

# REQUEST FOR DESIGN PROPOSALS

## PLEASANT HILL ROAD / OLYMPIC BOULEVARD ROUNDABOUT

The City of Lafayette invites your proposal to prepare construction documents for intersection improvements to create a roundabout at the intersection of Pleasant Hill Road/Olympic Boulevard.

### Background

The project is funded by Measure J as administered by the Contra Costa Transportation Authority. Lafayette recently conducted a feasibility study for traffic improvements along the Olympic Boulevard and Reliez Station Road corridors, and the City Council has adopted the following program of capital improvements, estimated to be in the order of \$1.4 million in construction costs, to be constructed in the summer of 2016. The feasibility study reports may be viewed at [www.ci.lafayette.ca.us/OlympicRSR](http://www.ci.lafayette.ca.us/OlympicRSR).

1. Retrofit the existing intersection of Pleasant Hill Road/Olympic Boulevard to create a roundabout.
2. Install traffic signals at the intersections of Reliez Station Road/Las Trampas Road and Reliez Station Road/Olympic Boulevard.
3. Install signage along the corridors to raise speed awareness and reinforce truck route regulations.

This RFP is for Item 1 above only. The City does not plan to issue an RFP for the other items of work at this time.

### Work Program

The Consultant is responsible for preparing plans, specifications, and estimates for all work required to construct the roundabout, including ancillary work not specifically mentioned but deemed necessary to complete a safe and functional project that meets the highest standard of state-of-the-art practice. The Consultant is expected to coordinate the work by consultants and subconsultants of other disciplines, such as surveying, lighting and landscape design, construction staging and traffic control to deliver an integrated set of documents.

Separately, Contra Costa County is preparing a bike corridor plan for Olympic Boulevard to connect the Iron Horse Trail (in Walnut Creek) to the Lafayette-Moraga Trail (in Lafayette). The consultant therefore must ensure that Lafayette's improvements are properly coordinated with concepts contemplated in the bike corridor plan to the extent practicable.

The successful proposal should address the following tasks, generally in chronological order: Implicit within each task is the necessary coordination amongst the consultant team, city staff, utility agencies, and other entities as required to complete the design contract.

### Conceptual Layout Phase

Drawings and products of this phase will be used for a public design review of the proposed roundabout. While they are not expected to include engineering design details, there must be sufficient information to identify obvious issues and conflicts that must be resolved during detail design, such as conflicts in right-of-way, grades, utility facilities, specimen trees, etc.

1. The feasibility study commissioned by Lafayette indicates that a one-lane roundabout should be sufficient to serve existing and expected traffic at the project intersection. Conduct a peer review of said analyses to confirm feasible traffic operation of a one-lane roundabout concept for the project intersection. City will provide background documents and traffic data produced in the feasibility study.
2. Prepare working base maps showing existing conditions typically seen on road improvement plans, including right-of-way and utilities.
3. Develop horizontal layout for all major features of proposed roundabout, street signs and markings, and accommodation of ped/bike travel. Design strategies for enhancing the safe operation of the roundabout should be shown in general concept. Consultant should explore the applicability of state-of-the-art enhancement measures such as illuminated bollards, transverse marking on approaches, strategic use of curbs and islands to induce proper driving behavior.
4. Generally describe expected street grades on the approaches to the roundabout and various travel and turning paths through and around the facility.
5. Include general concepts from specialty design disciplines, such as landscaping and potential accommodation of public art within the center circle.
6. During the progress of this phase, attend one or more internal design working sessions with city staff to review working draft of all drawings and documents. The Consultant should be prepared to perform analysis and research of design issues arising from comments or questions received to refine the design concepts. The final product of this phase is a set of "public review draft" plans, including special exhibits that may be necessary to convey the design intent, such as showing paths of travel for large trucks to demonstrate adequate accommodation.
7. City staff will present the "public review draft" to interested public and city review boards. The consultant is expected to attend up to two of these meetings.

#### 65% Submittal Phase

Work beginning with this phase is devoted to fully developing the approved concept, addressing construction details, and properly coordinating amongst the various design disciplines (civil, landscape, electrical, etc.) Measure J funding requires that the project be subject to peer review by a committee comprised of public works officials from the Contra Costa County City/County Engineers Advisory Committee (CCEAC), hosted by CCTA. The first peer review milestone will occur at the 65% submittal.

