



REQUEST FOR PROPOSAL

RFP #56108

CITY OF SAN LEANDRO

2017 STARTUP-IN-RESIDENCE (STiR) PROGRAM

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INTRODUCTION

The CITY OF SAN LEANDRO (hereinafter “the City”) is partnering with the City and County of San Francisco to sponsor the Startup in Residence (“STIR”) Program that connects City departments with innovative technology startups for a 16-week voluntary in-residence period to develop technology-based solutions that address challenges facing City government. The program builds on a successful 2016 STIR program collaboration among the cities of San Leandro, San Francisco, Oakland, and West Sacramento that produced 14 exemplary technology product innovations designed to meet local government needs.

Historically, and particularly in the San Francisco Bay Area Region, technology has been a driver of increased productivity and innovation gains in many sectors – with government being a notable exception. The barriers to government adopting new technology are plentiful. Most significant is a shortage of public sector-specific solutions and more fluid pathways for governments to work with smaller technology companies. This has typically left government of all sizes with two primary options: (1) utilize technology intended for large, private enterprises, or (2) develop a collection of customized solutions that require significant investment of time and resources.

The STIR Program intends to bridge this gap by connecting public-sector agencies directly with technology entrepreneurs to seed product development that is specifically tailored to address public sector needs. With thousands of policy challenges, government has the potential to support a large ecosystem of best-of-breed technology solutions helping catalyze public sector innovation and technology.

1.1. Definitions

For the purpose of this RFP references to “Applicant” in all instances shall mean the specific person or entity responding to this RFP; references to “Apply” in all instances shall mean the applicants’ response to this Request.

1.2. Clarification and Interpretation of RFP

The words “must” or “will” or “shall” in this RFP indicate mandatory requirements. Taking exception to any mandatory requirement may be grounds for rejection of the proposal.

The City wants to avoid any misunderstanding where it is assumed that a feature is included in the proposal and turns out to be an optional, extra cost feature. As such, any question answered with an indication of compliance will be considered included at no additional cost. Any service that is referred to in the body of this response (does not pertain to attachments and brochures) will be considered included in the basic offer.

1.3. Purpose

The purpose of this RFP is to provide minimum requirements, solicit applications and gain adequate information from which the City may evaluate the Applicant’s proposal as they compare to other applicants and as they pertain to the needs of the City’s organization as defined in this document.

1.4. RFP Number

The City has assigned the following RFP identification number that must be referenced in all communications regarding this RFP #56108

1.5. Contract Duration and Project Timeframe

The contract will be executed following Applicant selection by the appropriate City departmental staff. This is expected to occur in May 2017. The Project will commence thereafter and is expected to be completed within 16 weeks.

1.6. Projected Installation Date

The selected Applicant will develop a project plan and timeline with the City upon award. The selected Applicant will make best efforts to meet the Project deadline and shall be completed within 16 weeks’ time.

1.7. RFP Coordinator

The following RFP Coordinator shall be the primary contact for this RFP and all correspondence or questions regarding this RFP should be directed in writing to his attention at:

RFP Coordinator:	Tony Batalla
Address:	835 E 14 th St, San Leandro, CA 94577
Phone:	510-577-3385
Email:	tbatalla@sanleandro.org

1.8. Communications Regarding the RFP

After release of this RFP, all Applicant communications concerning this procurement must be directed to the RFP Coordinator. Unauthorized contact regarding the RFP with other employees of the procuring City may result in disqualification. The official site for the Startup-in-Residence Program (STiR) is www.startupinresidence.org. This RFP will be directly linked from that website as well as posted directly to www.sanleandro.org.

All communications must be submitted in writing (email is acceptable) to the RFP Coordinator. Any oral communications shall not be binding on the City or considered official. Questions, requests and other types of written communication must cite the subject RFP number.

The RFP Coordinator shall respond in writing to all written communications. This response may constitute an amendment to the RFP, in which case it will be shared with all Applicants. Only written responses to written communications shall be considered binding and official by the City. At its sole discretion, the City reserves the right to determine appropriate and adequate responses to written questions, comments and requests for clarification.

Any data or factual information provided by the City shall be deemed as informational purposes only.

1.9. RFP Schedule of Events

The following RFP Schedule of Events represents the City’s best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:30 a.m. and 5:00 p.m., Pacific Standard Time. The City reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the RFP Schedule of Events shall be provided to all Applicants in the form of an addendum.

