CITY OF SAN LEANDRO

INVITATION FOR BIDS

SUBMIT BID TO:	**FOR FURTHER INFORMATION CALL:**
City of San Leandro Purchasing Department 835 East 14th Street San Leandro, CA 94577	Sally M. Perez Interim Purchasing Agent (510) 577-3376 fax (510) 577-3312 sperez@sanleandro.org

BID NO:	**DATE MAILED:**	**THIS BID MUST BE DELIVERED TO THE CITY BEFORE:**
15-16.001	July 14, 2015	3:00 PM, Wednesday, August 5, 2015

QTY.	**DESCRIPTION**		
	City of San Leandro **INVITATION FOR BIDS** **Bid No. 15-16.001** **Water Pollution Control Plant Digester Cleaning, Re-bid** Notice is hereby given that sealed bids must be received by the Interim Purchasing Agent in the Purchasing Office August 5, 2015 at 3:00 PM local time, at which time they will be publicly opened and read for furnishing all labor, materials and equipment, and performing all work necessary and incidental to empty and clean 153,000 gallons of residual sludge from an anaerobic digester equipped with 2 x 36" top access openings located at approximately 22.8 ft above ground level and 3 x 30" ground level access hatches. **Pre-Bid Conference.** A pre-bid conference will be held at **10:00 AM, Wednesday, July 22, 2015 at the Water Pollution Control Plant, located at 3000 Davis Street, San Leandro. Project Manager is Dean Wilson, 510-577-3434**. Bids shall be delivered and addressed to the City of San Leandro Purchasing Agent, 835 E. 14th Street, San Leandro, California, 94577, and shall be labeled "Water Pollution Control Plant Digester Cleaning". Any Bidder who wishes their bid to be considered is responsible for making certain that their bid is received in the Purchasing Office by the proper time. No oral, telegraphic, electronic, facsimile, or telephonic bids or modifications will be considered unless specified. Bids received after the scheduled Bid Submittal Deadline will be returned unopened. It is the responsibility of the Bidder to see that any bid submitted shall have sufficient time to be received by the Purchasing Office before the Bid Submittal Deadline. Late bids will be returned to the Bidder unopened. This Invitation for Bids is available in PDF format on the City's web site at: http://www.sanleandro.org/depts/finance/purchasing/bids/current_bids/default.asp	State Bid Price on page 15	

THIS PROJECT IS SUBJECT TO THE PAYMENT OF PREVAILING WAGES. THIS PROJECT IS SUBJECT TO COMPLIANCE MONITORING AND ENFORCEMENT BY THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS. IN ORDER TO SUBMIT A BID, ALL BIDDERS MUST BE REGISTERED WITH THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS IN ACCORDANCE WITH CALIFORNIA LABOR CODE SECTION 1725.5.

Any bid may be withdrawn at any time prior to the time fixed for the opening of bids only by written request for the withdrawal of the bid filed with the City. The request shall be executed by the bidder or bidder's duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid will not be received after that time nor may any bid be withdrawn after the time fixed in the public notice for opening of bids.

As stated in Public Contract Code Section 5100 to 5108, inclusive (State Contract Act) concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in his bid, the bidder shall give the City written notice within five (5) days after the opening of the bids of the alleged mistake, specifying in the notice, in detail how the mistake occurred.

All bidders shall verify if any addendum for this project has been issued by the City. It is the bidder's responsibility to ensure that all requirements of all contract addenda are included in the bidder's submittal.

The successful bidder shall submit a certificate of insurance showing compliance with the enclosed insurance requirements. This insurance shall be maintained at all times during the course of any resulting agreement. In addition, the successful bidder shall have the proper City of San Leandro business license and all other applicable licenses and permits.

The award will be made to the lowest responsible bidder whose bid complies with the specifications in a manner satisfactory to the City's best interests as determined by the City. The right is reserved, as the interest of the City may require, to reject any or all bids, or to waive any informality or minor irregularity in the bids.