8. Based on the approved layout and alignments, develop necessary and appropriate design details, notes, and annotations for the construction plans. This submittal should include all plan sheets that will be expected to be included in the final plans.
9. Submit a bid schedule showing all individual pay items of work, with estimated prices and quantities based on a take-off from the plans. Each pay items shall reference a section in the project specifications as specified below.
10. Submit draft specifications for the project. The Consultant shall follow sample specifications to be provided by the City, and reference the City's Standard Specifications to be consistent with

Lafayette's typical practices. The Consultant shall become familiar with Lafayette's Standard Specifications and how they are used, so as to avoid creating duplication and conflict in the project documents. Each specification section shall reference the pay item(s) that it covers, if any.

11. Attend one internal design review meeting staff to resolve any remaining PS&E issues. Attend peer review meeting hosted by CCTA.

#### 90% Submittal Phase

12. Based on the outcome of the previous review, prepare "substantially complete" plans for review by city staff and the second peer review by CCEAC. The Consultant is not expected to attend this review. The plans in this phase shall contain all necessary details to convey the whole intent of the design with necessary dimensions and grades, stationing and offsets, sections and profiles, and construction details. Specifications shall contain all necessary sections arranged in appropriate format, covering all pay items. Estimates shall reflect actual work and quantities shown on the plans.
13. This submittal shall include a construction staging and traffic handling plan to generally convey the sequence of construction of the roundabout, and how prevailing traffic may be handled and managed through and around the work zone. Graphic and annotations for each construction stage should clearly convey the work to be done, how new work conforms to adjacent grades and facilities, whether they are existing, interim, or final conditions. Work zone signage, including any lane closures and detours, shall be clearly described. Use of standard plans and details are encouraged, but they shall be customized to fit the project as required.

#### Final Construction Documents Submittal

14. Based on review comments, prepare final draft improvement plans, specifications, and engineering estimates (99% submittal) for backchecking of any minor remaining comments.
15. Prepare one set of final reproducible construction documents for bidding.

Drawings should be in engineering scale, English units, of sufficient scale to be clear and legible. Final plans should be in 22" x 34" sheets so that they can be easily reproduced at half scale. Specifications shall be prepared using Microsoft Word. Estimates shall be in Excel spreadsheets. The final submittal shall include all documents in electronic form, including CAD drawing files.

#### **Schedule**

The Consultant should recognize that the project schedule is aggressive. The successful consultant will deliver the required submittals on time. Conceptual layout plans shall be submitted no later than October 16, 2015, with final plans and specifications to be submitted no later than March 23, 2016. The City's target bid advertisement date is April 2, 2016. The proposal should include a detail schedule that will be consistent with this timeline, accounting for the various work elements and review milestones. The schedule represents the consultant team's *no-excuses* commitment to the schedule and will become a provision of the service contract. The Consultant's compensation is contingent on his/her ability to deliver the project according to schedule.

## 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 designer(s), including subconsultant designer(s), who will personally perform the required engineering analysis and design for the project. The City expects the make-up of the project team remain unchanged throughout the project and to be efficient and organizationally streamlined, without unnecessary administrative layers that contribute to costs.
2. Include a *very brief* synopsis of the experience of the project manager and designer(s), focusing on experience related to roundabout design, especially where an existing "built-out" setting is retrofitted to accommodate the new facilities.
3. Provide a listing of drawings that you expect to be required to produce a constructible set of documents that meet the project requirements stated previously.
4. Provide a schedule and clearly explain how it will be followed.
5. Include a labor allocation chart to show a breakdown of personnel time dedicated to each element of the work program.
6. Include a project fee schedule *under separate cover* to show the cost breakdown for each element and/or milestone of the work program.
7. Be no more than ten pages, printed on one side. In addition, the proposal may include up to three plan sheets as work samples on similar projects in the last three years.