Activity	Date
STIR RFP Released	3/9/2017
Proposal Due Date (<u>no later than 5:00PM PST</u>)	4/3/17; 5pm PST
Pre-Selection Oral Interviews	4/2017 (month of)
Startups Selected and Announced	5/2017 (month of)
STIR Program Officially Begins	5/2017 (exact date TBD)

PROJECT DESCRIPTION

1.10. General Overview

The City is soliciting proposals from start-ups for technology-based solutions to address specific “Civic Challenge Areas” facing several City agencies (see Attachment A). “Technology based solutions” means on-premise or cloud-based software, information technology hardware, and/or any combination thereof. The highest scoring responsive proposals for each of the Challenge Areas will be selected to participate in a four-month long “residence period” to work with the relevant City department to develop their proposed technology based solution.

The STIR Program will include an educational component during the residence period for the selected Applicants and corresponding City agencies consisting of in-person and web-based sessions with leaders in the business, legal, finance, investment and consulting sectors, as well as government executives, innovators, academics and researchers. The educational component serves to help STIR participants learn about navigating government partnerships, procurement process, open data and systems integration and civic tech trends. The educational component also helps City leaders learn about the

technology marketplace, how to develop technology product solicitations and how to approach building a technology product.

The perpetual license, hosting and/or purchase option agreement(s) will be entered into following the residence period if a successful technology-based solution has been developed by the Selected Applicant.

In those cases where the Selected Applicant develops a hosted software solution, special legal requirements would apply to the license, hosting and/or purchase option agreement. City's data, and the Selected Applicant's data center storing such data, must be located and remain in the United States. The Selected Applicant shall ensure that all physical or electronic transmission or exchange of data with the City and/or any other parties expressly designated by the City shall take place via secure means (for electronic transmissions using HTTPS or SFTP or the most recent version in the industry). The Selected Applicant shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the City contract. Data shall not be distributed, repurposed or shared across other applications, environments or business units of the Selected Applicant. The Selected Applicant shall ensure that no City data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties.

SCOPE OF SERVICES

Selected Applicant agrees to partner with City, free of charge, in developing technology based solutions to the IT Division and Library Department's identified challenge described in full detail in Attachment A "Challenge Statements."

"Technology Based Solutions" means solutions offered to City which are premise software (licenses to software object code), mobile applications, hosted software or applications, information technology hardware, and/or any combination thereof.

Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Selected Applicant. Selected Applicant will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Selected Applicant. The personnel of each Party, when on the premises of the other, shall comply with the security and other personnel regulations of the Party on whose premises such individual is located. The following is a high level outline of the scope of services for the Project.

1.11. Project Management

The selected Applicant shall work closely with the City to provide project management to oversee the development of the new system.

1.12. System Design

The selected Applicant shall design the system according to the City's feedback and requirements.

1.13. User Acceptance Testing

The selected Applicant shall test the system with the City's team in areas related to the system's functionality.

1.14. User Training

The selected Applicant shall coordinate system training (onsite and remote, as needed) for all end users, as specified by the City's project team.

1.15. Documentation

The selected Applicant shall be responsible for providing system documentation and training materials to the City for future use.

1.16. Computers & Client Devices

The selected Applicant must provide information and configuration for the City's inventory of computers and client devices, as needed.

RULES GOVERNING PROPOSALS

1.17. Application Deadline

Applications shall be submitted no later than the Proposals Due Date detailed in the RFP Schedule of Events (see Section 1.9) at the following website: www.startupinresidence.org. It is the Applicant's responsibility to ensure that proposals are received prior to the deadline noted in Section 1.9. Applicants shall respond to the written RFP and any exhibits, attachments, or amendments. Applicant's failure to submit its Application by the deadline as required shall cause that Application to be disqualified.

1.18. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or California State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Applicants. Accordingly, all Applicants entering into contracts with the City shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.19. Electronic Form

An electronic form of this RFP may be obtained from the City's web site:

http://www.sanleandro.org/depts/finance/purchasing/quotes/current_rfps_rfqsasp.asp

1.20. General Application Parameters

Insurance - The selected Applicant shall comply with all insurance requirements stipulated in Section 4 of the attached Non-Professional Services Agreement (NPSA) and provide all required insurance documents. Additionally, Applicant shall comply with the Indemnification and Selected Applicant's Responsibilities (Section 5).

Conflict of Interest and Application Restrictions - By submitting an Application, the Applicant certifies that no amount shall be paid directly or indirectly to an employee or official of the City as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subselected Applicant, or consultant to the Applicant in connection with the procurement under this RFP.

RFP Amendment and Cancellation - The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue the RFP at its sole discretion. Applicants shall respond to the final written RFP and any exhibits, attachments and amendments. All Applicants shall verify if any addendum for this project has been issued by the City. It is the Applicant's responsibility to ensure that all requirements of all contract addenda are included in the Applicant's submittal.

Right of Rejection - Any Application received which does not meet the terms, conditions or performance requirements of this RFP may be considered non-responsive and the Application may be rejected. Applicants must comply with all of the terms of this RFP and all applicable State and County laws and regulations.

The City reserves the right, at its sole discretion, to waive variances in Applications provided such action is in the best interest of the City. Where the City waives minor variances in Applications, such waiver does not modify the RFP requirements or excuse the Applicant from full compliance with the RFP. Notwithstanding any minor variance, the City may hold any Applicant to strict compliance with the RFP.

Severability - If any provision of this RFP is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and, the rights and obligations of the City and Applicants shall be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

Permits and Codes - The selected Applicant will comply with all laws, codes, rules and regulations of the State, County and City applicable to the work to be performed at the City's location.

Pricing – Upon the conclusion of the residence period, the City will have the option, but is in no way obligated, to license any technology-based solution developed during the residence period as follows:

1. Perpetual License to on Premise Software.

If selected Applicant (“Contractor”) develops on premise software, the City shall have the option to license the software in perpetuity, free of charge. If the option is exercised, the Contractor will maintain the software and provide the City with free maintenance for one year, during which time the City and Contractor will negotiate an annual maintenance fee for future years.

2. Hosted Software or Applications

If Contractor develops software or applications that are subsequently hosted by a Contractor (i.e. “hosted software”), the City shall have the option of a term license or subscription with the first 90 days of access provided free of charge. If the option is exercised, the City and Contractor will negotiate a subscription fee or other structure for future years.

3. Hardware

In those cases where the Contractor develops a hardware product, the City will have the option to lease or license the product for 90 days, including free maintenance. If the option is exercised, the City may elect to purchase or continue leasing the product following the initial year of free use. In this scenario, the City will negotiate a compensation charge and maintenance fee with the Contractor.

Application Withdrawal - To withdraw an Application, the Applicant must submit a written request signed by an authorized representative to the RFP Coordinator. After withdrawing a previously submitted Application, the Applicant may submit another Application at any time up to the deadline for submitting Applications.

Application Amendment - The City shall not accept any amendments, revisions, or alterations to Applications after the deadline for Application submittal unless such is formally requested, in writing, by the City.

Application Errors - Applicants are liable for all errors or omissions contained in their Applications. Applicants shall not be allowed to alter Application documents after the deadline for submitting an Application.

Incorrect Application Information - If the City determines that an Applicant has provided incorrect information that the Applicant knew or should have known was materially incorrect, that Application shall be penalized in the final scoring.

Review Rights - Proposals submitted may be reviewed and evaluated by any person(s) considered necessary to the decision-making process at the discretion of the City.

Application Preparation Costs - The City shall not pay any costs associated with the preparation, submittal, or presentation of any Application.

Application of Additional Services - If an Applicant proposes an offer of services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of the City.

Independent Price Determination - The Applicant is prohibited from submitting more than one Application for the same challenge statement. However, alternative solutions within Applicant's single response will be accepted. Submittal of more than one response will result in the City requesting the Applicant to select only one application to move forward.

Public Release of Information - News releases, articles, brochures, advertisements, prepared speeches and other information releases concerning this RFP, or any subsequent contract or activity related thereto, may not be made without the prior written approval of the City.

Liability and Reserved Rights - The City reserves the right not to award a Contract to any of the Applicants solicited in this RFP. The City also reserves the right to make partial awards. This RFP may be withdrawn at any time without liability or responsibility for any damages or expenses incurred by Applicants.

Public Disclosure - All materials provided to the City by Applicants are subject to State and City public disclosure laws. Proposals shall become the property of the City of San Leandro. Once a final award is made, all Application responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsibly for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act.

