



City Council

Don Tatzin, Mayor
Brandt Andersson, Vice Mayor
Mike Anderson, Council Member
Mark Mitchell, Council Member
Traci Reilly, Council Member

REQUEST FOR PROPOSALS

FEASIBILITY AND OPTIONS STUDY FOR TRAFFIC OPERATION IMPROVEMENTS ALONG THE OLYMPIC BOULEVARD AND RELIEZ STATION ROAD CORRIDOR

The City of Lafayette invites your proposal to conduct a feasibility and options study for various traffic operation improvements along the Olympic Boulevard and Reliez Station Road corridor in Lafayette, California.

Background

The segments of Olympic Boulevard and Reliez Station Road under study comprise a critical link in the larger traffic corridor connecting southern Lafayette to State Route 24 and I-680. Traffic originating from Burton Valley neighborhoods in southern Lafayette, and parts of the Town of Moraga even further south, uses the corridor that runs north along Glenside Drive, Reliez Station Road, Olympic Boulevard, and Pleasant Hill Road to reach State Route 24 and I-680, the main freeways linking Lafayette to regional destinations. The pattern of work and school commute lends clear traffic peaking characteristics to the corridor. With the exception of Pleasant Hill Road and Olympic Boulevard, the corridor consists of two-lane, undivided minor arterials, with a posted speed limit of 25 MPH, though prevailing speeds may be higher. Pleasant Hill Road is a four-lane divided arterial with a 40 MPH posted limit. Olympic Boulevard has a 35 MPH posted speed limit west of Pleasant Hill Road and a 45 MPH speed limit east of Pleasant Hill Road. Average daily traffic along this corridor is in the order of 12,000 - 15,000 vehicles per day. Land use surrounding the entire corridor is almost entirely single-family residential. Traffic control consists mainly of stop controls at major intersections along the corridor. The Lafayette-Moraga Trail is a regional pedestrian and bicycle facility that intersects Reliez Station Road at Olympic Boulevard, where it connects to other lower-class facilities.

For the purpose of this study, the segment of interest begins at the intersection of Reliez Station Road (RSR) and Glenside Drive (North), extending northerly along RSR to Olympic Boulevard, then along said road to just beyond its intersection with Pleasant Hill Road. (See attached Project Limits Map.) Due to a combination of reasons including but not limited to topography, sight distance constraints, roadway geometry, and traffic capacity, Lafayette has identified needs for traffic operation improvements within the corridor, particularly at some key intersections. The purpose of this study is to examine existing conditions to understand the concerns that form the nexus of those needs, then analyze solution options that may address them, and finally recommend a program of feasible actions for consideration by the City.

Problem Statements

Issue 1- Peak-Hour Congestion at Pleasant Hill Road (PHR)/Olympic Boulevard Intersection

This is currently an all-way-stop-controlled intersection that experiences significant congestion in the morning peak hour. During that time, the peak traffic direction is eastbound Olympic Boulevard to northbound Pleasant Hill Road. The stop control operation has already been proven to have insufficient capacity, resulting in long overall delays and excessive queuing on the eastbound approach, at times extending back into and beyond the adjacent intersection at Olympic Boulevard and Reliez Station Road. While signal warrants have been met, Lafayette has so far declined to signalize this intersection due to its secondary impacts. Instead, the City wishes to explore the feasibility of alternatives, such as a modern roundabout, that would provide efficient traffic operation during all hours of the day, safely accommodate non-motorized modes of travel, and be consistent with the environmental character of the area. Contra Costa County is currently conducting a planning study to connect the Iron Horse Trail to the Lafayette-Moraga Trail. It would be desirable to integrate relevant issues and outcome of that study into this project.

Issue 2- Peak-Hour Congestion and Related Issues at Olympic Boulevard/Reliez Station Road (RSR) and RSR/Beechwood Drive/Andreasen Drive Complex

The Olympic/RSR intersection also currently operates with all-way-stop controls. Conditions at PHR/Olympic could have secondary impacts on the operation of the subject intersection. As stated previously, eastbound queues at PHR/Olympic during the morning peak at times extend back to and beyond this intersection, impacting the northbound right turn movement. Anecdotally, this causes some traffic to circumvent the delay by proceeding through northbound to use a local residential road as a bypass. Additionally, pedestrians crossing the northbound approach report that vehicles often fail to yield.

