

City of San Leandro



Request for Proposal

State Legislative Advocacy Services RFP No. 53342

Electronic Submittals Due By:

12:00pm

On

Friday, January 3, 2014

To:

San Leandro City Manager's Office
835 E. 14th Street
San Leandro, CA 94577
Attention: Eric Engelbart,
Assistant to the City Manager
eengelbart@sanleandro.org

THE CITY OF SAN LEANDRO HEREBY REQUESTS PROPOSALS FOR

State Legislative Advocacy Services

I. Community Overview

The City of San Leandro takes pride in its reputation of being an energetic and well-managed city. It is a city that is sensitive to the needs of its residents and responsive to their input in all matters of civic affairs. A full service city, San Leandro has been governed for nearly a century under the Mayor-Council-Manager form of government. Located in the center of the San Francisco Bay Area, San Leandro enjoys close proximity to Silicon Valley, San Francisco, world-renowned universities, the Oakland International Airport and the Port of Oakland, and is served by two major freeways and two BART stations. The City is noted for its shoreline area, fine schools and affordable housing. It is ideally located for those who enjoy a wide range of cultural and recreational activities. The City is approximately fifteen square miles in area and has a population of approximately 85,000 residents.

Mission Statement: We, the employees of the City of San Leandro, are dedicated and committed to serving the community. We strive at all times to achieve the highest professional standards, to communicate a vision of the future, and to enhance the quality of life for every citizen.

II. Introduction

The City of San Leandro is requesting proposals to establish a contract for State Legislative Advocacy Services with work to commence on or about January 22, 2014 and be completed December 31, 2014 with the option for an annual renewal of such contract on a calendar-year basis.

Responses must be submitted as detailed below, no later than the date and time stated in the RFP.

III. Tentative Schedule for the RFP Process

December 2, 2013	Request for Proposal released
December 16, 2013	5:00 pm Deadline for questions or clarifications
December 20, 2013	City staff release answers to questions submitted
January 3, 2014	Responses due by 12:00p.m. (please note City Hall is closed from Dec. 24 – Jan. 1)
January 3-10, 2014	Sub-committee/ staff review period
Week of January 13-17	Interviews with respondents
January 17	Respondent selected for contract recommendation; notifications sent
January 21, 2014	Contract presented to City Council for approval
January 22, 2014	Contract start date

IV. Submission Process and General Conditions

1. All questions regarding the RFP are due by 5:00pm on December 16, 2013. Questions are to be emailed to eeengelbart@sanleandro.org. Answers to questions will be emailed to all interested bidders by December 20, 2013.
2. Respondents should submit one (1) original proposal (preferably PDF via email) to:

Eric Engelbart, Assistant to the City Manager
San Leandro City Manager's Office
835 E. 14th Street
San Leandro, CA 94577
eeengelbart@sanleandro.org
(510) 577-3391
3. Deadline for submitting proposals: Friday, January 3, 2014 at 12:00pm.
4. By submitting a proposal, the respondent represents and warrants that:
 - (a) The information provided is genuine and not a sham, collusive, or made in the interest or on behalf of any party not therein named, and that the respondent has not directly or indirectly induced or solicited any other respondent to put in a sham proposal, or any other respondent to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage.

- (b) The respondent has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of the City of San Leandro.
- 6. All costs of preparation of proposals including travel for any interviews scheduled shall be borne by the respondents.
- 7. All proposals become the property of the City of San Leandro. The City reserves the right to reject any and all submittals; to request clarification of information submitted; to request additional information from competitors; and to waive any irregularity in the submission and review process. None of the materials submitted will be returned to the bidder unless they are not submitted in a timely manner.
- 8. Proposals will become a public record and may be available for release to the public upon selection of a successful respondent and an agreement is reached.
- 9. The City of San Leandro reserves the right to award an agreement without further competition based on the responses received to this RFP.
- 10. The City reserves the right to request additional information not included in this RFP from any or all respondents.
- 11. The City reserves the right to contact references not provided in the submittals.
- 12. The City reserves the right to incorporate its standard language into any contract resulting from this Request for Proposal. The City's standard agreement language is attached for informational purposes only.