Piggybacking – Applicant is requested to indicate in its Application that if it is selected by the City to develop a solution for one of its challenges and, following the 12-week engagement period of the Startup-in-Residence program, the City decides to enter into an agreement with the selected Applicant, it will extend the negotiated pricing, terms and conditions of that agreement to other government agencies. If the selected Applicant agrees to this provision, other agencies may enter into a contract with the selected Applicant for the purchase of the service and solutions described in the final agreement, based on the terms, conditions, and prices offered by the selected Applicant and agreed to by the City of San Leandro ; however, each agency must evaluate the specific contract documents to determine if the competitive process and contract awarded allows piggybacking and meets that agency's rules and regulations for contracting.

INSTRUCTIONS TO APPLICANTS

This section outlines specific instructions for proposal submission. Applicants not adhering to these instructions will be disqualified without further consideration.

1.21. Pre-Application Conference

Please refer to the Startup-in-Residence website at www.startupinresidence.org for additional information regarding any meetings that interested Applicants may attend. The City of San Leandro will not host any such conferences directly.

1.22. Statement of Compliance

By submission of a response to this RFP, Applicant acknowledges full compliance with required specifications and all terms and conditions as detailed in the RFP.

1.23. Application Submittal

The Application must be submitted electronically to the RFP Coordinator by the deadline specified with the Subject:

“Application in Response to RFP #56108 – [Name of Startup]”

The complete proposal must include the proposal document with a response to the RFP and all other materials requested. Applicants may include any additional materials they feel could assist in the evaluation of the proposed system. However, each question must be responded to completely.

1.24. Key Evaluation Criteria

All responses will be evaluated against the following criteria:

Responsiveness - A complete and concise response to the RFP that complies with the City’s requirements.

Capacity and Ability - The feasibility of the proposal based upon the methodology of the proposed scope of services to meet the City’s needs, the quality of services proposed, and the reasonableness of the total project costs and of the proposed time period over which the work will be completed.

Experience - The City will evaluate the Applicant’s experience in the design, implementation, integration and support of the Project and current technologies. Extra consideration may be given to those Applicants who have a proven track record with other government agencies, although this is not a requirement.

References – If available, the Applicant will provide up to three examples of technology-based solutions provided for other U.S. Cities and/or other government agencies. Current contact information for references must be provided.

Service Capabilities - Remote serviceability and technical support of the technology-based solution. Ability to provide timely support on an ongoing basis.

System Scalability - If applicable to the technology-based solution developed, the City may require a modular, cost-effective growth in the system over several years.

1.24.1. Written Application (100 Points)

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

Criteria	Possible Points
Proposed technology based solution. <ul style="list-style-type: none">• Demonstrates a comprehensive understanding of the nature and scope of the challenge• Extent to which the solution creatively and effectively addresses the challenge area• Whether the solution is compatible with or flexible enough to work with the City’s IT infrastructure or City requirements	50
Relevant technology skill set and experience. <ul style="list-style-type: none">• Expertise of the start-up in the fields necessary to execute the proposal• Recent relevant experience of team members• Professional qualifications and education of team members• The start-up’s record of past successes developing technology tools and services for the public or private sector• The existence (or lack thereof) of working prototypes	35
The proposed solution’s larger potential in the public sector. <ul style="list-style-type: none">• The proposal’s potential to have broader application and benefit for other governmental entities	15
TOTAL POINTS FOR WRITTEN PROPOSAL	100

1.24.2. Oral Interview (50 Points)

Following the evaluation of the written proposals, the three (3) proposers receiving the highest scores for a specific challenge will be invited to an oral interview. The interview will consist of standard questions asked of each of the three proposers. City departments will combine both written and oral interview scores of the three “short listed” applicants to determine final scores and participant selection. Evaluation and scoring criteria for the oral interview are provided below.

Oral Interview Criteria	Possible Points
Communication skills. <ul style="list-style-type: none"> Ability to verbalize key concepts and solution ideas in a manner that is easy for department representatives to understand. 	25
Critical problem solving skills. <ul style="list-style-type: none"> Ability to respond to departmental questions about the applicant's proposed solution with detailed answers that demonstrate an awareness of possible challenges that may be encountered during the residence period. 	25
TOTAL POINTS FOR ORAL INTERVIEW	50

1.25. Application Evaluation Process

All Applications will be reviewed by the RFP Coordinator to determine compliance with basic Application requirements as specified in this RFP. If the RFP Coordinator determines that an Application may be missing one or more such requirements, the Application Evaluation Team will review the Application to determine:

- if it meets requirements for further evaluation;
- if the City will request clarification(s) or correction(s); or
- if the City will determine the Application non-responsive and reject it.

