

CITY OF SAN LEANDRO

REQUEST FOR BID

SUBMIT BID TO: City of San Leandro Purchasing Department 835 East 14th Street San Leandro, CA 94577	FOR FURTHER INFORMATION CALL: Don Brockman Purchasing Agent (510) 577-3472 fax (510) 577-3312 dbrockman@ci.san-leandro.ca.us
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BID NO: 09-10.025	DATE MAILED: March 1, 2010	THIS QUOTATION MUST BE DELIVERED TO THE CITY BEFORE: 3:00 P.M. , Friday, March 26, 2010
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QTY.	DESCRIPTION	UNIT PRICE	EXTENSION
	<p>City of San Leandro INVITATION FOR BIDS Bid No. 09-10.025 Boulevard Yarwood Sycamore Tree Trimming</p> <p>Notice is hereby given that sealed bids will be received at the Purchasing Office, until 3:00 PM, Friday, March 26, 2010 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 trim a stand of Yarwood Sycamore Trees located along local boulevards and adjacent roadways throughout the City of San Leandro in accordance with the City of San Leandro plans, specifications and contract documents.</p> <p>Pre-Bid Conference. A pre-bid conference will be held at 9:00 AM on Tuesday, March 16, 2010 at the Public Works Service Center Conference Room located at 14200 Chapman Rd.</p> <p>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 “Boulevard Yarwood Sycamore Tree Trimming, Bid No. 09-10.025. Bids will be received until 3:00 PM, Friday, March 26, 2010. 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. The receiving time in the Purchasing Office will be the governing time for acceptability of bids. Bids must bear original signatures and figures. 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.</p> <p><u>Specifications.</u> Specifications may be examined and obtained at no charge at the Purchasing Office, on line at http://www.ci.san-leandro.ca.us/slpurchasingbids.html or by calling 510-577-3472</p>		

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 contract addendum are included in the bidder's submittal.

The successful bidder shall comply with all local, state and national laws, rules and regulations regarding the licensing of its drivers and delivery personnel and the maintenance and safety of its vehicles.

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 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.

Payment shall be within 30 days following acceptance of bid items.

- Delivery shall be F.O.B. destination
- There shall be no charge(s) for delivery of bid items.

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. Please note that there is a one-day delay in mail delivery to City Hall by the U.S. Postal Service.

Tree Trimming Services shall be performed at various sites around the City:

Firm _____

Date: _____

Address _____

Phone: _____

FAX: _____

By (Signature) _____

Print Name: _____

Title: _____



Don Brockman
Purchasing Agent

INSTRUCTIONS TO BIDDER

BID FORMS: Bid must be submitted on Bid Forms from this bid package.

BID OPENING AND BID RESULTS: Bids are opened publicly in the Purchasing Department. Interested parties are invited to attend the bid opening. Bid results will be available on the City's web site as soon as practical after the bids are opened.

BID SUBMITTAL DEADLINE: **The Bid Submittal Deadline is 3:00 PM, Friday, March 26, 2010.** Bids must be submitted in sealed envelopes and should be properly identified with the bid number and Bid Submittal Deadline. **Bids must arrive in the Purchasing Office, 835 E. 14th Street, San Leandro, California, 94577, by 3:00 PM local time, Friday, March 26, 2010.** 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 Agent before the Bid Submittal Deadline. At no time may the successful Bidder(s) 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. A pre-bid conference will be held at **9:00 AM on Tuesday, March 16, 2010** at the Public Works Service Center Conference Room located at 14200 Chapman Rd.

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

TERMS AND CONDITIONS

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.

PAYMENT TERMS: See Scope of Services, Item #8.

QUESTIONS AND COMMENTS: Questions and comments regarding their solicitation must be submitted in writing, either by mail to the Purchasing Agent at 835 E. 14th Street, San Leandro, California, 94577, or by facsimile at 510-577-3312. 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 their 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 their solicitation.

CANCELLATION OF CONTRACT: The City may cancel their contract WITHOUT CAUSE at any time by giving thirty- (30) days written notice to the supplier/contractor. The City may cancel their contract WITH CAUSE at any time by giving ten (10) days 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 their contract. The successful Bidder may not cancel their contract without prior written consent of the Purchasing Agent.

COMPLIANCE OR DEVIATION TO SPECIFICATIONS: Bidder hereby agrees that the material, equipment or services offered will meet all the requirements of the specifications in their 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 their requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but shall not be an acceptable substitution for their requirement.

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

FORCE MAJEURE: If execution of their 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 and City's written acceptance shall constitute a binding contract.

LAWS GOVERNING CONTRACT: Their contract shall be in accordance with the laws of the state of California. The parties stipulate that their contract was entered into in the county of Alameda, in 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 their solicitation and shall refer exclusively to the person, company, or corporation with whom the City enters into a contract as a result of their 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 their 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 their contract without the specific written consent of the City.

SEVERABILITY: If any provisions, or portions of any provisions, of their 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.

TAXES, SALES: California Sales Tax should be shown separately on the Bid Form, when and where indicated, if applicable.

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

SPECIAL PROVISIONS FOR SERVICES

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

AUTHORITY OF THE CITY OF SAN LEANDRO: Subject to the power and authority of the City as provided by law in their 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 their 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: If the scope of work under their bid includes performing services or installation on City property, the SUCCESSFUL BIDDER must have current City Business License. Inquires regarding Business License may be directed to the Finance Department at 510-577-3468. Business Licenses are not required to submit a bid, or for materials or equipment shipped by U.S. mail or common carrier.

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 their 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 their 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: Their contract and the accompanying Non-Professional Services Agreement (NPSA) embody the entire contract between the City and the Contractor. 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. No changes, amendments, or modifications of any of the terms or conditions of the contract 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 Bidder's successful submittal, supplemental agreements, change orders, performance bond(s), if any 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 their 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 their contract. Failure or refusal to restore or replace such damaged property will be a breach of their 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. He shall satisfy himself 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 their 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 their 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 their contract is an officer or employee of City. It is expressly agreed by Contractor that in the performance of the services required under their 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 attachment labeled Non-Professional Services Agreement 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

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.

LIQUIDATED DAMAGES: Time is of the essence of their contract. 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 "Maximum Completion/Delivery Time" indicated by the Successful Bidder/Contractor on their Bid Form for the completion work or delivery of the goods specified. 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 \$100.00 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: The successful Bidder shall complete, sign and enter into a Non-Professional Services Agreement (NPSA – blank copy attached for example) with the City of San Leandro.

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.

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 their contract the Contractor 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.

CONTRACT RENEWAL: Upon mutually agreement, this may be renewed for up to two (2) additional contract periods. Per tree amount will be change by the most current CPI period, which is typically April to April of the previous year (SF Bay All Urban Consumers).

PIGGY BACK: Upon mutual agreement, this pricing, specification, terms and conditions, etc. may be extended to other authorized agencies.

VIEW JOB SITE: As designated above, the trees are all in plain view.

WAGES: This contract requires the payment of **prevailing wages for the State of California** or the City of San Leandro Living Wage whichever is higher.

EXHIBIT A: SCOPE OF SERVICES
BOULEVARD YARWOOD SYCAMORE TREE TRIMMING
Bid No. 09-10.025

1. **SUMMARY:** The work includes all services, labor, materials, transportation and equipment necessary to perform the work described in these specifications.
2. **SCOPE:** Furnish all labor, tools, equipment, materials, transportation, and perform all operations necessary and incidental to proper execution and completion of all tree trimming in accordance with the specifications.

Work consists of trimming a stand of Yarwood Sycamore trees on major boulevards and adjacent side streets as outlined below and as directed by the Tree Supervisor.

3. **QUANTITIES:** Approximate quantities and locations are the following:

LOCATION	APPROX # OF TREES
East 14 th Street from North City Limits to South City Limits	600
MacArthur Boulevard from North City Limits to Estudillo Avenue	107
Bancroft Avenue from North City Limits to Estudillo Avenue	74
Marina Boulevard from I-880 to San Leandro Boulevard	37
Alvarado Boulevard from Estabrook Street to Marina Boulevard	4
Davis Street from I-880 to East 14 th Street	127
Parrott Street from East 14 th Street to Washington Avenue	31
Wicks Boulevard across from Stenzel Park	24
15301 Wicks Boulevard – Marina Community Center	21
Doolittle Drive South of Davis Street	12
Lewelling Boulevard East of Wicks Boulevard (900 Block)	8
City Hall Parking Lots – Toler and Lafayette	22
Bancroft Avenue at Callan Avenue (IFO Bancroft Middle School)	8
300 Block of Preda Street	22
San Leandro Boulevard Between Parrott Street and Lille Street	31
In front of 1371-B E.14 th Street (1 Conferta, 2 Podocarpus, 1 Sycamore)	4
Joaquin Avenue – east of E.14 th Street	11
Garcia Avenue at E. 14 th Street	2
Victoria Circle	9
Dowling Boulevard at Bancroft Avenue	5
Dutton Avenue at E. 14 th Street and Bancroft Avenue	19
Lewis Avenue at Macarthur Boulevard	6
Maud Avenue and Thornton Street at E. 14 th Street	8
APPROXIMATE TOTAL	1192

Exact quantities and locations shall be as authorized by the Tree Supervisor of the City of San Leandro or his designated representative. No payment shall be made for any work performed which is not authorized. The City may elect to change quantities of trees for trimming by up to 25% without change in bid amount per tree.

4. **STANDARDS:** All tree trimming is to be done in accordance with the *International Society of Arboriculture, Western Chapter Pruning Standards (1988)*, the *National Arborist Association Pruning Standards for Shade Trees (revised 1988)*, and in compliance with ANSI Z133.1 (1988 Safety Standards). Specifically the quality of work shall be consistent with the National Arborist Association definition of Fine Pruning (Class 1). Contractor is required to have a thorough knowledge of these standards and is to have copies of these standards on all sites where work is being performed.

In addition, in order to minimize damage to the trees, no pruning is allowed with circular saws and no climbing with spikes is allowed.

Trees are to be raised from the sidewalk and street, thinned, trimmed back from buildings and signs cleared as much as possible, long heavy limbs lightened, and as is consistent with the growth stage of the tree, have all basal and inside sucker growth removed as is consistent with the above standards.

Contractor will not be paid for any trees not trimmed consistent with these specifications. If at any time, Contractor shows an inability to trim consistent with these specifications, the Tree Supervisor, or said representative, will have the authority to order Contractor to cease all trimming and to have the purchase order cancelled.

5. **MOBILIZATION:** Contractor selected shall have five (5) week days from notice by City to provide proof of insurance, proof of Contractor's license, proof of business license and such other documentation as required.

6. **WORKDAYS:** All trimming is to be completed within sixty (60) workdays from award of contract.

7. **HOURS OF OPERATION:** All trimming is to be done between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless prior approval is granted by the City Tree Supervisor or his designated representative.

8. **PAYMENT:** Payment shall be on a per tree basis. Only trees approved for trimming by the City Tree Supervisor will be paid for. No payment will be made for any tree which is not trimmed as per these specifications. If the Contractor's activities damage a tree to the extent where it will not recover with good form in the sole judgment of the City's Tree Supervisor, Contractor shall remove and replace the damaged tree with a replacement tree approved by the city. All such removal/replacement costs will be borne by the Contractor with no payment from the City. If Contractor does not replace a damaged tree, \$500 per damaged tree will be withheld from any payment due Contractor.

Invoices shall be prepared by the listing of street names, side of street (North, East, West, South), what block to what block, and total number of trees trimmed on that side of the specified street in between each block.

9. **WEEKLY MEETINGS:** Contractor shall be required to meet weekly with the Tree Supervisor or his representative to confirm the work completed, discuss any issues that may have occurred, and to review the contractor's proposed work schedule.

10. **CLEANUP:** All branches, brush, leaves, chips, and sawdust are to be removed from the site and properly disposed of by the Contractor as part of the bid price. The intent is that all areas are to be left in as clean a condition or better than before the Contractor's operations. Cleanup is to be done continuously as each tree is finished. No brush is to be left at any of the tree sites.

11. **TRAFFIC CONTROL AND ACCESS:** Contractor shall not completely obstruct public pedestrian pathways or deny access to private property at any time. No streets shall be closed at any time. The Contractor may establish "No Parking" zones, contiguous to the work area by posting signs. The City will enforce parking restrictions only when the Contractor has posted the proper signs and has notified the City Police Department a minimum of 48 hours in advance of the required restriction period.

Construction signs, lights, barricades, etc., shall conform to the latest revision of the *Manual of Warning Signs, Lights and Devices for Use in Performance of Work Upon Highways*, by California Department of Transportation.

12. **CORRECTION OF HAZARDOUS CONDITIONS:** If, in the determination of the city Supervisor, any work done or omitted by the Contractor or any act of vandalism or theft has created a condition hazardous to the public, the city Supervisor will notify the Contractor's office by telephone. The Contractor shall commence correction of such condition by placement of barricades or as otherwise directed by the city within one (1) hour of receipt of such notice at his office, and shall complete correction thereof on the same calendar day, regardless of the size of the working force required or the number of hours of work required.

If the contractor cannot be reached by telephone, or fails to respond to the hazardous condition within the specified one (1) hour limit, the city shall have the authority to cause said hazardous condition to be corrected and deduct the cost thereof from any amounts due or to become due the Contractor. Such costs shall include any minimum or base costs for labor, materials or equipment as required by contracts, agreements or supplier but in no case shall such cost be less than \$250 per hazardous condition per location.

BID FORM
Boulevard Yarwood Sycamore Tree Trimming
Bid 09-10.025

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

From: _____
Name of Bidder

Address: _____
City, Zip _____
Phone: _____
Fax: _____

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. **09-10.025** to **Boulevard Yarwood Sycamore Tree Trimming**, in its entirety, all Addenda, and the following documents by their reference are hereby made a part of their contract:

- a. Notice of Invitation For Bids
- b. Scope of Work
- c. Instructions To Bidder
- d. Terms and Conditions
- e. Special Provisions For Services
- f. Bid Form (Prices)
- g. Non-Collusion Affidavit
- h. Bidder's Statement Regarding Insurance Coverage
- i. Worker's Compensation Insurance Certificate
- j. Bidder's Nondiscriminatory Employment Certificate
- k. Experience Statement
- l. Subcontractors List
- m. Non-Professional Services Agreement (NPSA)

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 at the stipulated unit price.

BID PRICE _____

PER TREE PRICE: \$ _____

Per tree price X 1192 TREES: \$ _____

Bid amount

Award of bid will be made to the lowest responsible and responsive bidder of the Total Amount of Bid.

Please check your calculations before submitting your bid; the City verify all math.

The “per tree” price shall be used to determine actual amount of contract. Should the actual number of trees be greater or less than 1192 the City of San Leandro will use the “per tree” price to add or subtract the appropriate amount of money due.

BIDDER NAME: _____

BID FORM - Continued

Subcontractor Information. Does their proposal include the use of subcontractors? (if yes – complete attached list 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

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 their portion of the bid may be attached to their page. **NOTE: Subcontractors' address, telephone number, license numbers, class and expiration date information may be omitted from their 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 <i>All Subcontractors in excess of 1/2 of 1% of total bid must be listed.</i>		
SUBCONTRACTOR:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ()
SUBCONTRACTOR:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ()

**Non-Collusion Affidavit
To Be Completed and Submitted With Bid**

State of California)
County of Alameda ss.
)

Name of Bidder

being first duly sworn, deposes and says that he or she is Owner of _____(Contractor 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 or her 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

**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 Bids No. 09-10.025, for Boulevard Yarwood Sycamore Tree Trimming. 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

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 their 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

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

THIS AGREEMENT for non-professional services is made by and between the City of San Leandro ("City") and _____ ("Contractor") (together 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, and incorporated herein, 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 according to the standards observed by a competent practitioner of the industry 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 Section 1.2 above and to satisfy Contractor's obligations hereunder.
- 1.5 **Reserved**
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Contractor's attention is directed to the City's Municipal Code, Title 1, Article 6, Chapter 6. Contractor must submit completed self-certification form and comply with the LWO, if covered.

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

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

- 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;
- 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 **Reserved.**
- 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 **Reserved**
- 2.6 **Reimbursable Expenses.** Reimbursable expenses shall not exceed \$. Expenses not previously approved by the City 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.

Section 3. FACILITIES AND EQUIPMENT. 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 may, in its discretion, provide Contractor facilities and equipment that may be necessary, but only after City is satisfied that Contractor and its individual employees are trained to use such facilities or equipment safely and properly.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under 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. 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 \$1,000,000.00 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 Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 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. If no owned or non-owned automobiles will be used under this Agreement, Contractor shall provide a statement that provides under penalty of perjury that no owned or non-owned automobiles will be used in the performance of this Agreement.

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 (most recent edition), 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 occurrence basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as 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. 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.

- d. Each insurance policy required by this clause 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 **Reserved**

4.4 **All Policies Requirements.**

4.4.1 **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.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all policies delivered to Contractor by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and 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.

4.4.3 **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.

4.4.4 **Reserved**

4.4.5 **Waiver of Subrogation.** 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.

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.

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

4.5 **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.

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 30 days' written notice to City and shall include in such notice the reasons for cancellation.

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

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

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

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

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

- 8.6 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:

- 8.6.1 Immediately terminate the Agreement;
- 8.6.2 Reserved;
- 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 Section 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 **Reserved.**

10.7 **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 Sections 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 twelve 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 Government Code § 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 Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 **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.

10.9 **Contract Administration.** This Agreement shall be administered by Ron May and Don Brockman ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Contractor shall be sent to:

Any written notice to City shall be sent to:

10.11 **Reserved**



10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A 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

10.13 **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.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF SAN LEANDRO

CONTRACTOR

Steve Hollister, City Manager

[NAME, TITLE]

Approved as to Form:

Jayne W. Williams, City Attorney

123412