## Submittal of Proposal

A complete proposal must be delivered to the City by Thursday July 9, 5 p.m. Postmarks are not acceptable. Proposals shall be delivered to:

City of Lafayette  
3675 Mt. Diablo Boulevard, Suite 210  
Lafayette, CA 94549  
Attention: Tony Coe, City Engineer

The City intends to select a consultant within two weeks of receipt of proposals, and work shall commence immediately after execution of a consultant services agreement. An agreement template has been provided so that the Consultant may understand its terms and provisions, which are generally not negotiable. At this time the City does not intend to conduct interviews prior to selecting a consultant. Please direct questions regarding the project or this request for proposal to Tony Coe, 925.299-3203. Faxes are accepted at 925.284.3169. Emails can be directed to [tcoe@ci.lafayette.ca.us](mailto:tcoe@ci.lafayette.ca.us).

## Attachment

Design Services Agreement Template

**CITY OF LAFAYETTE  
CONSULTANT DESIGN SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into as \_\_\_\_\_, 20\_\_\_\_ by and between the City of Lafayette, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 3675 Mt Diablo Blvd #210, Lafayette, CA 94549 (“City”), and [\*\*\*INSERT NAME\*\*\*], a [\*\*\*INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY\*\*\*] with its principal place of business at [\*\*\*INSERT ADDRESS\*\*\*] (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 City.** City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Consultant.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering and design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Engineer designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice in the State of California.

**2.3 Project.** City desires to engage Consultant to render such services for the **Pleasant Hill Road/Olympic Boulevard Intersection Improvements** (“Project”) as set forth in this Agreement.

**3. TERMS**

**3.1 Employment of Consultant.**

**3.1.1 Scope of Services.** Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering, design, and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as “Services”). The Services are more particularly described throughout this Agreement, including Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

**3.1.2 Term.** The term of this Agreement shall be from [INSERT DATE] to [INSERT DATE], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### 3.2 Project Engineer; Key Personnel.

3.2.1 Project Engineer. Consultant shall name a specific individual to act as Project Engineer, subject to the approval of City. Consultant hereby designates **[INSERT NAME OF INDIVIDUAL]** (License No. **[INSERT NUMBER]**) to act as the Project Engineer for the Project. The Project Engineer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Engineer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Engineer shall be of at least equal competence as the prior Project Engineer. In the event that City and Consultant cannot agree as to the substitution of a new Project Engineer, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Engineer, Consultant has represented to the City that certain additional key personnel, engineers, and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers, or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers, or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers, or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key additional personnel, engineers, and consultants for performance of this Agreement are as follows: **[INSERT NAMES, AND TITLES OF KEY PERSONNEL, AND LICENSE NUMBERS, IF APPLICABLE]**.

### 3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's subconsultants and experts. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

### **3.4 Standard of Care.**

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

### **3.5 Laws and Regulations.**

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care

and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, 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.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

### **3.6 Independent Contractor.**

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. 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.



### **3.7 Schedule of Services.**

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff and consultants in the performance of the Services, and shall be available to City's staff and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant has prepared an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Said schedule is attached hereto as Exhibit D and herein incorporated by reference. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following shall be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

### **3.8 Additional Consultant Services.**

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above.

### **3.9 City Responsibilities.**

3.9.1 City Responsibilities to furnish data and documents shall be limited to those specifically referenced in the Consultant's proposal attached hereto and incorporated herein by reference.

3.9.2 City's Representative. The City hereby designates the City Manager, or his or her 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. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

### **3.10 Compensation.**

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **[INSERT WRITTEN AMOUNT]** Dollars (**[\$[INSERT NUMERICAL AMOUNT]**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement. Payment for additional services shall require an amendment of this Agreement to be executed by both parties.

3.10.2 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the

Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.3 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.4 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Consultant's reasonable control.

3.10.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements.

### **3.11 Notice to Proceed.**

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

### **3.12 Termination, Suspension and Abandonment.**

3.12.1 Grounds for Termination; Consultant’s Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City’s Suspension of Work. If Consultant’s Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant’s Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. 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.

### **3.13 Ownership and Use of Documents; Confidentiality.**

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings plans, preliminary sketches, presentation drawings, computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

### **3.14 Indemnification.**

3.14.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, 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 of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees 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.