The RFP Coordinator will manage the Application evaluation process and maintain Application evaluation records. An Application Evaluation Team made up of City employees will be responsible for evaluating Applications.

The City reserves the right, at its sole discretion, to request clarifications of Applications or to conduct discussions for the purpose of clarification with any or all Applicants. The purpose of any such discussions will be to ensure full understanding of the Application. Discussions will be limited to specific sections of the Application identified by the City and, if held, will be after initial evaluation of Applications. If clarifications are made as a result of such discussion, the Applicant shall put such clarifications in writing.

1.26. Force Majeure

The Applicant will have no liability for delays, failure in performance, or damages due to: Fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications

carriers, unauthorized use of the products, or other causes beyond Applicant's control whether or not similar to the foregoing.

1.27. Assignment and Subcontracting

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

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

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

1.28. Right to Refuse Personnel

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

Joint Ventures and Partnering

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

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

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

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

1.29. Supplemental Terms and Conditions/Modifications

Supplemental terms and conditions and modifications will be made via the Contract document (NPSA), which will be negotiated with the successful Applicant.

1.30. Standard Contract Information

Contract Approval

The RFP and the Applicant selection processes do not obligate the City and does not create rights, interests, or claims of entitlement in the apparent best-evaluated Applicant. Contract award and City obligations pursuant thereto shall commence only after the contract is signed by the successful Applicant and the head of the procuring City agency and after the contract is signed by all other City officials as required by City ordinances and regulations to establish a legally binding contract.

Contract Payments

Contract payments will be made in accordance with the Payment Terms and Conditions provision of the final contract. No payment will be made until the contract is approved as required by City ordinances and regulations. Under no conditions will the City be liable for payment of any type associated with the contract or responsible for any work done by the Applicant, even work done in good faith and even if the Applicant is orally directed to proceed with the delivery of services, if it occurs before the contract start date specified by the contract or before contract approval by City officials.

Contract Monitoring

The successful Applicant shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation and acceptance by the City. The City may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract.

Contract Amendment

During the course of this contract, the City may request the Applicant to perform additional work for which the Applicant would be compensated. That work shall be within the general scope of this RFP. In such instances, the City will provide the Applicant a written description of the additional work and the Applicant shall submit a time schedule for accomplishing the additional work and a price for the additional work based on the rates included in the Applicant's Application to this RFP. If the City and the Applicant reach an agreement regarding the work and associated compensation, said agreement shall become effective by means of a contract amendment. Any such amendment requiring additional work must be mutually agreed upon by the parties and signed by the Applicant and the head of the procuring City agency and must be approved by other City officials as required by City laws and regulations. The Applicant shall not commence additional work until the City has issued a written contract amendment and secured all required approvals.

Contract Award Process

The RFP Coordinator will forward results from the Application evaluation process to the City Selection Committee for consideration.

1.30.1.1. The City reserves the right to make an award without further discussion of any Application submitted.

1.30.1.2. The City reserves the right to request a best and final offer.

1.30.1.3. The City reserves the right, at its sole discretion, to negotiate with the apparent best-evaluated Applicant subsequent to the award of Application.

1.30.1.4. The apparent best-evaluated Applicant shall be prepared to enter into a contract with the City. If an Applicant fails to sign and return the contract drawn pursuant to this RFP and final contract negotiations within 14 days of its delivery to the Applicant, the City may determine, at its sole discretion that the Applicant is non-responsive to the terms of this RFP and reject the Application.

1.30.1.5. Contract award will be subject to the contract approval of all appropriate City officials in accordance with applicable City laws and regulations.

Proposals, Public Information

Proposals are public records; each Applicant is hereby informed that, upon submittal of its proposal to the City in accordance with this RFP, the proposal is the property of the City.

1.30.1.6. Unless otherwise compelled by a court order, the City will not disclose any proposal while the City conducts its deliberative process in accordance with the procedures identified in this RFP. However, after the City either awards the project to a successful Applicant, or the City rejects all proposals, the City shall consider each proposal subject to the public disclosure requirements of the California Public Records Act (California Government Code sections 6250, *et seq.*), unless there is a legal exception to public disclosure.

1.30.1.7. If an Applicant believes that any portion of its proposal is subject to a legal exception to public disclosure, the Applicant shall: (1) clearly mark the relevant portions of its proposal "Confidential"; (2) identify, upon request from the City the legal basis for exception from disclosure under the California Public Records Act; and (3) defend, indemnify, and hold harmless the City regarding any claim by any third party seeking the public disclosure of the "Confidential" portion of the proposal.