There is an adjacent intersection at RSR/Beechwood Drive/Andreasen Drive located about 150 feet to the south, which operates with stop controls on the staggered side street approaches. Due to the proximity of the two intersections, the aforementioned impacts at Olympic/RSR in turn affects the operation of this intersection. Specifically, the typical left turn out from either side street depends on the availability of safe gaps in RSR traffic, in both directions. During the morning peak, queues for northbound RSR at Olympic often extend past the Beechwood/Andreasen intersection. While "Keep Clear" markings are in place, users still report difficulty turning out from side streets. Reportedly this is exacerbated by insufficient gaps in southbound traffic originating from the westbound left turn movement at Olympic/RSR.

For any solution options to be proposed at PHR/Olympic, the Consultant should identify secondary impacts on traffic operation, including impacts on ped/bike operations, at the two adjacent intersections of Olympic/RSR and RSR/Beechwood. Independent of those impacts, Lafayette is interested in exploring solution options that could substantively improve upon the observed current conditions, including creative ideas for traffic control that might integrate the two proximate intersections to operate as a single intersection complex while also improving the connection to the Lafayette-Moraga Trail for pedestrians and bicyclists.

Issue 3- Difficulty of Side Street Turning Movements and Pedestrian Crossing at Reliez Station Road/Las Trampas Road/Richelle Court

Further south on the study corridor, Reliez Station Road meets Las Trampas Road/Richelle Court at a conventional intersection, with stop signs controlling traffic on the side street approaches. The

road topography around this intersection is challenging, with horizontal curves on a steep grade. The high road embankment also limits sight distance to/from the intersection for certain movements. Area residents also complain about inappropriate speeds of mainline traffic. These factors combine to make it difficult for side street traffic to detect safe gaps in the through traffic to turn onto RSR. Pedestrians using the lone crosswalk across the south leg also report low obedience by motorists to yield.

Over the years, Lafayette has considered the signalization of the intersection. There has been indecision on this option, in large part due to safety concerns related to the stoppage of large trucks and buses at the intersection, given the steep grade of the southbound approach on RSR. Other reservations include potential, additional delay for northbound traffic and resulting queuing impacts on the adjacent intersection to the south at Glenside Drive, and the incompatibility of a signal with the semi-rural character of the area. Recently Lafayette installed an electronic warning sign system that is activated by pedestrian push button and inductive loops. The system, when activated, illuminates advance extinguishable message signs, augmented by a flashing beacon, to warn approaching traffic on RSR to the presence of pedestrians and cross traffic. No formal after-study has been conducted to gauge the effectiveness of this system, but anecdotal reports are mixed. Lafayette is now interested in gaining a factual understanding of the consequence of signalizing this location, as well as exploring additional innovative solution options that would substantively improve the safety of side street turning movements and pedestrian crossing. Lastly, solution options at the other study intersections to the north should be examined for possible secondary impacts extending to this location.

Work Program

For each of the project issues, the Consultant is responsible to-

1. Collect and analyze data that may help to describe/quantify the relevant issues, such as roadway geometry, traffic counts, level-of-service analysis, vehicle speeds, and sight distance measurement. The City can make available high resolution aerial photos of the project area, as-built drawings of most recent road improvements made along the corridor, and recent peak-hour turning volume counts at PHR/Olympic, Olympic/RSR, and RSR/Las Trampas Road/Richelle Court. (Traffic volumes are available on line at the City of Lafayette website. From the home page, click on "Getting Around".) The Consultant should assume the need to collect updated volume and speed data over three typical weekdays to be used in the study.
2. Make field observations to understand current operations, existing condition opportunities and constraints, and their relationship to the issue to be solved.
3. Attend one public meeting with interested members of the public for the purpose of fact-finding and to become familiar with public perceptions of relevant project issues and goals.
4. Synthesize solution concepts. In seeking the services of the Consultant, Lafayette expects that the Consultant would have extensive experience and exceptional skills to propose innovative ideas that go beyond traditional or "cookie-cutter" traffic engineering. Initial concept ideas would be presented and discussed with Lafayette staff to identify those with potential for further analysis and refinement.

5. Evaluate the feasibility and impacts of solution options that hold promise. Feasibility should be described in terms of how effectively the option responds to the stated issue, how traffic operations have been improved overall, what secondary impacts there might be, any constraints on implementation, and an order-of-magnitude cost opinion.
6. Present a program of improvements for the corridor to the interested public and the Lafayette Circulation Commission. Consultant is then expected to refine the recommendations to reasonably respond to any feedback received.

Deliverables

At minimum, the Consultant is expected to deliver the following in response to the above Work Program-

1. A technical memorandum summarizing observations, analyses, and findings of existing conditions, including verification of the various issues reported by the City in the Problem Statements. A meeting may be necessary to present and discuss a working draft with Lafayette staff.
2. A technical memorandum presenting solution concepts. If practical, and to the extent that it helps to illustrate the points, concepts should be presented graphically, using aerial photos and as-built drawings as base maps. A meeting may be necessary to present and discuss a working draft with Lafayette staff.
3. A "Review Draft" of a technical report incorporating the two technical memoranda above, but solution concepts would be limited to only those selected for detailed analysis and refinement. This memorandum should present the feasibility and impact analyses described in the Work Program, punctuated by a program of recommendations by the Consultant to address the project issues of interest. At least one meeting and multiple phone conferences with Lafayette staff may be necessary to coordinate the preparation of working and published drafts of this report, which the Consultant should expect to present at a neighborhood open house and to the Lafayette Circulation Commission at a public meeting.
4. A "Final Draft" of the above technical report, incorporating feedback from the public review, including refinement of analyses and recommendations previously presented.
5. Attendance of at least two meetings with interested public in an open-house format and one Circulation Commission public meeting.

Schedule

The Consultant must include a milestone schedule in its proposal, allowing for the Final Draft of the technical report to be completed no later than November 26, 2014. Since school-related activities may be responsible for a significant share of prevailing traffic, the schedule should note that traffic data collection should occur substantially prior to May 15 in order to capture typical conditions.

Proposal Requirements

The successful proposal will do the following:

1. Identify the project manager who will oversee the day-to-day activity of the project. Identify the lead staff, engineers, designers, including subconsultants, who will be personally performing the required work scope of the project. Lafayette expects the make-up of the project team to remain unchanged throughout the project.
2. Include a very brief synopsis of the experience of the project manager and key project staff, focusing on experience that is directly relevant to the work program.
3. Provide a milestone schedule, including a chronological listing of critical tasks, leading up to the required completion date of the project.
4. Include a labor allocation chart showing a breakdown of time by each project personnel dedicated to each task, element, or milestone of the work program.
5. Include a project fee schedule under separate cover showing the cost breakdown for each element or milestone of the work program. The breakdown should show the charge rates applicable to the labor hours in Item 4 above, as well as subcontracts and direct expenses.
6. Be no more than 20 printed pages.
7. Submit four (4) bound and one (1) unbound copies of the proposal by 5 p.m. March 25, 2014, to the address below. Proposals arriving after the due date/time will not be considered regardless of postmarks. Emails and faxes are not accepted.

City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, California 94549
Attention: Leah Greenblat, Transportation Planner

Selection

Lafayette intends to select a consultant by April 11, 2014, and work shall commence immediately after execution of a consultant services agreement. Prospective consultants should review the attached Lafayette standard "Professional Services Agreement," whose terms, other than the fee, are negotiable on a *very limited* basis.

At this time Lafayette does not intend to conduct interviews prior to selecting a consultant. All questions regarding the project or this RFP should be directed to-

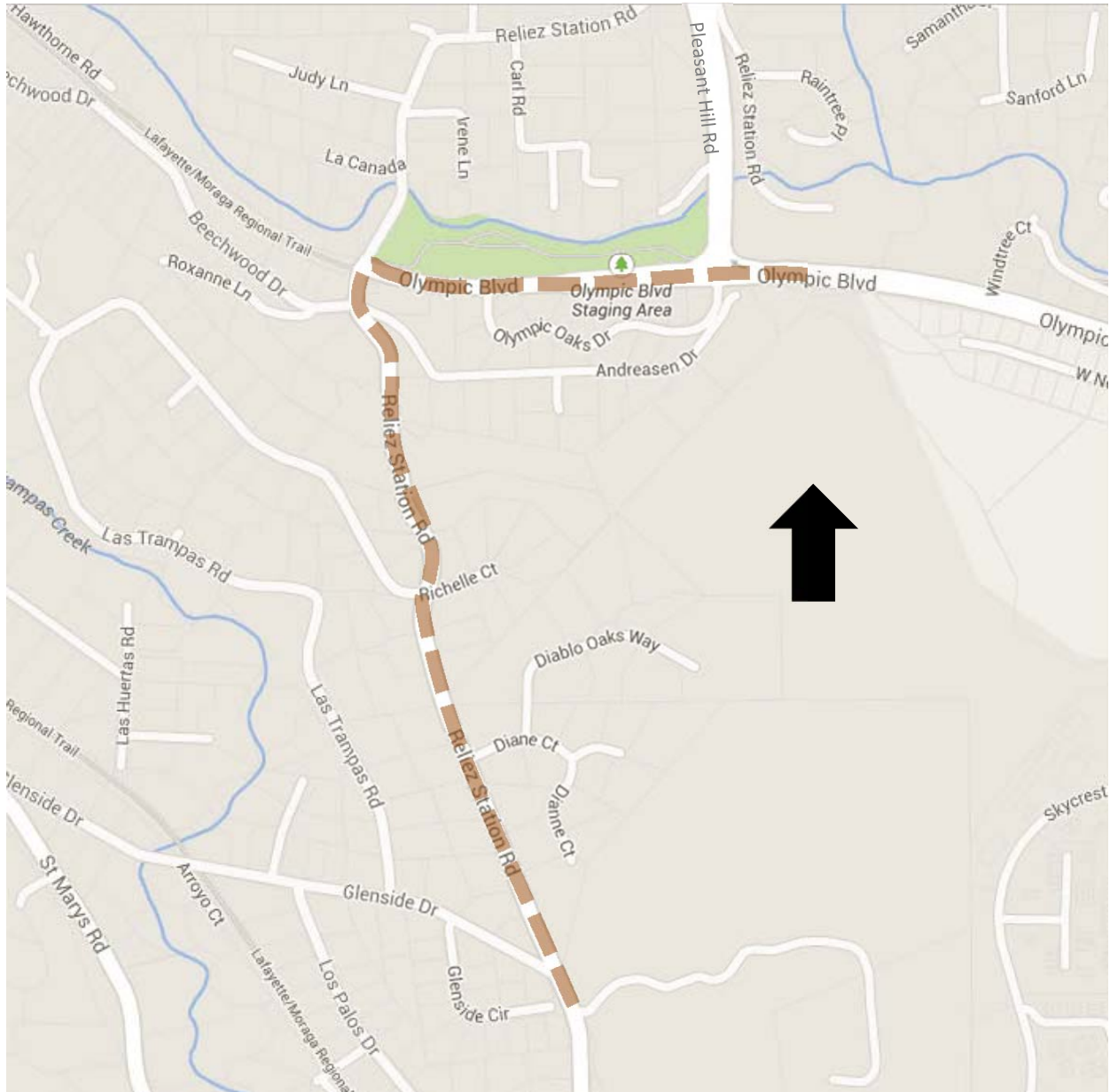
Leah Greenblat, 925.299.3209, lgreenblat@ci.lafayette.ca.us.

Attachments

- Project Limits Map
- Lafayette Standard Professional Services Agreement

**FEASIBILITY AND OPTIONS STUDY FOR TRAFFIC OPERATION IMPROVEMENTS ALONG
THE OLYMPIC BOULEVARD AND RELIEZ STATION ROAD CORRIDOR**

PROJECT LIMITS MAP



**CITY OF LAFAYETTE
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this ___ day of _____, 201__, by and between the City of Lafayette, a municipal organization organized under the laws of the State of California ("City") and _____, a California corporation ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of _____ services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing _____ services to public clients, is licensed in the State of California, and is familiar with the project goals and intents of City.

2.2 Project.

City desires to engage Consultant to perform special services necessary to complete _____, ("Project").

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. This agreement shall terminate upon completion of Services by Consultant and final acceptance by City of the Project, or _____, whichever is sooner, unless earlier terminated as provided herein. The parties may renew or extend this Agreement upon mutual consent by written amendment. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Consultant. The Services shall be performed by Consultant or personnel under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent Consultant basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant, once having commenced the Services, shall perform continuously to complete the Services expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to all applicable laws and codes governing the work and approval of City.

3.2.4 City's Representative. The City hereby designates Tony Coe, or his designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his designee.

3.2.5 Consultant's Representative. Consultant hereby designates _____, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement.

3.2.6 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers,

employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.7 Insurance.

3.2.7.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has satisfied all insurance requirements under this section.

3.2.7.2 Types of Required Coverages. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

- (a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "Occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

- (b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) Professional Liability: Consultant shall maintain insurance to cover damages that may be the result of errors, omissions, or negligent acts of Consultant, its employees and agents. Such insurance shall be in the amount of no less than \$500,000 and a deductible provision of not more than \$50,000.

3.2.8.3 Endorsements. The policy or policies of insurance required by Section 3.2.7.2 (a) Commercial General Liability and (b) Automobile Liability Insurance shall be endorsed to

provide the following:

- (a) **Additional Insured:** The indemnified parties shall be additional insured with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.
- (b) **Primary Insurance and Non-Contributing Insurance:** This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.
- (c) **Severability:** In the event of one insured, whether named or additional, incurs liability to any other of the insured, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.
- (d) **Cancellation:** In the event of cancellation of any coverage, Consultant shall notify City in writing and immediately cure such breach. Consultant shall not perform any Services during any lapse in coverage. In the event Consultant fails to cure the breach within five (5) days of cancellation, City may terminate this Agreement with written notice to Consultant.
- (e) **Duties:** Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.
- (f) **Applicability:** That the coverage provided therein shall apply to the obligations assumed by the Consultant under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

3.2.7.4 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.7.5 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.7.6 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

3.2.7.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.7.8 Insurance for Subconsultants. All Subconsultants shall be included as additional insured under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the Subconsultant's policies.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed _____ (\$ _____) without written approval of the City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. At the conclusion of the Project, Consultant shall submit to City an itemized statement which indicates work completed by Consultant. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Attn: _____

City:

City of Lafayette
3675 Mt. Diablo Blvd. # 210
Lafayette, CA 94549
Attn: Tony Coe

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing

furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Consultant, its officials, officers, employees, agents, subconsultants and subconsultants arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8 to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves the right to employ other Consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid,

illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Consultants' State License Board Certification. Consultants are required by law to be licensed and regulated by the Consultants' State License Board which has jurisdiction to investigate complaints against Consultants if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a Consultant may be referred to the Registrar, Consultants' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF LAFAYETTE

(CONSULTANT FIRM)

By: _____
Steven Falk, City Manager

By: _____

Its: _____

Date: _____

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

Consultant shall perform services that generally include but are not limited to:

- 1) (Generally describe work to be done);
- 2) ;
- 3) .

Consultant's proposal is attached hereto and hereby incorporated.

EXHIBIT "B"
COMPENSATION

Consultant shall receive the lump sum amount of _____ for all Services provided for the Project, as itemized in Consultant's Proposal, attached hereto and hereby incorporated.