V. Modification or Withdrawal of Qualifications

At any time prior to the specified time and date set for the RFP due date, a designated representative of the responding agency may withdraw the submission provided. No submissions may be withdrawn or returned after the due date and time set for final submission.

Any modification, amendment, addition or alteration to any submission must be presented, in writing, executed by an authorized person or persons, and submitted prior to the final date for submissions.

NO AMENDMENTS, ADDITIONS OR ALTERATIONS WILL BE ACCEPTED UNLESS REQUESTED BY THE CITY AFTER THE TIME AND DATE SPECIFIED AS THE SUBMISSION DEADLINE.

VI. Protests or Objections

Any protest or objection regarding the RFP procedures as defined in this document may be submitted in writing to Eric Engelbart, Assistant to the City Manager. All protests must be submitted within 5 working days of the notification of a respondent selected for recommendation for contract to the City Council and will be reviewed by the City Manager to determine whether the protest is valid. Only respondents may submit protests. Protests on the qualifications review process will not be accepted.

VII. RFP Addenda

Any changes to the RFP requirements will be made by addendum. All addenda shall include an acknowledgment of receipt that must be returned. The addenda must be signed and attached to the final response. Failure to attach any addendum may result in the rejection of the response.

All addenda will be emailed to each identifiable respondent.

VIII. Information Resources

Question about this Request for Proposal shall be referred to:

Eric Engelbart, Assistant to the City Manager
San Leandro City Manager's Office
835 E. 14th Street
San Leandro, CA 94577
Phone: (510) 577-3391
Email: eeengelbart@sanleandro.org

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. For additional information regarding the services to be provided, please review the Scope of Work. Except for the above named, potential respondents should not contact other San Leandro officials or staff regarding any aspect of this RFP. If such contact is made, the City reserves the right to reject the proposal

IX. Verbal Agreement or Conversation

No prior, current, or post award verbal conversations or agreements with any officer, agent, or employee of the City or any other person or entity shall affect or modify any terms or obligations of this RFP or any agreement resulting from this process.

X. Organization of Proposal

The City of San Leandro requests that the following information be provided as part of the response to the RFP. The proposal will be evaluated by the review committee and shall include, at a minimum, the following:

- A. **Profile of Proposing Firm.** This section shall include a brief description of the proposer's firm and its organizational structure. This section also should define the qualifications of the consulting firm, capacity, resources, and key personnel, staff or sub-consultants assigned to the services. A designated principal consultant for the duration of the contractual period should be identified.
- B. **Prior clients.** This should include a listing of current and former County, City, Special District, or other public-sector clients over the past three years.
- C. **General Knowledge of Local Government and San Leandro Issues.** This section should discuss the proposer's knowledge and expertise in local government affairs in general. This section also should include an overview of the local issues the consultant can help to address in San Leandro.
- D. **Specific Experience.** This section should describe any successes, funding awards, or other major accomplishments in advocating/lobbying for various types of projects or issues for other clients, or any other issue areas for which the firm may have particular expertise. The firm also should describe any specific experience it may possess working on issues related to:
 - The unwinding of redevelopment agencies,
 - Transportation and infrastructure needs,
 - Advanced manufacturing,
 - Broadband technology,
 - Public safety,
 - Furthering partnerships with educational institutions, or
 - Furthering partnerships or advancing shared goals between City & County governments
- E. **Approach to Relations with Clients and State Officials.** This section shall briefly define the approach the consultants will undertake to best serve the City's state legislative advocacy needs. This section should include an overview of the firm's general approach to communicating with clients and elected state officials or their staff, including tracking/monitoring/influencing legislation, identifying emerging issues, and methods of keeping clients informed.