ATTACHMENT A

CITY OF SAN LEANDRO CHALLENGE STATEMENTS

TITLE: RESIDENT PERSONLIZATION FOR CITY WEBSITE

CONTEXT:

When residents use the City's various digital services, the experience can be disjointed and frustrating as they end up with multiple accounts (one for each service). They may not even realize the breadth of digital services the City has available. Meanwhile, the City has no way of easily accessing contact information for its 90,000+ residents and many more visitors, nor understanding their specific interests in City services. Individual outreach efforts by City Staff end up being very time consuming. In addition, there is a missed opportunity to foster civic engagement by matching City services (i.e., volunteer opportunities) with residents' individual interests.

TECHNOLOGY NEED:

San Leandro IT is interested in creating a personalized digital experience for residents, akin to commercial technology such as Amazon, Netflix, and Google. In this manner, residents would have a way of creating and managing their City profile information, and identifying preferences for City communications such as events, volunteer opportunities, emergency notifications, etc. In addition, the software should be able to make recommendations to residents based on their interests. The second component would be to aggregate these new City profiles with existing City data sources (including: email contact lists, CRMs, web accounts, etc.) to create a "Master" profile record of the Resident. These master profile records would need to be updated monthly, at minimum.

TITLE: SAN LEANDRO LIBRARY: GET TO KNOW SAN LEANDRO

CONTEXT:

San Leandro is in the midst of revitalization. While the City is seeing tremendous growth, it is at risk of becoming a commuter city. Creating a mobile opportunity for residents and visitors to engage with San Leandro's various historic, artistic and natural assets could result in higher civic engagement, pride, better business, and more stewardship. Additionally, it would provide an opportunity to obtain use statistics and feedback for the various sites. There is no mechanism currently in place to collect feedback from the 90,000+ residents and visitors that might visit these areas of interest.

TECHNOLOGY NEED:

San Leandro is home to a number of historic, artistic, and natural assets--many of which are within the downtown area. These sites include: Casa Peralta, San Leandro History Museum, San Leandro Creek, San Leandro History Walk and Truth is Beauty. Unfortunately, many residents and visitors are unaware of their existence. The city is seeking a mobile-driven solution that encourages interaction.

ATTACHMENT B

**NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
[NAME OF SELECTED APPLICANT]
FOR
[NAME OF PROJECT]**

THIS AGREEMENT for _____ services is made by and between the City of San Leandro (“City”) and _____ (“Selected Applicant”) (together sometimes referred to as the “Parties”) as of _____, 20__ (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Selected Applicant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

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

Section 2. COMPENSATION. City hereby agrees to pay Selected Applicant a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Selected Applicant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Selected Applicant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Selected Applicant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Selected Applicant for services rendered pursuant to this Agreement. Selected Applicant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Selected Applicant shall not bill City for duplicate services performed by more than one person.

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

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

- 2.1 Invoices.** Selected Applicant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Selected Applicant and each employee, agent, and subselected Applicant of Selected Applicant performing services hereunder;
 - The Selected Applicant's signature;
 - Selected Applicant shall give separate notice to the City when the total number of hours worked by Selected Applicant and any individual employee, agent, or subselected Applicant of Selected Applicant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Selected Applicant and City. Such notice shall

include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Selected Applicant and City, if applicable.

SELECTED APPLICANT**SELECTED APPLICANT**

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

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

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

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Selected Applicant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Selected Applicant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Selected Applicant shall make a written request to City to use facilities or equipment not otherwise listed herein.

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Selected Applicant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Selected Applicant and its agents, representatives, employees, and subselected Applicants. Consistent with the following provisions, Selected Applicant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Selected Applicant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Selected Applicant's bid. Selected Applicant shall not allow any subselected Applicant to commence work on any subcontract until Selected Applicant has obtained all insurance required herein for the subselected Applicant(s) and provided evidence that such insurance is in effect to City. **VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION.** Selected Applicant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Selected Applicant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Selected Applicant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$_____ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per accident. In the alternative, Selected Applicant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Selected Applicant, its employees, agents, and subselected Applicants.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Selected Applicant shall submit the following:

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Selected Applicant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$_____ and automobile liability insurance for the term of this Agreement in an amount not less than \$_____ [dollar amounts to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile

Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

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

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

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Selected Applicant shall submit the following:

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

4.3 All Policies Requirements.

4.3.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.3.2 Verification of Coverage. Prior to beginning any work under this Agreement, Selected Applicant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Selected Applicant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and

certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Selected Applicant beginning work, it shall not waive the Selected Applicant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.3.3 Deductibles and Self-Insured Retentions. Selected Applicant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Selected Applicant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.3.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.3.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3.6 Subselected Applicants. Selected Applicant shall include all subselected Applicants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subselected Applicant. All coverages for subselected Applicants shall be subject to all of the requirements stated herein.