3.14.2 Additional Indemnity Obligations. To the fullest extent permitted by law, Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.14.1 that may be brought or instituted against City, or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City, or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. 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 not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

**3.15 Insurance.** 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 secured all insurance required under this section.

3.15.1 Types of Insurance Required. 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

3.15.2 Additional Insured. The City of Lafayette, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional

insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

#### 3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

#### 3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

#### 3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage



specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

### 3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

|                              | <u>Combined Single Limit</u>  |
|------------------------------|---|
| Commercial General Liability | \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage |
| Automobile Liability         | \$1,000,000 per occurrence for bodily injury and property damage  |
| Employer's Liability         | \$1,000,000 per occurrence  |
| Professional Liability       | \$1,000,000 per claim and aggregate (errors and omissions)  |

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

### 3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

### 3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

#### 3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the business of insurance 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.

#### 3.15.11 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

#### 3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

#### **3.16 Records.**

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

#### **3.17 [Reserved].**

#### **3.18 Limitation of Agreement.**

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for consultant services between City and the consultant chosen therefor by City.

#### **3.19 Mediation.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

#### **3.20 Successors and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

#### **3.21 [Reserved].**

**3.22 No Third Party Rights.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

**3.23 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Contra Costa County.

**3.24 Exhibits and Recitals.**

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

**3.25 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

**3.26 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

**3.27 Safety.**

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

**3.28 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:

CITY:

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

CONSULTANT:

\*\*\*INSERT NAME, ADDRESS & CONTACT PERSON\*\*\*

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.

### **3.29 Time of Essence.**

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

### **3.30 City's Right to Employ Other Consultants.**

City reserves right to employ other consultants in connection with this Project or other projects.

### **3.31 Prohibited Interests.**

3.31.1 Solicitation. 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.

3.31.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

### **3.32 Equal Opportunity Employment.**

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

### **3.33 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.

### **3.34 Subcontracting.**

As specified in this Agreement, Consultant shall not subcontract any portion of the Services 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 each and every provision of this Agreement.

**3.35 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

**3.36 Entire Agreement.**

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any persons which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF LAFAYETTE

[INSERT NAME OF CONSULTANT]

By: \_\_\_\_\_

By: \_\_\_\_\_

[INSERT NAME]  
[INSERT TITLE]

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

**EXHIBIT "A"**  
**CONSULTANT'S SCOPE OF SERVICES**

**1. GENERAL REQUIREMENTS.**

**1.1 Basic Services.** Consultant agrees to perform all the necessary professional services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

**1.2 Communication with City.** Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

**2. PROJECT WORK.**

The scope of work on this Project is described in Consultant's proposal, which is attached hereto as Exhibit "D" and incorporated herein by this reference.

**EXHIBIT "B"**  
**FEE AND PHASING/FUNDING SCHEDULES**

**1. FEE SCHEDULE.**

Consultant's fee budgets for the various phases and milestones are set forth in Consultant's proposal, which is attached hereto as Exhibit "D" and incorporated herein by this reference.

**2. PHASING/FUNDING SCHEDULE.**

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

|                       |                     |                            |
|-----------------------|---------------------|----------------------------|
| Conceptual Layout:    | Thirty-five percent | (35%)                      |
| 65% Design Submittal: | Sixty-five percent  | (65%)                      |
| 90% Design Submittal: | Ninety percent      | (90%)                      |
| Final Submittal       | :                   | One hundred percent (100%) |



## **EXHIBIT "C"**

### **COMPENSATION RATES AND REIMBURSABLE EXPENSES**

#### **1. HOURLY COMPENSATION RATES.**

Consultant's fee schedule is set forth in Consultant's proposal, which is attached hereto as Exhibit "D" and incorporated herein by this reference.

#### **2. REIMBURSABLE EXPENSES.**

Allowances for reimbursable expenses as described in Consultant's proposal to provide services to this Project is hereto attached and herein incorporated by reference.

#### **3. ADDITIONAL SERVICES.**

Additional Services shall be computed at the actual hourly rates listed in Fee Schedule above.

**EXHIBIT "D"**

**CONSULTANT'S PROPOSAL**

**[Consultant's Proposal is Attached Behind This Page]**