To bid, complete and return a copy of the Request and the other required forms, in a sealed envelope. The envelope shall be marked with the project name and bid number. The bid must be received by the date and time shown in order to be considered. Deliver envelope to: City of San Leandro Purchasing Dept., 835 E. 14th Street, San Leandro, CA, 94577. Please note that there is a one-day delay in mail delivery to City Hall by the U.S. Postal Service.

Firm _____ Date: _____

Address _____ Phone: _____

_____ FAX: _____

By (Signature) _____ Print Name: _____

Title: _____ _____

Sally M. Perez
Interim Purchasing Agent

City of San Leandro

Digester Cleaning 2015
Bid No. 15-16.001

General

This project is to empty and clean a 950,000 gallon anaerobic digester equipped with 2 x 36” top access openings located at approximately 22.8 ft above ground level and 3 x 30” ground level access hatches.

Work to be done is:

1. Submit an approved site and worker safety plan prior to mobilization.
2. The contractor is to furnish all equipment and materials and perform all labor necessary to complete the work.
3. Remove and clean approximately 153,000 gallons of residual sludge from digester.
4. Screen sludge at ¼” to remove any inorganic material such as rags, plastics, etc.
5. Contractor to propose how they will remove fine grit (1/16 mm to 2 mm in size) from screened liquid prior to return to the headworks.
6. Contractor to propose how to pump screened liquid to headworks channels prior to bar screens approximately 800 feet distant from Digester #4 work site.
7. Dispose of screenings and grit.

   Base Bid: Dump to Water Pollution Control Plant drying bed;
   Alternate A Bid: Contractor to haul and dispose of screenings and grit off site;

8. Hose all sludge residues from walls, floor and ceiling of digester interior. The inside of the digester is to be cleaned to a standard such as to allow repair work to be completed in a safe environment by another contractor or plant personnel.

The City will provide electrical power and water for the project. All of the above work is to be completed in a substantial and workmanlike manner according to standard practices and in compliance with all Cal-OSHA requirements.

INSTRUCTIONS TO BIDDER

BID FORMS: Bid must be submitted on preprinted Bid Forms supplied by the Purchasing Office or as downloaded from the Purchasing web site (address above).

BID OPENING AND BID RESULTS: Bids are opened publicly in the Purchasing Office. Interested parties are invited to attend the bid opening. A tabulation of bids received will be available within a reasonable time after the bid opening. Bid results will be faxed or mailed to interested parties upon request and will be posted on the Purchasing web site.

BID SUBMITTAL DEADLINE: **The Bid Submittal Deadline is Wednesday, August 5, 2015 at 3:00 PM local time.** Bid must be submitted in sealed envelope and should be properly identified with the bid number and Bid Submittal Deadline. **Bids must be received by the Interim Purchasing Agent in the Purchasing Office, 835 E. 14th Street, San Leandro, California, 94577, by Wednesday, August 5, 2015 prior to 3:00 PM local time.** Telephone, telegraphic, facsimile, electronic, and late bids will not be accepted or considered. It is the Bidders' responsibility to see that their bids have sufficient time to be received by the Purchasing Office before the Bid Submittal Deadline.

BID WITHDRAWAL: Bidders' authorized representatives may withdraw bids only by written request received by the Purchasing Supervisor before the Bid Submittal Deadline. After that time, Bidders may not withdraw their bids for a period of ninety- (90) days from the Bid Submittal Deadline. At no time may the successful Bidder withdraw their bid.

INFORMED BIDDERS: Before submitting bids, Bidders must fully inform themselves of the conditions, requirements and specifications of the work or materials to be furnished. Failure to do so will be at Bidders' own risk and they cannot secure relief on the plea of error.

LATE BIDS. Bids not received by the Bid Submittal Deadline are late. Late bids will be returned to Bidders unopened.

OFFERS OF MORE THAN ONE PRICE: Bidders may submit only one bid on each option of this project. No alternate bids will be accepted.

PRICES, NOTATIONS, AND MISTAKES: All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person who signs bid. Prices shall be stated in units and quotations made separately on each item. In case of conflict, unit prices will govern. Where there is a conflict between words and figures, words will govern.

TERMS AND CONDITIONS

PAYMENT TERMS: Net 30, following completion and acceptance of job.

QUESTIONS AND COMMENTS: Questions and comments regarding this solicitation must be submitted in writing, either by mail to the Purchasing Agent at 835 E. 14th Street, San Leandro, California, 94577, by facsimile at 510-577-3312, or email to sperez@sanleandro.org. General questions may be directed to the Purchasing Office by calling 510-577-3376.

TERMS OF THE OFFER: City's acceptance of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City. Bids offering terms other than those shown herein will be declared non-responsive and will not be considered.

ATTORNEY FEES: In the event a suit or action is instituted in connection with any controversy arising out of this contract, the prevailing party shall be entitled to receive, in addition to its costs, such sum as the court may adjudge reasonable as to attorney's fees and costs.

BIDDER AGREEMENT TO TERMS AND CONDITIONS: Submission of a signed bid will be interpreted to mean Bidder has agreed to all the terms and conditions set forth in the pages of this solicitation.

CANCELLATION OF CONTRACT: The City may cancel this contract WITHOUT CAUSE at any time by giving written or oral notice to the supplier/contractor. The City may cancel this contract WITH CAUSE at any time by giving one (1) day written notice to the supplier/contractor. Cancellation for cause shall be at the discretion of the City and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful Bidder may not cancel this contract without prior written consent of the Purchasing Supervisor.

COMPLIANCE OR DEVIATION TO SPECIFICATIONS: Bidder hereby agrees that the material, equipment or services offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the Bidder's response**.** Bidder may submit an attachment entitled "Exceptions to Specifications", which must be signed by Bidder's authorized representative. An explanation must be made for each item to which an exception is taken, giving in detail the extent of the exception and the reason for which it is taken. Bids failing to comply with this requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but shall not be an acceptable substitution for this requirement.

COMPLIANCE WITH LAWS: All bids shall comply with current federal, state, local and other laws relative thereto.

TERMS AND CONDITIONS – continued

FORCE MAJEURE: If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to acts of God, war, acts of a public enemy, acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FORMATION OF CONTRACT: Bidder's signed bid, completed Non-Professional Services Agreement (NPSA) and City's written acceptance shall constitute a binding contract.

LAWS GOVERNING CONTRACT: This contract shall be in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the county of Alameda, in the State of California. The parties further stipulate that the county of Alameda, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

NOMENCLATURES: The terms Successful Bidder, supplier, vendor, and contractor may be used interchangeably in this solicitation and shall refer exclusively to the person, company, or corporation with whom the City enters into a contract as a result of this solicitation.

REJECTION OF BIDS: The City reserves the right to reject any bids, all bids, or any part of a bid. The City reserves the right to reject the bid of any Bidder who previously failed to perform adequately for the City or any other governmental agency. The City expressly reserves the right to reject the bid of any Bidder who is in default on the payment of taxes, licenses, or other monies due the City of San Leandro.

SAFETY: All articles delivered under this contract must conform to the Safety Orders of the State of California, Division of Industrial Safety.

SELL OR ASSIGN: The successful Bidder shall not have the right to sell, assign, or transfer, any rights or duties under this contract without the specific written consent of the City.

SEVERABILITY: If any provisions, or portions of any provisions, of this contract are held invalid, illegal, or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

TAXES, FEDERAL EXCISE: The City is exempt from Federal Excise Tax.

WAIVER OF INFORMALITIES: The City reserves the right to waive informalities or technicalities in bids.

SPECIAL PROVISIONS
FOR SERVICES

ACCESSIBILITY: The contractor shall fully inform themselves regarding any peculiarities and limitations of the spaces available for the performance of work under this contract. They shall exercise due and particular caution to determine that all parts of this work are made quickly and easily accessible.

AUTHORITY OF THE CITY: Subject to the power and authority of the City as provided by law in this contract, the City shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. The City shall decide questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

BUSINESS LICENSE: Though not required to submit a bid, the successful bidder shall provide proof of valid and active City of San Leandro business license prior to commencement of the work.

CHANGES IN WORK: The City may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the City. Changes in work and the amount of compensation to be paid to the contractor for any extra work as so ordered shall be determined in accordance with the unit prices quoted.

CLEAN-UP: During performance and upon completion of work on this project contractor will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by these specifications. Contractor shall leave entire area in a neat, clean and acceptable condition as approved by the City.

COMPLIANCE WITH FAIR EMPLOYMENT PRACTICE ACT: Contractor agrees in accordance with Section 1735 and 1777.6 of California Labor Code, and the California Fair Employment Practice Act (Sections 1410-1433) that in the hiring of common or skilled labor for the performance of any work under this contract or any subcontract hereunder, no contractor, material supplier or vendor shall, by reason of race, color, national origin or ancestry, or religion, discriminate against any person who is qualified and available to perform the work to which such employment relates.

CONTRACT INCORPORATION: The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein or in the attached "Non-Professional Services Agreement." No changes, amendments, or modifications of any of the terms or conditions herein or in the Non-Professional Services Agreement shall be valid unless reduced to

writing and signed by both parties. The complete contract shall include the entire contents of the bid solicitation, all addenda, all of successful Bidder's submittal, supplemental agreements, change orders, performance bond(s), the City's Non-Professional Services Agreement and any and all written agreements which alter, amend or extend the contract.

COOPERATION BETWEEN CONTRACTORS: The City reserves the rights to contract for and perform other or additional work on or near the work covered by these specifications. When separate contracts are let within the limits of any one project, each contractor shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed. Each contractor involved shall assume all liability, financial or otherwise, in connection with this contract and shall protect and save harmless the City from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other contractors working within the limits of the same project.

COORDINATION WITH AGENCIES: The contractor shall coordinate their activities with the proper regulatory agencies and have their representative on site at the proper times.

DAMAGE: The contractor shall be held responsible for any breakage, loss of the City's equipment or supplies through negligence of the contractor or their employee while working on the City's premises. The contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The contractor shall immediately report to the City any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property will be a breach of this contract.

EXAMINATION OF SPECIFICATION AND SITE: Bidder is expected to carefully examine the site of the proposed work and all bid specifications, documents, and forms. They shall satisfy themselves as to the character, quality, and quantities of work to be performed, materials to be furnished and the requirements of the proposed specifications.

INDEPENDENT CONTRACTOR: In accepting this contract, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of their knowledge, no one who has or will have any financial interest under this contract is an officer or employee of City. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of City.

INSURANCE REQUIREMENTS: Within ten (10) consecutive calendar ***days*** of award of contract, Successful Bidder must furnish the City with the Certificates of Insurance proving coverage as specified in the attached Non-Professional Services Agreement (NPSA) and naming the City of San Leandro, its officers and agents, Additional Insured by endorsement. Failure to furnish the required certificates within the time allowed will result in forfeiture of Bidder's Bid Security.

JOB SITE NOTICES: In accordance with California Labor Code section 1771.4(a), the contractor is required to post all job site notices as prescribed by regulation.

LAWS - ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS: The contractor shall adhere to all applicable health and safety laws and regulations including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and County Environmental Health Department. To the fullest extent legally required and applicable, Contractor shall have an Injury and Illness Prevention Program (IIPP) that conforms to all applicable federal, state and local laws, and shall provide a copy of its current version to the City upon request.

LIQUIDATED DAMAGES: Failure to start and complete all work specified within the time allowed shall constitute material breach of contract. The "time allowed" will be calculated *from the* date of the Notice to Proceed through the end date indicated by the City in the Non Professional Services Agreement. Failure of successful Bidder to complete the work or deliver the goods within the time allowed will result in damages, and for each consecutive day in excess, the contractor shall pay to the City the sum of **$250** per calendar day. Such amount shall not be construed as a penalty but as a minimum value of liquidated damages that may be deducted from payment due to the contractor if such delay occurs.

MEASUREMENTS: It is the responsibility of the Bidder to make all measurements to determine their bid price. The City will not be responsible for determining the quantities of materials necessary to complete the work specified.

NON-PROFESSIONAL SERVICES AGREEMENT: Successful contractor shall enter into a Non-Professional Services Agreement (NPSA) – sample copy attached- with the City for the work to be done

PERMITS: Unless otherwise specified herein, Contractor shall at their expense, obtain all permits and licenses and pay all charges and fees necessary for the performance of the contract, and shall give all public notices necessary for the lawful performance of the contract. Contractor shall pay all taxes, levies, duties and assessments of every nature due in connection with any work under the contract, shall make any and all payroll deductions required by law, and shall indemnify and hold harmless the City from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

PREVAILING WAGE: THIS PROJECT IS SUBJECT TO THE PAYMENT OF PREVAILING WAGES. THIS PROJECT IS SUBJECT TO COMPLIANCE MONITORING AND ENFORCEMENT BY THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS. IN ORDER TO SUBMIT A BID, ALL BIDDERS MUST BE REGISTERED WITH THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS IN ACCORDANCE WITH CALIFORNIA LABOR CODE SECTION 1725.5. The Interim Purchasing Agent directs prospective bidders to the Department of Industrial Relations' website for the prevailing wage rates applicable to the worker classifications to be employed on the project.

PROTECTION OF PUBLIC: Adequate warning devices, barricades, guards, flagmen or other necessary precautions shall be taken by the contractor to give advised and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area.

REJECTION OF WORK: Contractor agrees that the City has the right to make all final determinations as to whether the work has been satisfactorily completed.

UNKNOWN OBSTRUCTIONS: Should any unknown obstruction be encountered during the course of this contract the Contractor shall immediately bring it to the attention of the City. The contractor shall be responsible for the protection of all existing equipment, furniture, or utilities encountered within the work area.

BID FORM
Digester Cleaning 2015
15-16.001

To: City of San Leandro
835 E. 14th Street
San Leandro, California, 94577

From: _____
Name of Bidder

_____
Mailing Address

_____
City, State & Zip

The undersigned Bidder agrees he will contract with the City of San Leandro to provide all necessary labor, supervision, machinery, tools, apparatus, and other means of construction to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and that he will take in full payment the amount set forth hereon.

Bid No. 15-16.001 in its entirety, all Addenda and the following documents by this reference are hereby made a part of this contract:

a. Notice of Invitation For Bids
b. Sludge Material Management Specifications
c. Instructions To Bidder
d. Terms and Conditions
e. Special Provisions For Services
f. **Bid form**
g. **Addenda (if any)**
h. **Subcontractor information questionnaire**
i. **Non-Collusion Affidavit**
j. **Bidder's Guaranty**
k. **Bidder's Statement Regarding Insurance Coverage**
l. **Worker’s Compensation Insurance Certificate**
m. **Experience Statement**
n. **Subcontractors List**
o. Insurance requirements (attached)
p. Non-Professional Services Agreement – sample

Items in **bold** are to be completed and enclosed in sealed bid.

BID FORM - Continued

Bidder acknowledges receipt of Addenda Number(s) ,____,____, and____.

The cost of all labor, material, and equipment necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit price for the various items shown hereon. The City of San Leandro reserves the right to increase or decrease the quantity of any item or omit items as may be deemed necessary and the same shall in no way affect or make void the contract. When increases or decreases are made, appropriate additions or deductions from the contract total price will be made.

Bid Price to remove approximately 153,000 gallons of sludge from existing anaerobic digester, to screen and remove inorganic material from sludge, pump cleaned water to Water Pollution Control Plant headworks, clean digester interior, and dispose of screenings and grit:

Base Bid Price for disposing of screenings and grit in existing Plant drying bed (in figures): $_____

Base Bid Price in words: _____

Bid Alternate A: Additional price for hauling and disposing of screenings and grit off site (in figures):

$_____

Bid Alternate A Price in words: _____

TOTAL BID PRICE $_____

TOTAL BID PRICE (in words) $_____

Award of bid will be made to the lowest responsible and responsive bidder based on TOTAL BID PRICE including Alternate A at the City's discretion. Bidders must include a price for Bid Alternate A.

Amount Written in Words. This bid will be awarded based upon the total amount bid **as written in words.** Where there is a discrepancy between words and figures, WORDS WILL GOVERN.

Please check your calculations before submitting your bid; the City will not be responsible for Bidder miscalculations.

RETURN WITH BID PACKET

BID FORM - Continued

Subcontractor Information. Does this proposal include the use of subcontractors?

Yes_____No _____ Initials _____

_____
Company Name of Bidder

_____
Mailing Address (PO Box or street)

_____
City, State, and Zip Code

_____
Name of Authorized Representative

_____ _____
Signature Title

_____
Type of Business (Corp, Partnership, Sole Proprietorship)

_____ _____
Telephone Number / Facsimile Number

_____
Contractor's DIR Registration No.

_____

_____

RETURN WITH BID PACKET

Non-Collusion Declaration
To Be Completed and Submitted With Bid

State of California)
County of Alameda ss.
)

_____(name of signer), being first duly sworn, deposes and says that he or she is Owner of_____(Company name) the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the Bidder has not , directly or indirectly, submitted their bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."
.

_____	_____
(Date)	(Signed at (Place))
_____	_____
Bidder Name (Person, Firm, Corp.)	Authorized Representative
_____	_____
Address	Representative's Name
_____	_____
City, State, Zip	Representative's Title

RETURN WITH BID PACKET

BIDDER'S GUARANTY
To Be Submitted With Bid

The successful bidder shall execute this guaranty upon execution of the contract. If they so choose, Bidders may execute this guaranty at the time of submitting their bid.

To the City of San Leandro
Bid No. 15-16.001

The undersigned guarantees the production, construction, and installation of the following work included in this project in accordance with:

Bid No. 15-16.001 Digester Cleaning 2015

Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the contract documents, due to any of the above causes, all within **twelve (12) months after date on which this contract is accepted** by the City of San Leandro, hereinafter called City, the undersigned agrees to reimburse the City, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project.

Said reimbursement shall include the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or upon demand by the City, to replace any such materials and to repair said work completely without cost to the City so that said work will function successfully as originally contemplated. The City shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the undersigned. In the event the City elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the City. If the undersigned shall fail or refuse to comply with their obligations under this guaranty, the City shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred due to the said failure or refusal.

_____
Name of Bidder/Contractor (Person, Firm, or Corporation)

_____
Signature of Bidder/Contractor's Authorized Representative

_____
Name & Title of Authorized Representative

_____
Date of Signing

RETURN WITH BID PACKET

BIDDER'S STATEMENT
REGARDING INSURANCE COVERAGE
To Be Submitted With Bid

BIDDER HEREBY CERTIFIES that the Bidder has reviewed and understands the insurance coverage requirements specified in the Invitation for Bid No. 15-16.xxx, Digester Cleaning 2015. Should the Bidder be awarded the contract for the work, Bidder further certifies that the Bidder can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City of San Leandro as Additional Insured for the work specified.

_____
Name of Bidder (Person, Firm, or Corporation)

_____
Signature of Bidder's Authorized Representative

_____
Name & Title of Authorized Representative

_____
Date of Signing

RETURN WITH BID PACKET

WORKER'S COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

_____
Name of Bidder (Person, Firm, or Corporation)

_____
Signature of Bidder's Authorized Representative

_____
Name & Title of Authorized Representative

_____
Date of Signing

ATTEST:
By_____
Signature

_____
Title

RETURN WITH BID PACKET

EXPERIENCE STATEMENT
To Be Submitted With Bid

List at least three references for work of a similar nature performed within the last three years.

I hereby certify that I have performed the work listed below.

_____
Signature of Bidder

Description Yr. Amt. Customer & Telephone

_____ ___$_____ _____

(_____)_____

_____ ___$_____ _____

(_____)_____

_____ ___$_____ _____

(_____)_____

_____ ___$_____ _____

(_____)_____

_____ ___$_____ _____

(_____)_____

_____ ___$_____ _____

(_____)_____

RETURN WITH BID PACKET

SUBCONTRACTORS LIST

The following is a list of the subcontractors that will be used in the work if the Bidder is awarded the contract, and no subcontractor not listed below will be used without the written approval of the City of San Leandro. Additional numbered pages outlining this portion of the bid may be attached to this page. **NOTE: Subcontractors' address, telephone number, license numbers, class and expiration date information may be omitted from this form but must then be submitted within two (2) working days following the opening of bids. Subcontractor name, location, and item of work must be stated at the time of the bid.**

_____
Bidder Name

SUBCONTRACTORS LIST, Page 1 ***All Subcontractors in excess of 1/2 of 1% of total bid must be listed.***		
SUBCONTRACTOR and DIR Registration No.:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. **CLASS:**	**EXPIRATION DATE:** / /	PHONE: ( )
SUBCONTRACTOR and DIR Registration No.:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. **CLASS:**	**EXPIRATION DATE:** / /	PHONE: ( )

RETURN WITH BID PACKET

NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN

THE CITY OF SAN LEANDRO AND
[NAME OF CONTRACTOR] FOR [NAME OF PROJECT]

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

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

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.

1.2 Standard of Performance. Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.

1.3 Assignment of Personnel. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor's obligations hereunder.

1.5 City of San Leandro Living Wage Rates. This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

1.6 Public Works Contractor Registration. Contractor agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public

works project unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Contractor agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

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

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

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

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

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
- The Contractor's signature;
- Contractor shall give separate notice to the City when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and City. Such notice shall include an estimate of the time necessary to

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

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

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Fees. Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed $_____. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

2.10 Liquidated Damages. Failure of Contractor to respond to problems referred to it by City within the

time limits established in Subsection 1.2 of this Agreement shall result in liquidated damages as set forth in Exhibit A.

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

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

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

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

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

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

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

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

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

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF

CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

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

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

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

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

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

4.1 Workers' Compensation.

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

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the

entity for all work performed by the Contractor, its employees, agents, and subcontractors.

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

a. Certificate of Liability Insurance in the amounts specified in the section; and

b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.

c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

d. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

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

a. Certificate of Liability Insurance in the amounts specified in the section;

b. Additional Insured Endorsement as required by the section;

c. Waiver of Subrogation Endorsement as required by the section; and

d. Primary Insurance Endorsement as required by the section.

4.3 All Policies Requirements.

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

4.3.2 Verification of Coverage. Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Contractor by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

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

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

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

4.3.6 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

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

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

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

Section 6. STATUS OF CONTRACTOR.

6.1 Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this

Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Contractor Not an Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

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

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Contractor.

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

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

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

8.6 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, City's remedies shall 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 Contractor pursuant to this Agreement;

8.6.3 Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or

8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid

Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Contractor's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 Contractor's Books and Records. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds $10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.6 Conflict of Interest. Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

10.8 Contract Administration. This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.9 Notices. Any written notice to Contractor shall be sent to:

_____
_____
_____

Any written notice to City shall be sent to:

_____
_____
_____

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

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein

as Exhibits A, B, [and C] [ENSURE THAT THE CORRECT EXHIBITS ARE LISTED] represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Compensation Schedule & Reimbursable Expenses
Exhibit C California Labor Code Section 1720 Information [DELETE IF NOT APPLICABLE]

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

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

SIGNATURES ON FOLLOWING PAGE

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

CITY OF SAN LEANDRO

_____
Chris Zapata, City Manager

Attest:

_____
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)

[NAME OF CONTRACTOR]

_____
[NAME, TITLE]

_____
Contractor's DIR Registration Number

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

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

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Contractor and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services or work.

B. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes penalties per day for each worker engaged in the performance of the services described in Exhibit A that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of their obligations under the California Labor Code. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable

for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Contractor shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and sent directly to the Labor Commissioner, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

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