

**AGREEMENT FOR TEMPORARY PLANNING ASSISTANCE BETWEEN THE CITY OF
SAN PABLO AND MIG**

THIS AGREEMENT, dated this 20th day of October, 2015, is by and between the City of San Pablo, a municipal corporation organized and existing under the laws of the State of California, (hereinafter referred to as "City"), whose address is 13831 San Pablo Ave., San Pablo, California 94806, and MIG, (hereinafter referred to as "Consultant"), whose address is 800 Hearst Avenue, Berkeley, CA 94710, Telephone (510) 845-7549.

RECITALS:

WHEREAS, the City desires to utilize MIG staff to provide services to provide Planning Assistance on a temporary basis. Services include current and long range planning. General tasks include: customer services at our front counter, residential plan checks, and ordinance development.

WHEREAS, Consultant desires to enter into the agreement described herein with the City as an independent contractor;

WHEREAS, Consultant has represented to City, and does in fact have the special training, skill, competence and expertise necessary to render the consulting services contemplated herein;

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

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

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

AGREEMENT:

(1) Scope of Service.

Term and Scope of Services

The Scope of work includes current and long range planning. General tasks include: customer services at our front counter, residential plan checks, and ordinance development.

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 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.

(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 **\$90 per hour for 9.5 weeks, two days a week, working from 7:30-6:00pm.**

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 October 26, 2015 and it shall terminate on December 31, 2015.

(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, mileage by employee during inspections, 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 not in the proposal 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 unless exempt, 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 upon reasonable notice and 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 MIG. The primary provider of the services called for by this agreement shall be Scott Davidson, 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 Manager. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City 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) 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.

(v) 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.

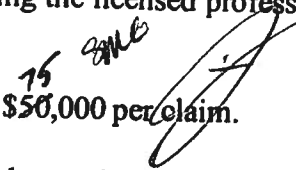
9. Verification of Coverage

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 ⁷⁵ \$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 at a level of effort to be determined solely by Consultant. 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. To the fullest extent permitted by law, the Consultant shall (1) immediately defend, and (2) indemnify the City, and its officials, volunteers, officers, and employees from and against all liabilities regardless of nature or type directly or indirectly, in whole or in part, arising out of or resulting from Consultant's performance of services under this contract, or any negligent or wrongful act or omission of the Consultant or Consultant's officers, employees, agents, or subcontractors. 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. The Consultant's obligation to indemnify applies unless it is adjudicated or otherwise determined or agreed that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated or otherwise determined or agreed that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

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 or otherwise determined or agreed to that liability was caused by the sole active negligence or sole willful

(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: MIG
Scott Davidson
800 Hearst Avenue
Berkeley, CA 94710

To the City: Michele Rodriguez
Development Services 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 hereinafter 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 hereinafter 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) **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.

(36) **Whole Agreement.** This agreement has 13 pages excluding the exhibits described on its signature page. 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.


(37) **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.

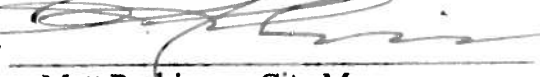
IN WITNESS WHEREOF, Consultant has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

APPROVED AS TO FORM:

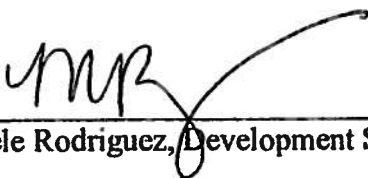
CITY OF SAN PABLO

A Municipal Corporation

By 
Lynn Tracy Nerland, City Attorney

By 
Matt Rodriguez, City Manager


APPROVED AS TO CONTENT:

By 
Michele Rodriguez, Development Services Manager

Dated 10-22-15

By 
Scott Davidson, Director of Contract
Planning Services
MIG

Susan Goltsman
President

Attest:
By 
Attachments: Resume Ted J. Denney, City Clerk

Robert Smith

ASSOCIATE PLANNER

AREAS OF EXPERTISE

Land Use Planning and Policy / Development Codes

QUALIFICATIONS

With considerable experience working in the public and private sectors, Robert Smith has reviewed development projects for compliance with land use planning policy and development codes for numerous Bay Area cities. Mr. Smith has prepared and presented project evaluations, entitlements and staff reports on a wide range of residential, commercial and mixed use projects. His experience includes working alongside planning and environmental consultants; interacting with city departments; preparing staff reports; setting agendas; supporting Planning Commissions and City Councils; and handling simple and complex inquiries from the public, property owners and developers. He has contributed on a number of strategic planning documents including general plans, specific plans, priority development areas and zoning text amendments.

Mr. Smith's past professional experiences include large residential, commercial and special development projects in central London. He successfully coordinated high profile projects for many complicated and controversial sites in the historic center of London. He is currently handling planning applications and processes to support the goals and respond to the needs of a number of California communities.

EDUCATION

- Masters of Planning, Manchester University, England
- Bachelor of Science, Geography, Manchester Metropolitan University, England

RELEVANT EXPERIENCE

- Large Scale, Mixed Use Planned Development and Rezoning Project, Davis, California
- Mixed Use Project on the Grand Boulevard, Millbrae, California
- Use Permit, Planned Development Facilitation, San Leandro, California
- Commercial Use Permit Facilitation, Vallejo, California
- Residential Subdivision Including 25+ Homes, American Canyon, California
- Industrial Warehouse Development, American Canyon, California
- Senior Planner for City of Westminster, London, England*
- Claridges Hotel and Restaurant Expansion Application, London, England*
- Negotiations for Financial Contributions to Affordable Housing, Public Art and Crossrail Infrastructure, London, England*
- Yaa Assantewa Community Centre Demolition and Rebuild, Community Negotiations, London, England*
- Urban Housing Capacity Study for St. Helens Borough Council, St. Helens, England*

* Work completed prior to joining MIG

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/26/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Dealey, Renton & Associates
P. O. Box 12675
Oakland, CA 94604-2675
510 465-3090

CONTACT

NAME: Jo Lusk

PHONE (A/C, No, Ext): 510 465-3090

E-MAIL: jlusk@dealeyrenton.com

FAX (A/C, No): 510 452-2193

INSURED

Moore Iacofano Goltsman, Inc.
800 Hearst Ave.
Berkeley, CA 94710

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Travelers Indemnity Co. of Conn

25682

INSURER B: Travelers Property Casualty Co

25674

INSURER C: Sentinel Insurance Co. LTD

11000

INSURER D: ACE American Insurance Company

22667

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	6802G239267	08/31/2015	08/31/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPI/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	BA2G258325	08/31/2015	08/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	CUP2G258454	08/31/2015	08/31/2016	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/>	57WEDD8525	04/01/2015	04/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability		G21656434012	07/01/2015	07/01/2016	\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

General Liability policy excludes claims arising out of the performance of professional services.

Note: 30 days notice of cancellation will be given except 10 days for non-payment.

Project Name: San Pablo Contract Staffing Services

Project #9102.00

The City of San Pablo, its officers, officials, employees, and volunteers are named as Additional Insureds (See Attached Descriptions)

CERTIFICATE HOLDER

City of San Pablo
13831 San Pablo Ave.
San Pablo, CA 94806

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

DESCRIPTIONS (Continued from Page 1)

as respects General Liability and Auto Liability coverages. Insurance is Primary/Non-Contributory per policy form wording. Waiver of Subrogation applies to Workers' Compensation. Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the Certificate Holder.

Professional Liability Deductible: \$75,000 per claim

Professional Liability Retroactive Date: 01/01/1981

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

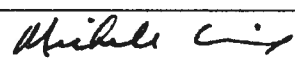
This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective 08/31/2015	
Named Insured Moore Iacofano Goltsman, Inc.	Countersigned by  (Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s):

NAME OF PERSON(S) OR ORGANIZATION(S): The City of San Pablo, its officers, officials, employees, and volunteers

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

Insured: Moore Iacofano Goltsman, Inc.

Policy Number: 57WEDD8525

Effective Date: 04/01/2015

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be _____ % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

PERSON(S) OR ORGANIZATION(S): City of San Pablo

City of San Pablo
13831 San Pablo Ave.
San Pablo, CA 94806

Countersigned by



Authorized Representative

Form WC 04 03 06
Process Date:

(1) Printed in U.S.A.

Policy Expiration Date: