisory, professional, paraprofessional, and confidential and office employees are exempted from this provision.

**14. How is the Living Wage Ordinance enforced? Are there penalties against businesses found not to be complying?**

Employers self-verify compliance. The City may also periodically require employer re-verification and review the businesses living wage related records. Each business is required to allow access to its workforce and living wage related records by authorized City of San Leandro representatives to ensure compliance.

Violations of the Living Wage Ordinance are subject to fines of up to \$5,000, and/or the City may terminate the violator's agreement. Any person may bring action against a business in the Superior Court of California to enforce the measure.

**15. Who can answer more questions about the Ordinance; and where can I get a copy of it?**

The Finance Department of the City currently administers the Living Wage Ordinance. Please contact the department at 510-577-3376 if you have any questions. You may obtain a copy of the Ordinance from the Finance Department; or it is available on the City's website at:

<http://www.sanleandro.org/depts/finance/livwage/default.asp>

## **ATTACHMENT G – LWO SELF VERIFICATION FORM**

### **CITY OF SAN LEANDRO**

#### **Living Wage Ordinance Self Verification Form for Providers of Personal Services**

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR SERVICES WITH THE CITY OF SAN LEANDRO.

The San Leandro Municipal Code Title 1, Chapter 6, San Leandro's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City during the City's fiscal year shall comply with all provisions of this ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, change orders to this contract or the entering into of subsequent contracts may make them subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

#### **SECTION I**

##### **1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS**

a. During the period of July 1 -June 30 of the current city fiscal year, have you entered into contracts, including the present contract, bid, or proposal, with the City of San Leandro for a cumulative amount of \$25,000.00 or more?

YES \_\_\_\_ NO \_\_\_\_

If no, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees?

YES \_\_\_\_ NO \_\_\_\_

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

##### **2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.**

a. During the period of July 1 -June 30 of the current city fiscal year, have you entered into contracts, including the present contract, bid, or proposal, with the City of San Leandro for a cumulative amount of \$100,000.00 or more?

YES \_\_\_\_ NO \_\_\_\_

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees?

YES \_\_\_\_ NO \_\_\_\_

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II on the following page.

## **SECTION II**

Please read, complete, and sign the following:

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE. ☐

THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE. ☐

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of San Leandro's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the San Leandro Municipal Code, Title 1, Chapter 6.

If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this verification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and pursue any other legal remedies available to the city, including debarment. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Business Entity: \_\_\_\_\_

Contract Description/Specification No: \_\_\_\_\_

## **SECTION III**

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**\* \* FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY \* \* \***

I have reviewed this Living Wage Ordinance Self Verification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to San Leandro's Living Wage Ordinance.

Department Name \_\_\_\_\_ Department Representative \_\_\_\_\_