

CITY OF CLAYTON
AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT

This Engineering and Associates, Inc. ("Consultant") and the City of Clayton ("City"), a municipal corporation, previously entered into an agreement with an effective date of January 18, 2023 relating to a professional services agreement for municipal engineering. Section 24 of that agreement provides that "This Agreement may not be modified or altered except in writing signed by both Parties hereto."

City and Consultant mutually agree to amend the agreement as follows:

1. Replace Section 5. "Time of Performance" as follows:

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The term of this Agreement is January 18, 2023 to June 30, 2025. The Agreement may be extended by written amendment and mutual agreement of the parties for up to three additional one-year terms.

In all other respects, the agreement shall remain unchanged and in full force and effect.

City of Clayton


Adam W. Politzer,
Interim City Manager

5/21/2024
Date

Theis Engineering and Associates, Inc.


Date

Attest


Stephanie Cabrera-Brown, City Clerk

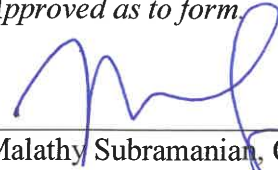
Lawrence Theis

Printed Name

President

Printed Title

Approved as to form.


Malathy Subramanian, City Attorney

**CITY OF CLAYTON
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of January 18, 2023 by and between the City of Clayton, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 6000 Heritage Trail, Clayton, California 94517 ("City"), and Theis Engineering & Associates, a California S-Corporation with its principal place of business at 4309 Rose Lane Concord CA 94518 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services related to City engineering and assessment district services (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B", Consultant's Proposal.

b. The Schedule of Charges may be adjusted by mutual agreement of the City and the Consultant once annually beginning July 1, 2023 and each July 1st thereafter (effective July 1st through the following June 30th). The rates and monthly fee shall be adjusted by the CPI-U San Francisco-Oakland-Hayward, April to April. In no case shall the adjustment be less than 3% annually or more than 5% annually.

c. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed including work completed and hours of services rendered by Consultant. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available 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 City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The initial term of this Agreement is January 18, 2023 through June 30, 2024. The Agreement may be extended by written amendment and mutual agreement of the parties for up to four additional one-year terms.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract

- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period

required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include limited contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, and employees free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final

adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the City, Consultant's obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Reserved.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Contra Costa, State of California.

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign Larry Theis, PE as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517
Attn: City Manager

CONSULTANT:

Theis Engineering & Associates
4309 Rose Lane
Concord, CA 94518
Attn: Larry Theis, PE

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However,

Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Disputes

In the event of any dispute between the Parties related to this Agreement, the Parties agree to first negotiate in good faith toward a resolution with participation by representatives of each Party holding sufficient authority to resolve the dispute. If such dispute cannot be resolved in this manner, before any action or litigation is initiated other than as required to secure lien rights, and upon mutual agreement of the parties, the dispute shall be submitted to mediation using the American Arbitration Association or another mediator as mutually selected by the Parties. Such mediation shall be completed within a reasonable period of time following either Party's written demand with each Party to bear an equal share of the mediation fees and its own respective attorney and consultant fees and costs.

[SIGNATURES ON FOLLOWING PAGE]

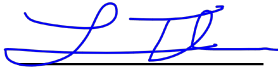
**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF CLAYTON
AND THEIS ENGINEERING & ASSOCIATES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF CLAYTON

Theis Engineering & Associates

By: _____
Reina J. Schwartz
City Manager

By: 
Its: Lawrence Theis, President

ATTEST:

By: _____
City Clerk

EXHIBIT A

1. City Engineering Services

The role of the City Engineering includes the administration of engineering related processes and procedures. These duties include:

- Assist in CIP scoping, prioritization, and budgeting
- Representation as City Engineer at internal and agency meetings
- Approval of permits and waivers
- Availability to the public and private developers to handle matters dealing with the engineering functions of City government
- Coordination with other agencies for the review of plans, projects and studies
- Assistance in the solicitation of proposals for CIP design work
- Assistance in the procurement of contractors and vendors for public works construction.

The City Engineer will also address failed infrastructure for immediate safety concerns and coordinate preliminary opinion on repair approach as well as coordinate with Maintenance staff on the maintenance, operations, and repair of public facilities.

City Engineer should be familiar with:

- Various regional, state and federal transportation funding entities and the application process, fund/project management and reporting requirements for those entities.
- The San Francisco Regional Water Quality Control Board Municipal Regional permit (MRP) 2.0 and the upcoming MRP 3.0, including annual report preparation and submittal.
- Contra Costa Clean Water Program and applicable C-3 Guidebook.

2. General Engineering Services (Non-General Fund Capital Projects)

The firm is to provide access to specialized technical staff ready to perform studies, designs, project and construction management on any tasks or projects the City identifies. These efforts include the preparation of site evaluations, planning and preliminary engineering reports, plans and specifications for CIP construction projects, along with detailed schedules and cost estimates. This work would also include any necessary field work, drafting, design, surveying, environmental documents, bid assistance, construction management & inspection, and project management – as well as the preparation of specialized engineering studies on a variety of subjects including, but not limited to drainage studies, traffic studies, and pavement evaluations.

3. Land Development Review and Permitting Services

The firm is to provide staffing to represent the City and interact with the public in processing the City's public permit applications. This work includes plan check for civil engineering design plans which includes, but is not limited to street, sewer, water, stormwater, recycled water, green infrastructure, storm drain, fiber optic, grading, erosion control, signing & striping, street lighting, traffic signal and all related engineering studies, including hydrology and hydraulics, soils, water and sewer studies and structural analyses. It should be noted that water service for the City of Clayton is provided by Contra Costa Water District. Sewer service is provided by the City of Concord including maintenance, plan review and sewer capital projects.

4. Annual Administration/Assessments Levy Services

- i. The City currently has eight (8) districts (listed below) that require the services listed below for annual administration and assessment levies. It should be noted that some of the districts have restrictions on the amount of funding that can be spent on administration of the district.

District Name	Type of District
Oakhurst Geological Hazard Abatement District (1,484 parcels)	Geological Hazard Abatement District, Public Resources Code, Sec 26500 et seq
Streetlight Assessment District (3,482)	1919 Act Streetlight District
High Street Bridge Assessment District (5)	Permanent Road Division
Lydia Lane Sewer Assessment District (16)	1913 Act
Oak Street Bridge Assessment District (9)	Permanent Road Division
Oak Street Sewer Assessment District (10)	1913 Act District
Diablo Estates Benefit Assessment District (24)	1972 Act, 1982 Act District
Community Facilities District No. 2022-01 (18) Public Services	Mello-Roos Community Facilities Act of 1982

- A. **Research** - Obtain all available information from the City regarding the districts, including the current assessment data files, electronic map files, listing of projected expenditures and revenues and any additional information that is available. Update the current assessment data files with the latest Assessor's parcel number and land use code information if needed.

- B. **Meetings and Coordination** - Meet with City staff to review the districts, receive budgets and confirm schedule, conduct one status meeting in conjunction with the draft Engineer's Reports and one for the final Engineer's Report, if required, attend the City Council meetings considering the Resolutions of Intention and the public hearings, and provide technical support and answer questions. At the public hearing provide a presentation to present at the public hearing. Total of up to 8 (eight) meetings.
 - C. **Estimated Budgets** - Review budgets for the upcoming fiscal year by establishing projected costs based on prior year estimates and actual/projected changes in costs and improvements. Review debt service schedule for the assessment districts and ensure the current year levy follows the debt service schedule for each assessment district.
 - D. **Engineer's Reports** - Prepare the Engineer's Reports setting the annual assessment rates for the next fiscal year based on budget estimates from City, and including reduced copies of the updated Assessment Diagrams, if revised. The Engineer's Reports will also incorporate any new annexations into the districts during the previous year. Provide copies of the draft Reports for review and comment. Provide a PDF copy and up to 4 (4) bound copies of the finalized Reports and up to (2) bound copies of the Preliminary Assessment Rolls for processing and filing.
 - E. **Diablo Estates BAD Noticing and Mailing** - Provide to the City packets including a notice of the public hearing with a copy of the draft Engineer's Report, to be mailed to the owner of record for each property within the Diablo Estates Benefit Assessment District. This packet shall be in a mailing envelop with the appropriate mailing label with a Assessor parcel number, owner name and mailing address, ready to have postage applied and mailed by the City.
- ii. **Submittal to Contra Costa County** - After confirmation of assessments, prepare an Assessment Roll in electronic format, as required by the County Auditor-Controller for inclusion of assessments on the property tax bills. Submit the roll for each district to Contra Costa County and, after receipt of the County's exception report, make any required corrections. Deliver a copy of the electronic files for each district to City staff.

iii. **Formation/Annexation Services**

The City may require the following services for any additional development that may occur within the City limits. The following tasks would be required for any Formation or Annexation. The City will require a detailed proposal for each formation or annexation taking into account the tasks listed below:

- A. **Kick-off Meeting** - Meeting with City staff and property owner representative (if appropriate) to discuss the scope of the work, the proposed project schedule, the mechanisms and/or liaisons for obtaining the necessary information for the analysis (such as improvement plans, proposed land use designations, Parcel/Tentative Tract Map information, etc.) any properties that may have special needs, considerations or exemptions, and other information regarding the proposed improvements and properties.
- B. **Research** - Gather support data, proposed development plans, proposed zoning information, preliminary improvement plans, cost estimates for all construction and maintenance components, locations of the proposed public improvements to be maintained, and any other pertinent information relating to the proposed improvements. A database will need to be compiled based on the Assessor's Roll and Parcel/Tentative Tract Map information for the properties within the Development Area, including property size, land use data and property ownership.
- C. **Coordination** - Coordinate with City staff, property owners, legal counsel, and other project consultants via conference call, email, or in person. Participate in meetings with City staff, and the project team as requested.
- D. **CFD: Rate & Method of Apportionment** - Review construction cost estimates including direct and indirect costs. Develop a special tax revenue model based on the proposed development product mix. Prepare preliminary special tax rate calculations based on the above analysis. Determine the special tax allocation methodology and formula to be applied in accordance with the Act. Apportion the costs of facilities in the form of special taxes to be levied upon the parcels of land within the CFD using the special tax methodologies determined above. Prepare the Rate and Method of Apportionment for attachment to the Resolution of Intention. Review comments with City staff, the project team and property owners and finalize based on comments received
- E. **LLMD: Engineer's Report** - Prepare a preliminary & final Engineer's Report which contains all items as required by the Code, including the 1972 Act, Proposition 218, and relevant case law, including a description of the proposed improvements/ services, an engineer's estimate of the construction costs/ service costs and incidental expenses, a description of the assessment methodology, boundary map/assessment diagram and the assessment roll.
- F. **CFD: Proposed Boundary Map** - Prepare the proposed Boundary Map for recordation pursuant to the Mello-Roos Act and the County Recorder's Office. The ability to provide a reduced copy of the Boundary Map for inclusion in reports.
- G. **CFD: Community Facilities District Report** - Prepare a draft CFD Report to reflect final estimated cost of facilities. In summary the report should include:

- Description of the CFD (including the Proposed Boundary Map)
 - Description of Facilities and Services
 - Cost Estimates
 - Rate and Method of Apportionment
 - A list of Property Owners
- H. Review comments with City staff and financing team and finalize based on comments received. Provide a final PDF copy of the CFD Report
- I. **City Council Meetings** - Attend City Council meeting for Resolution of Intention & Public Hearing and election.
- J. **CFD: Notice of Special Tax Lien** - Prepare the required the Notice of Special Tax Liens and record after district formation
- K. **Bond Issuance** - As needed, provide Special Tax Tables including the overlapping debt tables and up to five (5) special tax tables for the preliminary official statement, as required by the Bond Counsel and/or Disclosure Counsel. Certificate of the Special Tax Consultant - Review and execute the certificate of the special tax consultant, as provided by the Bond Counsel.
- L. **Annexations** - All applicable services listed above or as amended as needed.

EXHIBIT B
CONSULTANT'S PROPOSAL