4.4 Remedies. In addition to any other remedies City may have if Selected Applicant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Selected Applicant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Selected Applicant to stop work under this Agreement or withhold any payment that becomes due to Selected Applicant hereunder, or both stop work and withhold any payment, until Selected Applicant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND SELECTED APPLICANT'S RESPONSIBILITIES. Selected Applicant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Selected Applicant's performance of the Services or its failure to comply with any of its

obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Selected Applicant's obligation to defend and indemnify shall not be excused because of the Selected Applicant's inability to evaluate Liability or because the Selected Applicant evaluates Liability and determines that the Selected Applicant is not liable to the claimant. The Selected Applicant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Selected Applicant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Selected Applicant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Selected Applicant accepts or rejects the tender of defense, whichever occurs first.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Selected Applicant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

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

Section 6. STATUS OF SELECTED APPLICANT.

- 6.1 Independent Selected Applicant.** At all times during the term of this Agreement, Selected Applicant shall be an independent selected Applicant and shall not be an employee of City. City shall have the right to control Selected Applicant only insofar as the results of Selected Applicant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Selected Applicant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Selected Applicant and any of its employees, agents, and subselected Applicants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Selected Applicant Not an Agent.** Except as City may specify in writing, Selected Applicant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an

agent. Selected Applicant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. **LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Selected Applicant and any subselected Applicants shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Selected Applicant and any subselected Applicants shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Selected Applicant represents and warrants to City that Selected Applicant and its employees, agents, and any subselected Applicants have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Selected Applicant represents and warrants to City that Selected Applicant and its employees, agents, any subselected Applicants shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Selected Applicant and any subselected Applicants shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Selected Applicant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subselected Applicant, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Selected Applicant under this Agreement. Selected Applicant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Selected Applicant thereby.

Selected Applicant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. **TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Selected Applicant.

Selected Applicant may cancel this Agreement upon _____ days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Selected Applicant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Selected Applicant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Selected Applicant or prepared by or for Selected Applicant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Selected Applicant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Selected Applicant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Selected Applicant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Selected Applicant recognize and agree that this Agreement contemplates personal performance by Selected Applicant and is based upon a determination of Selected Applicant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Selected Applicant. Selected Applicant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Selected Applicant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subselected Applicants noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Selected Applicant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Selected Applicant.** If Selected Applicant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Selected Applicant pursuant to this Agreement;
 - 8.6.3** Retain a different selected Applicant to complete the work described in Exhibit A not finished by Selected Applicant; or

- 8.6.4 Charge Selected Applicant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Selected Applicant pursuant to Section 2 if Selected Applicant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Selected Applicant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Selected Applicant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Selected Applicant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Selected Applicant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- 9.2 **Selected Applicant's Books and Records.** Selected Applicant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Selected Applicant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Selected Applicant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Conflict of Interest.** Selected Applicant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Selected Applicant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Selected Applicant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Selected Applicant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Selected Applicant was an employee, agent, appointee, or official of the City in the previous 12 months, Selected Applicant warrants that it did not participate in any manner in the forming of this Agreement. Selected Applicant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Selected Applicant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Selected Applicant will be required to reimburse the City for any sums paid to the Selected Applicant. Selected Applicant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

- 10.7 **Solicitation.** Selected Applicant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.8 **Contract Administration.** This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.9 **Notices.** Any written notice to Selected Applicant shall be sent to:

Any written notice to City shall be sent to:

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

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [and C] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between City and Selected Applicant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Compensation Schedule & Reimbursable Expenses

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Selected Applicant’s signature below Selected Applicant certifies that Selected Applicant, and any parent entities, subsidiaries, successors or subunits of Selected Applicant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

[NAME OF SELECTED APPLICANT]

Chris Zapata, City Manager

[NAME, TITLE]

Attest:

Selected Applicant's DIR Registration Number

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

1957063.2 (2015)

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES