

CITY OF SAUSALITO
PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (this "Agreement") is made and entered into this _____ day of _____, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and **KENNEDY JENKS CONSULTANTS INC.** (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

Section 1. Scope of Work

Consultant shall provide City with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full.

The duties and services required of Consultant under this Agreement and pursuant to this Section 1 are referred to throughout the remainder of this Agreement as "the Work."

Section 2. Responsible Individual

Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so. The person responsible for the Work is Joel Faller

Section 3. Work Schedule.

Consultant shall be available to work as many hours as required to complete the Work immediately upon receipt of the signed Agreement from the City and shall complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.

Section 4. Compensation.

The method of payment for this Agreement will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant's Cost Proposal, unless additional reimbursement is provided for by Agreement amendment. In no event, will Consultant be reimbursed for overhead costs

at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event, that City determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the Agreement time or actual costs reimbursable by City shall be adjusted by Agreement amendment to accommodate the changed work. The maximum total cost as specified in this Article shall not be exceeded, unless authorized by Agreement amendment.

The indirect cost rate established for this Agreement is extended through the duration of this specific Agreement. Consultant's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or Agreement award.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, City shall have the right to delay payment or terminate this Agreement.

No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

Consultant will be reimbursed promptly according to California Regulations upon receipt by City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due City including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of Consultant's work. Invoices shall be sent electronically to City's Contract Administrator at the following address:

Kevin McGowan, Director of Public Works/City Engineer
kmcgowan@sausalito.gov

The total amount payable by City shall not exceed ONE HUNDRED FOURTY THOUSAND ONE HUNDRED FIFTEEN (\$140,115) based on time and material invoices provided to the City.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

Section 5. Amendments.

In the event City desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this Agreement, specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

Section 6. Independent Contractor - Subcontractors.

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent or servant of City. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

Section 7. Consultant's Responsibility.

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that City relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work.

Acceptance by City of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 4 of this Agreement.

To the extent required by the California Labor Code, Consultant shall pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. The applicable wage determinations are available at the State of California Department of Industrial Relations at <http://www.dir.ca.gov/dlsr/pwd/index.htm>.

Section 8. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal Consultant's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal Consultant's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

Section 9. Insurance. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City.

Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party except after 30 days' prior written notice has been provided to the City.

Professional Liability Insurance

Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

General Liability

Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its elected and appointed officials, employees, contractors and agents shall be named as additional insureds under the coverage afforded with respect to the work being performed under the Agreement.

Auto Liability

Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident.

Workers' Compensation

Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

Section 10. Nondiscrimination and Equal Opportunity.

Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for

any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 11. City Personnel Conflict of Interest.

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 12. Consultant Conflict of Interest.

Consultant covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

Section 13. Assignment.

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

Section 14. Keeping and Status of Records.

Records Created as Part of Consultant's Performance.

All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are

confidential and will not be released to third parties without prior written consent of both parties.

Consultant's Books and Records.

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

Inspection and Audit of Records.

Any records or documents that Section 14 of this Agreement requires Consultant to maintain, shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 15. Termination.

City may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least seven calendar days before the effective date of such termination. If the Agreement is terminated by City as provided herein, Consultant shall be paid for all effort and material expended on behalf of the Work under the terms of this Agreement, less any charges against Consultant as otherwise provided herein, up to the effective date of termination, except that upon notification of such termination, Consultant shall immediately cease to undertake any duties under the Agreement not yet underway, and shall limit its further activities up to the effective date of termination to those duties necessary to wind up work then underway. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

Section 16. Public Works Requirements.

Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C.

Section 17. Cost Principles and Administrative Requirements.

The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to City.

When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

Section 17. Attorneys' Fees.

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

Section 18. Venue.

In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Marin.

Section 19. Conflict of Interest

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

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

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 et seq., the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for

any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

Section 20. Notices. Any written notice to Consultant shall be sent to:

Joel Faller
JoelFaller@KennedyJenks.com
Kennedy Jenks Consultants Inc.
275 Battery Street, Suite 550
San Francisco, CA 94111

Any written notice to City shall be sent to:
Kevin McGowan, Director of Public Works/City Engineer
kmcgowan@sausalito.gov

With a copy to:

Section 21. Contract Administration.

This Agreement shall be administered by Kevin McGowan, Director of Public Works/City Engineer ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

Section 22. Counterparts.

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

In Witness Whereof, City and Consultant have executed this Agreement as of the date first written above.

CITY OF SAUSALITO

BELLECCI & ASSOCIATES

By: Marcia Raines
Its: Interim City Manager

By Joel Faller
Its: Vice President/Principal Engineer

approved as to form:

Mary Ann Wagner
City Attorney