- F. **Cost Summary.** This section shall define the fee schedule and pricing information, as well as how or when supplemental costs may be incurred. The City's intent is to enter into a 12-month agreement with an option to renew annually each calendar year.
- G. **Disclosures.** A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending involving the proposer. The City of San Leandro reserves the right to reject any proposal based upon the proposer's prior history with the City of San Leandro or with other parties, which documents, without limitation, unsatisfactory performance, significant failures to meet contract milestones or other contractual failures.
- H. **References.** Provide references for similar work that your firm has provided within the last three (3) years. Include a detailed description of the services, the agency names, contact names and phone numbers, dates of services performed and successful work completed.

XI. Review of Proposals

Proposals will be reviewed by a committee that includes the Mayor, two City Council members, the City Manager, and the Assistant to the City Manager, and/or other staff as may be needed. Qualifications including specific experiences and successes, references, fees and familiarity with services requested will be evaluated. The committee will determine which proposal best meets the needs and requirements of the City. A Scope of Work is included to provide further information in assisting with the completion of the RFP.

The review committee may select and recommend a respondent for a State Legislative Advocacy Services agreement to the City Council. While proposed compensation will be a factor, qualifications and experience of the firm and proposed staff in relation to the Scope of Work and the City's needs shall inform the primary selection criteria. Additionally, the review committee will determine whether the respondent's existing client list presents a conflict to the City's needs and Scope of Work.

XII. Right of Refusal

- The City may, at its sole discretion, reject any and all proposals submitted in response to this RFP. In the event of any such rejection, the City shall not be liable for any costs incurred in connection with the preparation and submittal of a proposal.
- All potential respondents submit their proposal with the understanding that the recommended selection of the review committee is final and subject only to review and final approval by the San Leandro City Council.
- In determining which proposal best meets the needs of the City, several factors will be considered. These factors include, but are not limited to;

- experience, approach to the work, service record, references, and financial stability.
- The City reserves the right to waive any informality, technical defect or clerical error in any proposals as the interest of the City may require.

XIII. General Conditions

- The City of San Leandro Standard Non-Professional Service Agreement (i.e. standard contract agreement) is attached hereto as Attachment “B.” By submitting a proposal without exceptions, the Consultant accepts all terms and conditions contained in attached agreement. The Consultant must specify any requested exceptions to any term, provision, or language in attached agreement.
- The City of San Leandro Living Wage Ordinance is attached hereto as Attachment “C.” By submitting a proposal without exceptions, the contractor agrees to comply fully with the requirements of the ordinance
- The terms and conditions not specifically identified will be considered acceptable to the Contractor. The City reserves the right to reject any proposal that provides changes to the agreement not acceptable to the City.

XIV. Attachments

- Attachment A: Scope of Work
- Attachment B: City of San Leandro Non-Professional Services Agreement
- Attachment C: City of San Leandro Living Wage Ordinance

Attachment A
City of San Leandro State Legislative Advocacy Services
Scope of Work

Contractor shall provide special knowledge, advice, services and skill, and shall do each of the following:

- (a) Provide City of San Leandro (hereafter "City") staff and/or elected officials with timely information regarding State legislation and administrative matters significantly affecting City program responsibilities, authority and resources;
- (b) Provide advice regarding effective strategies for promoting City interests and priorities within the legislative and executive branches of State government;
- (c) Represent City in public and private meetings of State legislative and administrative officials, committees and bodies, including representation in legislative committee hearings and hearings of administrative regulatory bodies;
- (d) Assist in securing enactment of City-sponsored legislative proposals and in securing the allocation of State funds to the City;
- (e) Consult with elected City officials, the City Manager, or City staff to help produce for review by the City Council a work program for the ensuing calendar year that will describe specifically the legislative priorities, sponsorship proposals and advocacy efforts to be undertaken by the Contractor. This work program shall be referred to as City's "Legislative Program" for the affected calendar year;
- (f) From time to time upon request and as permitted by law, arrange for meetings involving City officials in Sacramento or other locations in California;
- (g) Facilitate, if necessary, the participation of key City staff or officials in State-level activities significantly affecting programmatic or fiscal relationships between the State and the City;
- (h) Monitor and report on the State Budget and work when appropriate to secure or protect funding per the City's interests;
- (i) On occasion, meet in San Leandro with City officials or staff when necessary or when requested;
- (j) Provide, on a monthly basis, an electronic report/invoice specific to the City of San Leandro outlining any work completed the prior month to further advance the City's interests. This report also may include, if relevant, updates on the status of legislation or committee analyses that may be of concern.
- (k) Provide an annual report providing an overview of the work completed the past year and a forecast of important issues for the upcoming year.
- (l) Comply with all State or other laws regulating the activities of registered lobbyists, and prepare on the City's behalf such reports of lobbyist employers as may be required by State law or administrative requirements.

Attachment B
NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
[NAME OF CONTRACTOR]

THIS AGREEMENT for _____ services is made by and between the City of San Leandro ("City") and _____ ("Contractor") (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, Contractor 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 Contractor 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 Contractor 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.** Contractor 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 Contractor is engaged.
- 1.3 Assignment of Personnel.** Contractor 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, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Contractor 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 Contractor'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 Contractor a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor 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 Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor 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. Contractor 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 Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
- The Contractor's signature;
- Contractor shall give separate notice to the City when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor 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 Contractor and City, if applicable.

[NOTE TO STAFF: THE 800-HOUR LIMIT HAS BEEN ADDED BECAUSE OF RECENT COURT DECISIONS THAT INDICATE THAT INDEPENDENT CONTRACTORS MAY BECOME ELIGIBLE FOR PERS AFTER 1000 HOURS OF WORK FOR A CITY WITHIN A 12-MONTH PERIOD, ENTITLING THE CONTRACTOR TO AN EMPLOYER CONTRIBUTION FROM THE CITY.]

- 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 Contractor.
- 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 Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor 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 Contractor 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 Contractor 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.** Contractor 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 Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Contractor 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 Contractor 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.

[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, Contractor 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 Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to City to use facilities or equipment not otherwise listed herein.

[NOTE TO STAFF: City list of facilities and equipment at Contractor's disposal]

3.1 Safety Requirements. In accordance with generally accepted construction practices and state law, Contractor 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.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; 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 Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor 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. Contractor 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.

Contractor is hereby informed that work on City property could be hazardous. Contractor 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, Contractor 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.

Contractor 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. CONTRACTOR 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.

Contractor 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 Contractor where needed for use of its employees and their use shall be strictly enforced. Contractor shall not use the City's existing sanitary facilities, unless previously authorized by the City.

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

[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT. PLEASE CONSULT WITH RISK MANAGEMENT.]

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

4.1 Workers' Compensation.

4.1.1 General Requirements. Contractor 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 Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$ _____ [**dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required**] per accident. In the alternative, Contractor 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 Contractor, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Contractor 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. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$ _____ and automobile liability insurance for the term of this Agreement in an amount not less than \$ _____ [**dollar amounts to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required**] 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 Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.
- c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor 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 Contractor'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 Contractor's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Contractor 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, Contractor shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Contractor 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 Contractor beginning work, it shall not waive the Contractor'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.** Contractor 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 Contractor 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 Subcontractors.** Contractor 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.

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES. Contractor 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 Contractor’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.

The Contractor’s obligation to defend and indemnify shall not be excused because of the Contractor’s inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, 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 CONTRACTOR.

6.1 Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor’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 Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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 Contractor Not an Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor 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.** Contractor and any subcontractors 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, Contractor 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.** Contractor represents and warrants to City that Contractor 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. Contractor represents and warrants to City that Contractor 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, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor 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 Contractor under this Agreement. Contractor 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 Contractor thereby.

Contractor 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 Contractor.

Contractor 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, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor 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. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor 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 Contractor 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 Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor'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 Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor 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 Contractor shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall included, 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 Contractor pursuant to this Agreement;
 - 8.6.3** Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or
 - 8.6.4** Charge Contractor 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 Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

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

Contractor 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.*

Contractor 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 Contractor was an employee, agent, appointee, or official of the City in the previous 12 months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor 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.** Contractor 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 _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.9 **Notices.** Any written notice to Contractor 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 14th 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] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between City and Contractor 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>	California Labor Code Section 1720 Information [DELETE IF NOT APPLICABLE]

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

CONTRACTOR

Chris Zapata, City Manager

[NAME, TITLE]

Attest:

Marian Handa, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

1957063.1

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

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 Contractor and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Contractor and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

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

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

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be 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 Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

Attachment C

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2007-018

(3120)

AN ORDINANCE ADDING TITLE 1, ARTICLE 6 OF CHAPTER 6 OF THE SAN LEANDRO MUNICIPAL CODE RELATING TO LIVING WAGE

The City Council of the City of San Leandro does ORDAIN as follows:

Section 1. Purpose.

The City Council of the City of San Leandro hereby finds as follows:

The City of San Leandro awards contracts to private firms and other businesses to provide services to the public and to City government; and

The City of San Leandro has a limited amount of taxpayer resources to expend; and

The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources; and

The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the country, state and federal governments; and

That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

The payment of a minimum level of compensation as required by this chapter benefits these interests.

Section 2. Title 1, Chapter 6 of the San Leandro Municipal Code is hereby added as follows:

Chapter 1-6-600	Living Wage Ordinance	:
Section 1-6-605	Title and Purpose	
Section 1-6-610	Findings	

Section 1-6-615	Definitions
Section 1-6-620	Persons and Entities Subject to the Requirements of this chapter
Section 1-6-625	Living Wage Rate
Section 1-6-630	Waivers
Section 1-6-635	Required Contract Provisions
Section 1 6-640	Exemptions
Section 1-6-645	Retaliation and Discrimination Prohibited
Section 1-6-650	Employee Complaints to the City
Section 1-6-655	Enforcement
Section 1-6-660	Effective Date

Section 3. Title and Purpose – Section 1-6-605 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The purpose of this chapter is to assure that City employees, employees of City service contractors, subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers and businesses for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the “Living Wage Ordinance”. The purpose of this chapter is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 4. Findings – Section 1-6-610 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) The City of San Leandro awards contracts to private firms and other businesses to provide services to the public and to City government; and

(b) The City of San Leandro has a limited amount of taxpayer resources to expend; and

(c) The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

(d) When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general

quality of life within the community and maximizes the productive effect of the City's limited resources; and

(e) The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments; and

(f) That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

(g) The payment of a minimum level of compensation as required by this chapter benefits these interests.

Section 5. Definitions – Section 1-6-615 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

(a) "City" means the City of San Leandro and all City agencies.

(b) "City financial aid recipients" means all persons or entities that receive from the City, direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in the amount of more than \$100,000 within the City's fiscal year (July 1st through June 30th). This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations or ordinances.

(c) "Contractor" means any person or entity that enters into a service contract as hereafter defined with the City in an amount equal to or greater than \$25,000 within the City's fiscal year. (Contractor includes subcontractors whose employees are engaged in City funded services.)

(d) "Employee" means any individual employed by an employer who performs at least 25 percent of the work arising from City financial aid, or a City lease, or who performs work arising from a service contract. No work may be reassigned in order to evade coverage under this chapter.

(e) "Health Benefits" means an employer's monetary contribution toward the cost of health and medical care insurance for covered employees and their dependents. Health benefits may include the following types of insurance: medical health, including mental health, dental and vision care. The hourly cost of providing health benefits shall be credited as compensation along with wages under this chapter. Retirement benefits, accidental death and dismemberment insurance, life insurance, disability insurance and other benefits that do not provide medical or health-related coverage shall not be credited as compensation.

(f) "Nonprofit" shall mean a nonprofit organization described in Section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) of that code, or any nonprofit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

(g) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(h) "Service contract" means a contract given a contractor by the City for \$25,000 or more for the furnishing of services to or for the City, except those contracts where services are incidental to delivery of products, equipment or commodities. Service contracts include, but are not limited to, security guard services, janitorial services, waste management, landscaping, parking attendant services, and towing. "Service contract" does not include: (1) a contract between the City and another governmental entity or public utility; and (2) a contract subject to federal or state laws or regulations that would preclude application of the living wage requirement otherwise applicable pursuant to this chapter.

Section 6. Persons and Entities Subject to the Requirements of this Chapter – Section 1-6-620 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The persons and entities described below shall comply with the minimum compensation standards established by this chapter if they employ more than six employees:

(a) The City of San Leandro, including all its agencies, departments and offices, for all regular and permanent part-time employees.

(b) For-profit service contractors which employ six or more employees and receive contract(s) from the City for \$25,000 or more within the City's fiscal year. Compliance shall be required during the term of the contract for all employees who perform, and while engaged in work arising from the service contract.

(c) Nonprofit service contractors which employ six or more employees and receive contracts from the City of \$100,000 or more within the City's fiscal year. Compliance shall be required during the term of the contract for all employees who perform at least 25 percent of the work arising from the service contract.

(d) Lessees of public property, licensees, concessionaires and franchises which employ six or more employees and have \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term for any employees who spend 25 percent or more of their compensated time on the leased property or engage in work directly related to the license, concession or franchise.

(e) City financial aid recipients which employ six or more employees and receive more than \$100,000 in grants, loans or other cash and/or non-cash assistance within the City's fiscal year. Compliance shall be required for a duration of one year for each

\$100,000 of assistance, up to a maximum duration of five years, following receipt of the aid for all employees who spend 25 percent or more of their compensated time engaged in work directly related to the purposes for which the City provided the aid.

(f) Subcontractors and sub lessees of any of the entities or persons described in subparagraphs (a) through (e) above.

Section 7. Living Wage Rate – Section 1-6-625 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

All persons and entities subject to this chapter shall pay covered employees a wage of no less than the living wage set forth in this chapter:

(a) Living Wage means no less than \$12.40 per hour including wages and health benefits. For health benefits to be counted as a part of the living wage, the benefit must be at least \$1.50 per hour. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

(b) Time-off: Employees shall be entitled to at least twenty-two (22) days off per year for sick leave, vacation, or personal necessity. At least twelve (12) of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten (10) of the required 22 days may be uncompensated days off. Employees who work part-time 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 six (6) months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

(c) Additional Compensation Permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages to its employees.

(d) The initial rates set forth in subsection (a) of this section shall increase annually on July 1st, beginning July 1, 2008, to reflect the 12 month average in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Areas for the preceding year from May through April.

(e) If the prevailing wage for services occupations are posted by the State Department of Industrial Relations (or any successor agency) and exceeds the compensation required by the living wage, then the contractor is required to pay its employees the posted prevailing wage.

(f) The City Council may periodically adjust the living wage rate up or down to reflect average living wage rates in effect in other Alameda County cities.

Section 8. Waivers – Section 1-6-630 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

Following a review and recommendation by the City Manager, the City Council may approve waivers with or without conditions to any of the requirements and regulations set forth in this ordinance, or in any implementing policies, upon a finding that such action is in the best interest of the City.

Section 9. Required Contract Provisions – Section 1-6-635 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

Every City contract, lease, license agreement, concession agreement, franchise agreement or agreement for financial aid with an employer or amendment thereto affecting financial aid or extending the term shall require compliance with the requirements of this chapter. Such contract provisions shall address the employer's duty to promptly provide to the City, documents and information verifying compliance with the requirements of this chapter, and sanctions for noncompliance. Such contract provisions shall also require the employer to give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Chapter. The notification shall be in the form provided by the City in English and Spanish, and translated by the employer to other languages spoken by a significant number of the employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

Section 10. Exemptions – Section 1-6-640 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The requirements of this chapter shall not be applicable to the following employees:

(a) Employees of another government agency, including without limitation, cities, counties, state agencies, joint power authorities, and public utilities.

(b) An employee participating in a temporary job training program approved by the City in which a significant component of the employee's training consists of acquiring specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work attire, punctuality and workplace demeanor).

(c) Any disabled employee who; (1) is covered by a current sub-minimum wage certificate issued to the employee by the U.S. Department of Labor; or (2) would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.

(d) An employee who is in an internship or other job training program for which the employee is also receiving academic credit.

(e) An employee who is under 18 years of age.

(f) A temporary employee of the City of San Leandro who is employed for a limited term to a regular or non-regular position including casual, seasonal and emergency appointments with no guarantee of continued employment beyond the initial hire season.

(g) Volunteers.

(h) Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

(i) Employees of contractors and subcontractors subject to the requirements of Division 2, Part 7, of the California Labor Code, for payment of prevailing wage when prevailing wage requires compensation greater than that required by this chapter.

(j) An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

(k) An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 11. Retaliation and Discrimination Prohibited; Worker Retention – Section 1-6-645 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) It shall be unlawful to retaliate or discriminate against any person on account of having inquired into or having claimed a violation of this chapter.

(b) Each entity which is to replace a prior entity, subject to the requirements of this chapter, and described in Section 6, shall offer employment to the Employees of the prior entity. Such Employees may not be terminated by the new entity during the first 90 days except for just cause. The new entity may operate at lower staffing levels than its predecessor but in such event, shall place its predecessor's Employees on a preferential reinstatement list based on seniority. For purposes of this Section, an entity "replaces" another if it (1) assumes all or part of the lease, contract, subcontract or City aid of a prior employer, and (2) offers employment which Employees of the prior entity can perform. Nothing herein shall be construed to require that supervisory, managerial or confidential Employees retained by the new contractor be kept in a supervisory, managerial or confidential position.

Section 12. Employee Complaints to the City – Section 1-6-650 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

(b) Any complaints received shall be treated as confidential matters to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6254 and 6255.

Section 13. Enforcement – Section 1-6-655 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) A person claiming violation of this chapter may bring an action in the Superior Court of the State of California against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement and compensatory damages.
3. For a willful violation of this chapter, a court may award as a penalty up to treble the amount of monies to be paid as damages.
4. Reasonable attorney's fees and costs.

(b) Notwithstanding any provision of this chapter or any ordinances to the contrary, no criminal penalties shall attach for any violation of this chapter.

(c) No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.

(d) No liability of City. Claims or lawsuits against the City arising under this chapter are not authorized, nor shall the remedies provided in subsection (a) be awarded against the City. The City shall not be liable to any person or entity because of the City's failure to notify an employer of the applicability of this chapter, the City's failure to investigate or enforce violations of this chapter, or based upon another employer's failure to comply with this chapter.

(e) The City may terminate a service contract, financial assistance, or lease or facility agreement and pursue any other legal remedies available to the City, including debarment, for Non-compliance with this chapter.

Section 14. Effective Date – Section 1-6-660 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

This chapter shall apply to every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer entered into or amended on or after September 1, 2007.

Section 15. Administrative Guidelines, Regulations and Procedures

The City Manager, or his/her designee, shall have the authority to implement this ordinance and may promulgate administrative guidelines, regulations and procedures consistent with the purpose and intent of this ordinance.

Section 16. CEQA Determination

The City Council finds pursuant to Title 14 of the California Administrative Code §15601(b)(3) and §15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment. This action is further exempt from the definition of project in §15378(b)(3) in that it concerns general policy and procedure making.

Section 17. Severability

Every section, paragraph, clause and phrase of this Ordinance is hereby declared to be severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

Section 18. Effective Date and Publication.

This ordinance shall take effect on September 1, 2007. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Prola on this 16th day of July, 2007, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Grant, Gregory, Prola, Souza, Starosciak, Stephens;
Mayor Santos (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Marian Handa
Marian Handa, City Clerk

Passed and adopted this 30th day of July, 2007, after publication on July 23, 2007, by the following called vote:

Members of the Council:

AYES: Councilmembers Grant, Gregory, Prola, Souza, Starosciak, Stephens;
Mayor Santos (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Marian Handa
Marian Handa, City Clerk