



CITY^{OF} SAN PABLO
City of New Directions

**CITY OF SAN PABLO
Development Services Department
Request for Proposals**

**BICYCLE AND PEDESTRIAN MASTER PLAN/
FEASIBILITY STUDY**

**ISSUED ON:
May 12, 2016**

**RESPONSES DUE:
May 26, 2016**

**CONTACT:
Elizabeth Dunn, AICP
(510) 215-3035**

ElizabethD@SanPabloCA.gov or visit us online at www.SanPabloCA.gov

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I. INTRODUCTION

The City of San Pablo invites proposals from qualified firms experienced in the drafting and preparation of a Citywide 5-year Bicycle and Pedestrian Master Plan/ Study/Feasibility Study. Sensitivity to a low-income, primarily Spanish speaking community is a must. Preparation of this Master Plan/Feasibility Study is requested in order to further implement the goals and policies of the following City documents:

- 1) General Plan 2030 General Plan, with particular emphasis on these elements of the General Plan: Land Use and Physical Design; Circulation, Parks, Schools, Community Facilities and Utilities; Open Space and Conservation; and Health;
- 2) 2012 Climate Action Plan to reduce greenhouse gases and encourage the use of alternative modes of transportation, walking, biking, and carpools;
- 3) Public health goals for healthy transportation and physical activity; respond to public health issues such as obesity in adults and children; and incorporate the outcome of the Safe Routes to Schools (SR2S) programs in San Pablo; and
- 4) City's Capital Improvement Program (CIP) to address the scheduling and funding of infrastructure improvements of citywide benefit. An example is a sidewalk survey to understand where gaps in sidewalks exists within the City of San Pablo; and
- 5) To capitalize on the network of enhanced creeks and create the opportunity for multi-use pathways adjacent to the creekways for bicycle and pedestrian use for commuting to work and recreational activity.

II. ABOUT SAN PABLO

San Pablo is located in West Contra Costa County off Interstate 80, minutes away from the Bay Area cultural centers of Berkeley, Oakland and San Francisco. Interstate 80 is the principal arterial route between the Bay Area and Sacramento. The City of San Pablo is nestled between the cities of Pinole and Richmond and the neighboring cities of El Cerrito and Hercules. Historically one of the oldest Spanish settlements in the region, San Pablo has become a thriving residential and business community with a population of almost 30,000 on approximately three square miles of land.

San Pablo is located one half hour away from international airports in Oakland and San Francisco. Because of its location, its residents are afforded beautiful views of San Pablo Bay. Beyond the views and ease of intercontinental transportation, the Bay Area Rapid Transit (BART) system and Amtrak passenger train service are located in neighboring cities providing access to the entirety of the region in conjunction with an AC Transit bus line service. Express AC Transit Bus service exists on San Pablo Avenue to provide convenient and faster commuter bus service along San Pablo Avenue to the Richmond and El Cerrito BART stations, and important stops for employees using this form of transit.

The City's character was largely shaped during the Second World War when shipyards in Richmond began building ships at breakneck speed. A large portion of the City's housing stock was also constructed during this time, with limited resources and little regard for design and long term structural stability. Many of the houses lining San Pablo's streets were never intended to be

permanent; rather they were intended to accommodate the population influx that took the population from 2,000 people prior to the war to 25,000 people during the war era. The City incorporated shortly after the war on April 27, 1948 and continued to transform. We currently have one of the highest densities in California, with over 30 dwelling units per acre.

III. SCOPE OF WORK

The Consultant team shall complete the following tasks. The scope of work outlined below reflects anticipated tasks and deliverables to complete the Bicycle and Pedestrian Master Plan/Feasibility Study. Changes to the scope may be necessary to integrate innovative approaches by the consulting team.

Task 1: Project Management

Consultant will meet with City of San Pablo staff to review and finalize the scope, establish vision, goals, objectives, work plan, timeline and strategies. Consultants will maintain regular communication as determined jointly with San Pablo staff to update on the status of the project.

Task 2: Collect and Review Existing Data/Conditions

Consultant will review or compile appropriate information as identified below as it relates to the City of San Pablo for the creation of the Master Plan/Feasibility Study:

DESIGN AND REGULATIONS

- ADA Transition Plan for Streets and Sidewalks
- Bicycle Parking Requirements
- Inventory of sidewalks, bicycle facilities, informal pathways, and key pedestrian and bicycle opportunity areas
- Newspaper Rack Ordinance and other Regulations (Street Furniture) that may be in conflict with the design or implementation of new pedestrian routes
- Pedestrian and bicycle traffic control devices (Signs, Markings, and Signals)
- Specific Plans, and Overlay Zones
- Street Tree Requirements
- Traffic Signal and Stop Sign Warrants
- Design Guidelines to Support Mixed-Use and Pedestrian and Bicycle Orientation
- Traffic Management Procedures
- Crossing Barriers
- Transportation Demand Management Program

PUBLIC HEALTH DATA

- Collision History and Collision Reporting Practices
- Childhood and Adult Obesity Rates
- Safe Routes to School Program and Grant Funding
- Coordination with Health Agencies
- Collection of Pedestrian Volumes

ADDITIONAL DATA

- Update existing conditions, especially the collision data and commuting statistics for pedestrians and bicyclists
- Update priorities for pedestrian improvements and the City and countywide bicycle network
- Provide planning, design and implementation tools and other resources
- Update implementation tasks and established evaluation criteria for prioritizing recommended improvements
- Suggest guidelines for pedestrian-and bicycle-friendly developments
- Census tracts with low car ownership
- Administer intercept surveys with people who are out walking or biking in San Pablo
- Collect surveys from walking and biking resident throughout the City
- Participate in potential walk audits
- Sidewalk gaps*
- Existing Bike Lanes*¹

Task 3: Public Outreach

In conjunction with San Pablo staff, the Consultant will work with an appointed ad hoc Technical Advisory Committee that will assist the Consultant with community outreach and relevant local data. The Technical Advisory Committee will be established for a limited term in order to assist City staff with assembling community input, providing feedback and making a recommendation on the Master Plan/Feasibility Study. This Committee, appointed by City staff, will consist of representatives from the following groups: City of San Pablo Development Services Department and Public Works Department, residents, and business owners, and may consist of local and regional partners, such as Contra Costa County Health Services Department, Bike East Bay and First Five Contra Costa and West County Regional Group. The Consultant will begin promptly after the Committee appointment.

The Consultant shall anticipate community outreach with a minimum of two (2) community workshops, at least three (3) Technical Advisory Committee meetings.

The Consultant shall be responsible for producing agendas and graphics, facilitating and leading discussions, taking minutes, and coordinating with City staff to produce information packets for distribution to Committee members in anticipation of each meeting. This proposed Scope of Work should document the cost for additional public hearings and/or Committee meetings outside those assumed in the project scope.

Consultants are encouraged to present a work program in their proposal that most effectively meets the goals described in this RFP.

Task 4: Assembly of Relevant Policies, Goals, and Objectives from City and Regional Documents

¹ Information to be provided by the City of San Pablo or other source

General Plan 2030: All of the elements are critical for the Bicycle and Pedestrian Master Plan/Feasibility Study. Particular guiding and implementing policies of the General Plan 2030 are relevant, with particular emphasis on these elements of the General Plan: Land Use and Physical Design; Circulation, Parks, Schools, Community Facilities and Utilities; Open Space and Conservation; and Health. To view a current copy of the General Plan, please visit: <http://www.sanpabloca.gov/gp2030>

In May 2015, the City's Zoning Ordinance was adopted by the City Council. The purpose of the update to the City's Zoning (and Sign) Ordinance had the following objectives:

1. Ensure zoning consistency with the General Plan (districts and maps)
2. Ensure consistency with state law
3. Improve code organization and usability
4. Streamline and simplify allowed uses, permit procedures and use tables
5. Update development standards to address problems and reflect best practices
6. Update special use provision to address problems and reflect best practices

To view the Council adopted May 18, 2015 Zoning and Sign Ordinance, please visit: <http://ca-sanpablo.civiccities.com/index.aspx?NID=1303>

Zoning Districts

The City of San Pablo is currently zoned into 5 designations districts that include all the territory within the boundaries of the city within which the use of land and buildings, the space for buildings, and the height and bulk of regulated buildings, which are:

- Residential
- Commercial
- Industrial
- Mixed-Use
- Institutional & Open Space

Climate Action Plan 2012. Further implementation of the Transportation and Land Use Objectives; Municipal Transportation Objectives. This will be posted to the City's website.

23rd Street Specific Plan, adopted by the City Council in October 1, 2007.
<http://www.sanpabloca.gov/index.aspx?nid=1204>

San Pablo Avenue Specific Plan, adopted by the City Council in September 2011.
<http://www.sanpabloca.gov/index.aspx?nid=1203>

Complete Streets Study for San Pablo Avenue. This will be posted to the City's website.

Rumrill Blvd/13th Street Complete Streets Study, final plan presented to the City Council in October 2015. <http://www.sanpabloca.gov/rumrillcompletestreets> and

<http://www.sanpabloca.gov/index.aspx?nid=1336>

Contra Costa County Countywide Bicycle and Pedestrian Plan, adopted by the Contra Costa Transportation Authority, October 2009. http://www.ccta.net/_resources/detail/5/1

Task 5: Needs Assessment and Inventory of Facilities, Programs, and Existing Conditions

Consultant will conduct an assessment of the facilities and programs necessary to identify opportunities and constraints as discussed in Tasks 2 and 3.

Task 6: Implementation and Funding Strategies

Consultant will formulate an implementation strategy that includes lists of proposed projects by timeline, and funding strategy to support the recommendations. Consultant will devise a method to sustain a prioritized list over a specified period of time and develop associated performance measures. At a minimum projects will address safety issues, connecting existing and future facility networks, access to transit, schools, and other key activity centers, and be considered as having countywide significance.

Task 7: Draft and Final Plan/Feasibility Study

Consultant will incorporate work into a report that includes, at a minimum, an executive summary of findings, summary of existing conditions, recommendations, implementation strategy, maps of existing and proposed projects and a local bicycle and pedestrian map. A draft report will be presented to the ad hoc Technical Advisory Committee and Planning Commission for a recommendation and to the City Council to accept or adopt the report.

It is expected that a Table of Contents for the Master Plan/Feasibility Study will address the following Topics:

1. Executive Summary
2. Introduction
3. Goals and Policies
4. Existing Walking and Biking Conditions
5. Proposed Bicycle and Pedestrian Networks
6. Priority Projects
7. Support Programs
8. Performance Metrics
9. Implementation

The Scope of Work anticipates two phases with the following timelines:

Phase 1 to be completed by August 30, 2016:

- Write an approach and provide a framework to the Bicycle and Pedestrian Master Plan/Feasibility Study
- Review existing policies and programs of the City's source documents (General Plan, Zoning Ordinance, Specific Plans, Priority Development Areas, Capital Improvement Projects, Safe Routes to Schools)

- Interview staff for pending projects that relate to the overall projects
- Gather baseline data as discussed in Tasks 2 and 3 above
- Flyers for the community workshops and community meetings must be in Spanish and Tagalog. Workshops must provide Spanish and Tagalog translation as well as food and daycare services.
- Proficiency with social media (Facebook, Instagram, use of the City's e-news letter)
- Develop a vision and goals for the Bicycle and Pedestrian Master Plan/Feasibility Study

Phase 2 to be completed by August 31, 2017:

- Establish existing baseline conditions, with an emphasis on community attitudes, thoughts, feelings
- Create and conduct a community survey that provides for participation of local elementary schools and all existing Safe Route 2 Schools data and program details
- Conduct a pedestrian and bicycle audit
- Prepare community maps that highlight existing and proposed bicycle and pedestrians routes
- Establish priority networks for proposed bicycle and pedestrian routes
- Illustrate the location and materials for proposed on-street and multi-pathway signage and treatments for bicycle and pedestrian use
- Gap analysis of existing bicycling and pedestrian routes, as well as Safe Routes to Schools, should be conducted. This information should be overlapped with low income household, car ownership data for the City of San Pablo and by neighborhood, and expected areas where development is to occur.

Proposed Policies and Implementation

The following are performance criteria that should be included in the Bicycle and Pedestrian Master Plan/Feasibility Study:

- Policies and program recommendations
- Targets and indicators of success as well as performance measures
- Tracking reduction of GHG (see Rumrill Complete Streets project)
- Forecast high priority zones based upon mapping and high growth areas
- Future education to reduce single occupancy vehicles to walking and bicycling
- Priority list of improvements and next steps
- Cost estimate for high priority improvements
- Potential funding sources

The City can assist with:

- Workshop room reservations
- Organizing and communicating with the Technical Advisory Committee
- Speaking at events
- Review of Spanish (and Tagalog) language materials

IV. CITY COUNCIL/PLANNING COMMISSION ROLES

The City Council and Planning Commission will also hold one hearing each during the Bike and Pedestrian Master Plan/Feasibility Study process, and the Consultant will be expected to attend these meetings. Meetings and/or reports beyond the aforementioned commitment would be reimbursed on a time and materials basis with prior authorization from the Development Services Department.

V. BICYCLE AND PEDESTRIAN MASTER PLAN/FEASIBILITY STUDY DELIVERABLES

It is expected that the Consultant Team will provide the following services and work products:

- Prepare a Bicycle and Pedestrian Master Plan/Feasibility Study to incorporate the relevant health and transportation goals, plans and policies of the City of San Pablo General Plan 2030, 2015 Zoning Ordinance, 2012 Climate Action Plan, 2011 San Pablo Avenue Specific Plan, 2007 23rd Street Specific Plan, 2014 San Pablo Avenue Complete Streets Study, 2015 Rumrill/13th street Complete Streets Study, and City Capital Improvement Program. Using the enhanced creekways as another layer of a multi-use pathway for bicycle and pedestrian activity for commuting to work and recreational activity is essential.
- Timing of the project to be included in the Proposal. A timeline is provided in Section VIII of the RFP. A draft Bicycle and Pedestrian Master Plan/Feasibility Study should be ready to present to the Planning Commission and City Council in June 2017 and July 2017 so the City can demonstrate use of grant funds by September 2017.

Products: Ten (10) loose-leaf copies and one (1) unbound master copy of the Bicycle and Pedestrian Master Plan/Feasibility Study text in an 8 ½" x 11" format, and a CD or flashdrive in Microsoft Word 2016 and Adobe Acrobat 9 (or later version) of the draft document should be provided to the City. Provide one (1) color copy and one electronic copy.

- Attend necessary public hearings and schedule meetings, including Technical Advisory Committee meetings, as provided in the Scope of Work. City will be responsible for public hearing notices. Please provide an hourly billing rate should attendance at additional hearings/meetings be required.

Products: Display material as necessary.

Format

Completed Bicycle and Pedestrian Master Plan/Feasibility Study must be submitted in both paper and digital format using Microsoft Office 2016 and Adobe Acrobat 9 (or later version). Maps and illustrations must be submitted in both paper and Adobe Illustrator formats.

Geographic Information System (GIS)

The consultant must have capability to develop and analyze data, and generate reports and maps through the use of GIS. The City desires that future data generated and used for the Bicycle and Pedestrian Master Plan/Feasibility Study also be compatible with ESRI products. The consultant must coordinate with the City in developing its GIS program and, ultimately, deliver files compatible with its system.

VI. PROPOSAL EVALUATION PROCESS

Criteria for Consultant Selection

Primary regard will be given to the technical competence and ability of the Consultant (and sub-consultant) as demonstrated in the proposal and by successful prior experience on similar projects. Costs will be a consideration in consultant selection. The consultant's willingness and ability to work closely with the City staff, and the general quality and thoroughness of the proposal, will be considered.

In addition, the contract will be awarded only to a responsible Consultant. In order to qualify as responsible, a prospective Consultant must, in the opinion of City staff, meet the following standards as they relate to the RFP:

1. Have adequate staff, equipment, technical, and financial resources for performance, or have the ability to obtain such resources that are required for performance, including a demonstrated ability to meet work schedule time frames and deliverables.
2. Be an Equal Opportunity Employer.
3. Have a proven methodology for public participation.
4. Have an understanding of the city's needs and issues to be addressed.
5. Have references, qualifications, and experience of the firm's project manager and proposed staff, including history of successful completion of similar projects.
6. Cost effectiveness of performances in similar work for other cities.

Compliance with Terms and Conditions of the Professional Service Agreement

The Consultant will be required to comply with all terms and conditions set forth in the City of San Pablo Standard Form Professional Services Agreement (see Appendix D).

Any exceptions from these terms and conditions must be specified in the proposal, and any exception may be a basis for rejection of the proposal from further consideration.

Proposal Revision and Modification

Staff may request that the Consultant alter a submitted proposal when deemed necessary and appropriate to clarify that the proposal fully addresses the City's needs. In the event that a consultant agrees to modify the proposal, a change in the cost of the services as set forth in the proposal may be made. Otherwise, the cost stated in the original proposal remains effective for 90 days. Any additional work required beyond the scope of the contract shall be, with prior notification and contract amendment, mutually agreed to by the City and the Consultant, and shall be billed on a not-to-exceed estimated time and materials basis to the City. Contract amendments will be made only in unusual circumstances, where clearly justified by the Consultant and as determined necessary by the City.

VII. SUBMITTAL REQUIREMENTS - PROPOSAL FORMAT

To assist in the review of submittals, please detail your firm's proposed approach to the project in sufficient detail to permit evaluation of the relative merits of the analysis and procedures. Include, at a minimum, the following:

- A. *Philosophy*: The firm's philosophy on long-range urban planning, city development and urban design in the 21st Century, public participation, consultant/client relationships.
- B. *Work Program and Project Schedule*: An overall work program for completing the Bicycle and Pedestrian Master Plan/Feasibility Study project. The proposal should indicate a logical breakdown of project tasks and completion deadlines. The schedule should specify all scheduled meetings with staff and be designed to provide time for staff input prior to general distribution of materials. The schedule should also indicate all milestones and the critical path necessary for the completion of the project.
- C. *Proposal Costs and Payment Schedule*: Please submit Proposal Costs in a "menu" format to permit item by item cost identification. The costs shall be presented in a format that allows identification of sub-contractor(s) costs and of total costs for the Bicycle and Pedestrian Master Plan/Feasibility Study. Also provide rates for additional services if requested by the City, e.g. attending additional hearings or meetings.
- D. *Public Participation*: Specify the scope of public participation and the number of workshops and public hearings warranted. Include information on types of meetings, anticipated participants and size. It is likely numerous workshops, Planning Commission hearings and City Council hearings will be required, as described in the proposed Scope of Work. Thoroughly describe techniques for Committee and public workshop facilitation.
- E. *Key Personnel*: The proposal should include the names and resumes of all key personnel who are employed by the Consultant and/or proposed sub-consultant(s)

and who will be assigned to perform services pursuant to the contract. The Consultant should also indicate the percentage of project effort to be spent by each key personnel member. In addition, the proposal must identify a designated project manager with full authority to administer the contract. Any proposed substitutions of personnel are discouraged and must be approved in advance by the City. For each person identified, the following information must be provided: A brief, complete statement of each key person's work and educational background, giving the number of years of experience, title or function while gaining the experience; the dates of the projects cited for relevant experience; and the relationship of that key person to the major goals of the projects cited. The City reserves the right to verify each key person's experience and/or education and call upon references.

- F. *Subcontractors*: Identify proposed sub-contractors and their tasks. The form and content of all sub-consultant products shall be described.

Sub-consultants must also meet all requirements requested of the selected consultant and be approved by the City.

- G. *Number and Type of Products*: Indicate the number and type of products that will be generated throughout the process. Both text and graphic documents should be easily reproducible on a photocopy machine or laser printer as we anticipate doing as much of the printing in San Pablo as possible. The Consultant will be expected to provide camera-ready copies. Non-standard sized documents, such as larger wall maps, must be provided by the consultant in adequate quantities as indicated by the city.
- H. *Client References*. The proposal must list a minimum of three references for recent projects involving long-range planning and environmental analysis. The reference should identify the client, a contact name and a telephone number, a description of the service provided and the location where the service was performed.

VIII. TIMELINE

The tentative time line for the RFP is as follows (dates are approximate):

RFP ISSUED ON:
May 12, 2016

RESPONSES DUE:
May 26, 2016

SELECTION OF CONSULTANT BY:
June 2, 2016

CONTRACT TO BE FINALIZED BY:
June 9, 2016

APPROVAL OF CONTRACT BY CITY COUNCIL ON:
June 20, 2016

Submissions of Proposals

A total of five (5) bound copies and one unbound copy of the proposal should be sent to:

Elizabeth Dunn, AICP
City of San Pablo
Development Services Department
13831 San Pablo Avenue, Bldg. 3
San Pablo, CA 94806

Any questions can be directed to ElizabethD@SanPabloCA.gov or at (510) 215-3035.

IX. AWARDING OF CONTRACT

Submittals will be reviewed and rated by City staff. The selected firm will be required to enter into a written contract with the City of San Pablo in a form approved by the City Attorney. It is expected that work will commence upon award of contract.

X. INFORMATION RESOURCES

Coordination and/or consultation may be required with the following agencies:

- Association of Bay Area Governments (ABAG)
- Contra Costa County
- Various State and Federal Agencies

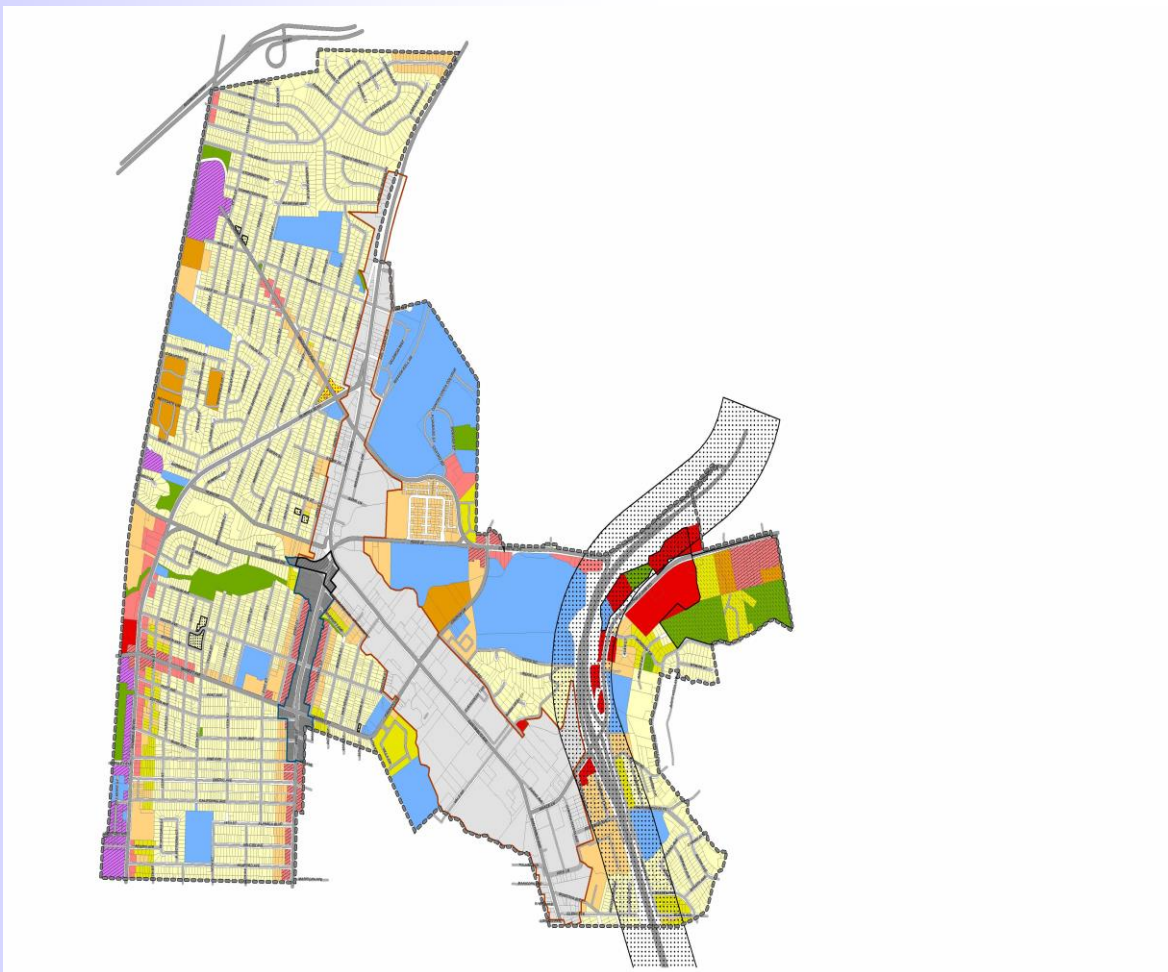
The City will provide access to the following documents for the Consultant's use as these documents will assist to provide background material for the Update. However, it is the

responsibility of the Consultant to compile and review these documents (some copying charges may apply). These documents are also be available on our website at www.SanPabloCA.gov

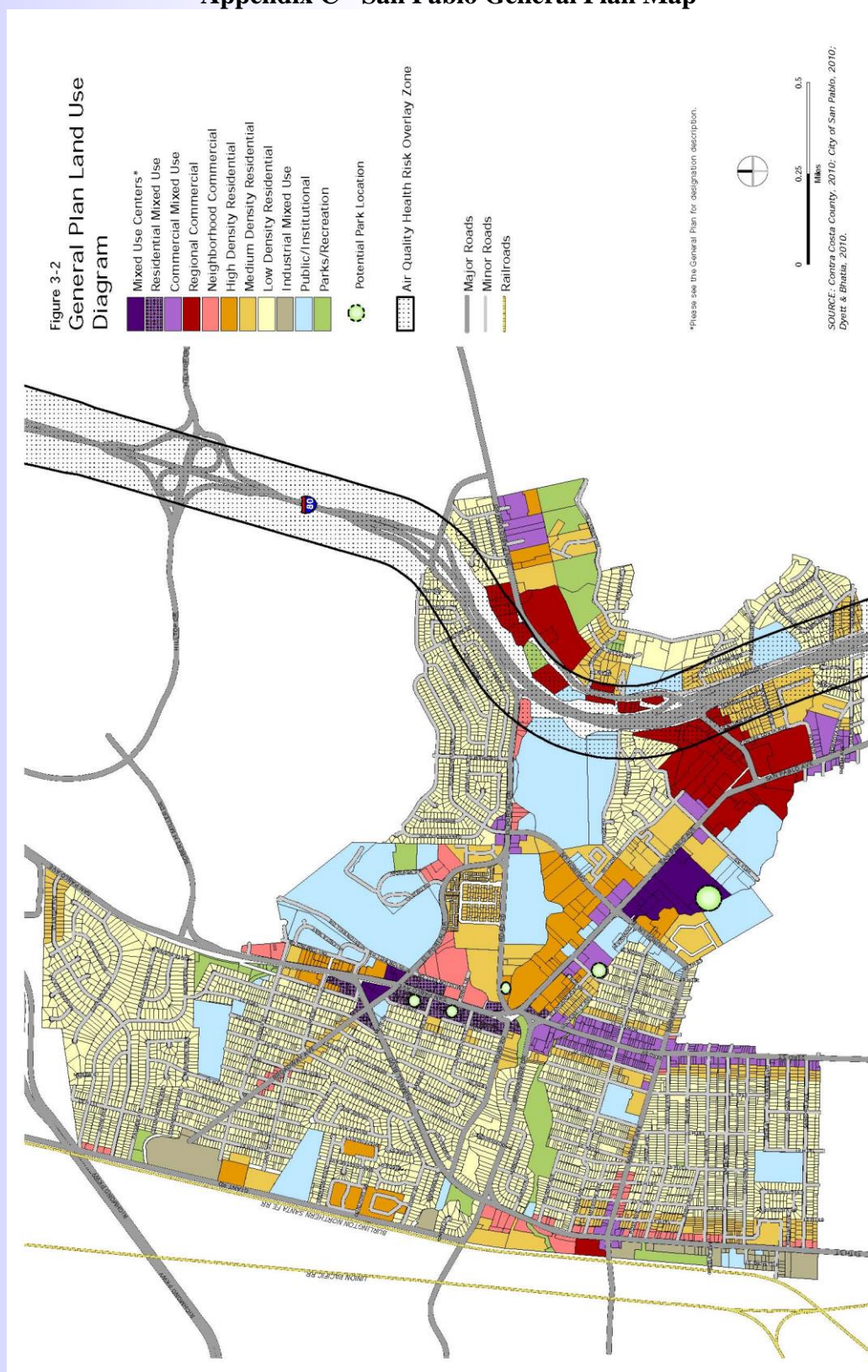
Appendix A - San Pablo Vicinity Map



Appendix B – Existing San Pablo Zoning Map



Appendix C - San Pablo General Plan Map



Appendix D - Sample Professional Services Agreement

CITY OF SAN PABLO - PROFESSIONAL SERVICES AGREEMENT

AGREEMENT FOR _____ CONSULTING SERVICES BETWEEN THE CITY OF SAN PABLO AND _____ Project No. _____ / Agreement No. [_____]

THIS AGREEMENT, dated this _____ day of _____, 20____, is by and between the City of San Pablo, a municipal corporation organized and existing under the laws of the State of California, ("City"), whose address is 13831 San Pablo Ave., San Pablo, California 94806, and _____, ("Consultant"), whose address is _____, Telephone _____, for _____ services.

RECITALS:

WHEREAS, the City desires to engage a consultant to provide a Citywide Bicycle and Pedestrian Master Plan/Feasibility Study services;

WHEREAS, the City desires to engage a professional who will act at all times in the City's best interest will respect the trust and confidence placed in that professional by the City;

WHEREAS, Consultant has represented to City, and does in fact have the special training, skill, competence and expertise necessary to provide the services needed by the City; desires to enter into this Agreement with the City as an independent contractor; and is willing to render such professional services on the following terms and conditions;

NOW, THEREFORE, Consultant and the City agree as follows:

AGREEMENT:

(1) Scope of Service.

Scope of Services

Consultant agrees to provide _____ services to the City in conformance with the proposal submitted by Consultant, _____, (Exhibit A), the cost proposal submitted by Consultant, dated _____, (Exhibit B), and the City's Request for Proposal, dated _____ as revised on _____, (Exhibit C), all of which are attached and incorporated herein by reference. In the event of any discrepancy between any of the terms of Consultant's proposal, the City's Request for Proposal, and this agreement, the terms most favorable to the City shall prevail.

Quality of Performance

Consultant agrees to perform these services in accordance with the standards of its profession and within the terms of this agreement, and shall at all times be provided on a basis satisfactory to the City Manager, and shall at a minimum be consistent with all goals and objectives set forth herein.

Consultant shall be solely responsible for the quality and suitability of services provided pursuant to this Agreement. The City Manager or designee shall determine whether services provided by Consultant pursuant to this Agreement are satisfactory to the City. If during the course of this Agreement, it is determined services being provided are not satisfactory, Consultant shall take such corrective action as the City may require. Failure to promptly take such action shall constitute a material breach of this Agreement and cause for termination in the City's discretion. This standard of care is not intended and shall not be construed to impose an obligation on the City within the meaning of Government Code Section 815.6.

Time is of the Essence. In the performance of this agreement, time is of the essence. Consultant shall be available to begin performance of services under this agreement immediately upon written notification of the execution of this agreement. All work as outlined in the scope of services must be completed by August 31, 2017.

(2) Compensation.

Notwithstanding any contrary indications which may be contained in Consultant's proposal, in exchange for the satisfactory performance of services that satisfy and timely achieve the milestones, performance commitments and outcomes identified herein and in the attached exhibits, City hereby agrees to pay Consultant a sum not to exceed (\$) as follows:

Consultant shall be paid within thirty (30) days of receipt of billings for work completed and approved. Invoices shall be submitted containing all information contained in paragraph 6 "Billings" below. In no event shall Consultant be entitled to compensation for extra work unless an approved change order, or other authorization describing the extra work and payment terms, has been executed by City prior to the commencement of the work.

Invoices must be signed by an authorized representative of Consultant, who shall verify that the invoiced services have been performed.

(3) Changes In Work-Extra Work. In addition to services described in section 1, the parties may from time to time agree in writing that Consultant, for additional compensation, shall perform additional services. The City and Consultant shall agree in writing to any changes in compensation and/or changes in Consultant's services prior to the commencement of any work. If Consultant deems work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, Consultant shall immediately inform the City in writing of the fact. The City shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the City determines that such work does

constitute extra work, it shall provide compensation to the Consultant in accordance with an agreed cost that is fair and equitable.

This cost will be mutually agreed upon by the City and Consultant. A supplemental agreement providing for such compensation for extra work shall be negotiated between the City and the Consultant.

(4) **Effective Date and Term.** The effective date of this agreement is [REDACTED] and it shall terminate on [REDACTED]. *[If the termination date is later than the end of the fiscal year, the agreement must provide that continuation of the agreement beyond that date will be contingent upon lawful encumbrance or appropriation of new funds.]*

(5) **Independent Contractor Status.** It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Consultant shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Consultant shall not represent, at any time or in any manner, that Consultant is an employee of the City. Consultant will exercise its judgment in recommending to City the methods by which to accomplish City's objectives and desires. In any case where an opportunity is made available to Consultant, Consultant will determine whether it possesses sufficient training and background to carry out whatever objective is sought by the City. If Consultant accepts an engagement, such an acceptance is deemed an affirmative admission that Consultant possesses the necessary skills, background, and licenses to perform the needed services. Consultant acknowledges that the City will provide no training. Consultant will provide whatever tools and materials that are necessary to complete a client engagement. Consultant is free to accept, and has accepted in the past, other client engagements. Consultant is responsible for purchasing, bringing, providing, and controlling any and all equipment, tools, instruments, etc. needed for completion of the work set forth herein, as well as for maintenance and use of such equipment. It is understood that Consultant is hired on a temporary basis only, and that if the City and/or Consultant desires to continue Consultant's services after expiration or termination of this agreement, Consultant will sign a new contract.

(6) **Billings.** Consultant's bills shall include the following information: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, the current contract amount, amount previously billed, total paid to date, outstanding balance, current invoice amount, total amount billed against the contract, amount remaining in contract, and the consultant's signature. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided in sections (2) and (3).

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by Consultant

in the performances of this agreement shall be incurred at the Consultant's discretion. Such expenses shall be Consultant's sole financial responsibility

(7) **Advice and Status Reporting.** Consultant shall provide the City with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to City such information as is necessary to enable City to monitor the performance of this Agreement, including statements and data demonstrating the effectiveness of the services provided in achieving the goals and objectives contained herein. The City may withhold payments otherwise due to Consultant pending timely delivery of all such reports and information. Consultant shall notify the City Manager of any matters that could adversely affect Consultant's ability or eligibility to continue to perform services under this Agreement, and shall do so immediately after discovery of the same.

(8) **Retention of Records.** Consultant's complete files, including all records, employee time sheets, and correspondence pertaining to the work as described within the proposal of services submitted to the City shall upon request be available for review by the City, and copies of pertinent reports and correspondence, upon written request, shall be furnished for the files of City. Consultant shall maintain adequate documentation to substantiate all charges for hours and materials charged to City under this agreement. Consultant shall maintain the records and any other records related to the performance of this agreement and shall allow City access to such records for a period of four (4) years after the completion of the work to which records relate.

At City's request, or upon completion or termination of this agreement, Consultant shall return to City all plans, maps, cost estimates, project financial records, reports, and related documents.

All research information, plans, diagrams, financial records, reports, cost estimates or other documents prepared or obtained under the terms of this agreement shall be delivered to and become the property of the City and all data prepared or obtained under this contract shall be made available, upon request, to the City without restrictions or limitations on their use.

Consultant and its subcontractors shall maintain all books, documents, papers, employees' time sheets, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract, for inspection by the City, State, F.H.W.A, and/or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested. Consultant also agrees to submit all records, books, documents, and related material for audit evaluation by the City, State, F.H.W.A., or authorized representatives prior to, during, or four (4) years following this Project for the purpose of ascertaining applicable overhead rates, book, and record keeping procedures and other information as necessary.

(9) **Written Reports and Documents.** In accordance with Government Code section 7550, any document or written report prepared by Consultant for or under the direction of City shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report; provided, however, that the total cost for work performed exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and

dollar amounts shall be contained in a separate section of such document or written report. When multiple documents or reports are the subject or product of this agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or reports.

(10) Record and Fiscal Control System.

Consultant shall maintain its financial records and fiscal control systems in a manner that meets the approval of the City; it shall maintain personnel and payroll records to adequately identify the source and application of all received funds; withhold income taxes; pay employment (social security), unemployment compensation, worker's compensation and other taxes as may be due; and, procure and maintain a City of San Pablo Business License. Consultant shall maintain an effective system of internal control to assure that funds provided through the City are used solely for authorized purposes.

(11) Access to Records; Audits.

The City shall have access at any time during normal business hours and as often as necessary to any bank account and books, records, documents, accounts, files, reports, and other property and papers of Consultant relating to the services to be provided under this Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.

(12) Consultant's Testimony. Consultant agrees to consult with City and testify at City's request at no additional cost other than normal witness fees if litigation is brought against City in connection with Consultant's services.

(13) Designation of Primary Provider of Services. This agreement contemplates the services of Consultant firm, [REDACTED]. The primary provider of the services called for by this agreement shall be [REDACTED], who shall not be replaced without the written consent of City.

(14) Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this agreement. If City asks Consultant to remove a person assigned to the work called for under this agreement, Consultant agrees to do so immediately regardless of the reason, or the lack of a reason, for City's request.

(15) Assignment and Subcontracting. It is recognized by the parties that a substantial inducement to City for entering into this agreement was, and is, the reputation and competence of Consultant. The assignment of this Agreement by Consultant, or any interest therein, is prohibited without the prior written approval of City's Development Services Manager. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Development Services Manager.

(16) **Insurance.**

A. **General, Automotive, and Employer's Liability, and Workers' Compensation Provisions.** On or before beginning any of the services or work called for by any term of this agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified herein below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. Consultants shall maintain limits no less than set forth below. If the consultant maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the consultant.

1. General Liability: \$2,000,000

(Includes operations, products and completed operations.)

Per occurrence for bodily injury, personal injury, and property damage.

2. Automotive Liability: \$1,000,000

Per accident for bodily injury and property damage

3. Workers' Compensation: As Required by the State of California. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

4. Employers' Liability: \$1,000,000 each accident;

\$1,000,000 policy limit bodily injury by disease, **\$1,000,000** each employee bodily injury by disease.

5. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. Other Insurance Provisions

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or

borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (form CG 20 10 11 85, or forms CG2010 version 10/01 and GC 2037 versions 10/01 or equivalent or CG 20 07 for design professional) to the Consultant's insurance policy, or as a separate owner's policy.

- For any claims related to this project, the Consultant's insurance coverage 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 Consultant's insurance and shall not contribute with it.

- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the City.

- Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.

- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

- (iv) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

- (vi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

Deductibles and Self-Insured Retentions. Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this agreement. During the period covered by this agreement, upon express written authorization

of City Manager, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Manager may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

Notice of Reduction in Coverage. In the event that any coverage required under this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

7. Waiver of Subrogation

Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

8. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

9. Verification of Coverage

Consultant shall furnish the City with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the city, unless the insurance company will not use the City's forms. All endorsements are to be received and approved by the City before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. As an alternative to the City's forms, the Consultant's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by the specifications.

10. Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

B. **Professional Liability.** Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one (1) million dollars covering the licensed professionals' errors and omissions, as follows:

- (i) Any deductible or self-insured retention shall not exceed \$50,000 per claim.

- (ii) Notice that cancellation, material change, or non-renewal must be received by the City at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
- (iii) The following provisions shall apply if the professional liability coverages are written on a claims-made form:
 1. The retroactive date of the policy must be shown and must be before the date of the agreement.
 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
 3. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work. The City shall have the right to exercise at the Consultant's cost, any extended reporting provisions of the policy should the Consultant cancel or not renew the coverage.
 4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

C. **City Remedies.** In addition to any other remedies City may have if Consultant 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:

- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
- (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
- (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's breach.

(17) **Standard of Care.** It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner consistent with the standard of care of the of the industry, and Consultant thus agrees to so perform the work. Acceptance by City of the work performed under this agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is further understood and agreed that

Consultant is apprised of the scope of the work to be performed under this agreement and Consultant agrees that said work can and shall be performed in a manner consistent with the standards of the profession. This standard of care is not intended and shall not be construed to impose an obligation on the City within the meaning of Government Code Section 815.6.

(18) Indemnification.

A. CONSULTANT shall, to the full extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability of every nature arising out of or resulting from the performance of this Agreement by CONSULTANT, its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or willful misconduct of CITY. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

B. The duty to defend is a separate and distinct obligation from the Consultant's duty to indemnify. The Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon tender to the Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

C. In the event that Consultant or any employee, agent, sub-consultant or subcontractor of Consultant 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, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, sub-consultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

D. The review, acceptance or approval of the Consultant's work or work product by any Indemnified Party shall not affect, relieve or reduce the Consultant's indemnification or defense obligations. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

E. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

F. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

(19) **Licenses.** If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its employees, agents, or subcontractors by federal or state law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

Consultant shall obtain and maintain a City of San Pablo Business License until all contract services are rendered and accepted by the City.

(20) **Nondiscriminatory Employment Practices and Compliance With Law.**

Consultant represents that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment. Consultant shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing work and providing services under this Agreement, Consultant shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders and directories of their respective administrative agencies and the officers thereof.

(21) **Termination.**

A. City may terminate this agreement at its sole discretion at any time prior to completion by the Consultant of the services required hereunder. Notice of termination of this agreement shall be given in writing to the Consultant, and shall be sufficient and complete when same is deposited in the United States Mail, postage prepaid and certified, address as set forth in the first paragraph of this agreement. The agreement shall be terminated upon receipt of the Notice of Termination by the Consultant. If the City should terminate this agreement, the Consultant shall be compensated for all work performed prior to the time of receipt of cancellation notice, and shall be compensated for materials ordered by the Consultant or his employees, or services of others ordered by the Consultant or his employees, prior to receipt of notice of cancellation whether or not such materials or final instruments of services of others

have actually been delivered, provided that the Consultant or his employees are not able to cancel such orders for materials or services of others. Compensation for the Consultant in the event of cancellation shall be determined by City in accordance with percentage of project completed and agreed to by the Consultant. In the event of cancellation, all notes, sketches, computations, drawings, and specifications or other data, whether complete or not, remain the property of the Consultant. The City may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

B. Termination for Cause. City may terminate this agreement for cause by providing Consultant with one day's written notice of such termination should Consultant violate any of the terms and conditions of this agreement. In City's discretion and at City's option, such termination for cause may alternatively be accomplished, where Consultant fails to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this agreement, within seven days after receipt from the notice of such default. Upon City's termination of this agreement for cause, City reserves the right to complete the work by whatever means City deems expedient and the expense of completing such work, as well as any and all damages to the extent caused by the negligent acts, intentional acts or errors or omissions of the Consultant, shall be charged to the Consultant.

C. Immediate Termination. City may terminate this agreement immediately in any case where the Consultant engages in fraudulent or criminal activities while performing its services under this agreement, or is otherwise determined to lack the necessary skills to accomplish the desired objectives.

(22) Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Consultant:

To the City: City Manager
 13831 San Pablo Avenue
 San Pablo, CA 94806

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(23) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Consultant pursuant to this agreement shall be the property of the City at the moment of their completed preparation. All materials and records of a preliminary nature such as survey notes,

sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

(24) **Amendments.** This agreement may be modified or amended only by a written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

(25) **Abandonment by Consultant.** In the event the Consultant ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

Consultant agrees to be financially responsible to compensate City for any costs incurred by City in retaining the services of another to replace Consultant, but only to the extent that the costs of retaining the replacement exceed what remaining amounts would have been paid to Consultant under the contract had Consultant completed the project.

(26) **Waiver.** The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

(27) **No Third-Party Rights.** The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

(28) **Severability.** Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

(29) **Compliance with Laws.** In the performance of this agreement, Consultant shall abide by and conform to any and all applicable laws of the United States, the State of California, and City ordinances. Consultant warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

(30) **Controlling Law.** This agreement and all matters relating to it shall be governed by the laws of the State of California.

(31) **Breach.** In the event that Consultant fails to perform any of the services described in this agreement or otherwise breaches the agreement, City shall have the right to pursue all remedies provided by law and equity. Neither payment by the City nor performance by Consultant shall be construed as a waiver of either party's rights or remedies against the other. Failure to require full and timely performance of any provision, at any time, shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter. Any litigation involving this Agreement or relating to the work shall be brought in Contra Costa County, and Consultant hereby waives the removal provisions of Code of Civil Procedure Section 394.

In the event of any suit, action or proceeding brought by either party for breach of any term hereof or to enforce any provision hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees.

(32) **Inspection by Other Agencies.** Authorized representatives of the Federal Government, the California Department of Transportation, or other government agencies which have provided grant funding (if any) for the subject Project and the City may have the right to inspect the work of such services whenever such representatives may deem inspection to be desirable or necessary.

(33) **Conflict of Interest.** Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement. Consultant further warrants its compliance with the Political Reform Act (Gov. Code ' 81000 et seq.) respecting this agreement.

Where City Manager determines, based on facts provided by city staff, that Consultant meets the criteria of section 18701 of the FPPC regulations, the individual providing services under this Agreement shall be considered a "designated employee" under the City's conflict of interest code, and shall be required to complete FPPC Form 700 regarding his or her economic interests in a timely manner.

(34) **Copyright.** Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Consultant or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

(35) **Whole Agreement.** This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or

incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(36) Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of the City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Consultant has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

APPROVED AS TO FORM:

CITY OF SAN PABLO

A Municipal Corporation

By _____
Lynn Tracy Nerland, City Attorney

By _____
Matt Rodriguez, City Manager

[NAME OF CONSULTANT]

By _____
Consultant, **[Title]**

ATTEST:

By _____
Ted J. Denney, City Clerk

Dated _____

Attachments:

Exhibit A: _____

Exhibit B: _____