



# SPECIAL MEETING

CLAYTON CITY COUNCIL

MONDAY, AUGUST 14, 2017

5:30 P.M.

*First Floor Conference Room, Clayton City Hall  
6000 Heritage Trail, Clayton, CA 94517*

**Mayor:** Jim Diaz

**Vice Mayor:** Keith Haydon

### **Council Members**

Tuija Catalano

Julie K. Pierce

David T. Shuey

*Pursuant to CA Government Code Section 54957 and upon order of Mayor Jim Diaz, a Special Meeting is called for **August 14, 2017 at 5:30 P.M.** for the purpose of the following matters: 1). Approval of St. John's Parcel Map and 2). Approve an Agreement for City Engineering Services.*

Signed: \_\_\_\_\_  
*Jim Diaz, Mayor*

Date: \_\_\_\_\_

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- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Clayton Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street; and 4) [www.ci.clayton.ca.us](http://www.ci.clayton.ca.us)
- If one has a physical impairment that requires special accommodations to participate, please call the City Clerk's Office at least 72 hours in advance of the meeting at 925.673-7304.

**1. CALL TO ORDER AND ROLL CALL** – Mayor Jim Diaz.

**2. PUBLIC COMMENT PERIOD**

**3. CONSENT CALENDAR**

*Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or further input may request so through the Mayor.*

- (a) Adopt a Resolution approving the Parcel Map and authorizing the execution of a Subdivision Improvement Agreement for the St. John's Church/Southbrook Drive Mixed Use Planned Development Project. ([View Here](#))

**4. ACTION ITEMS**

- (a) Consider the approval of a proposed Professional Engineering Services Agreement with Harris & Associates (Concord, CA) for its provision of city engineering services to and for the City of Clayton at a flat monthly retainer of \$9,585 for basic services plus other hourly rate schedules, and appoint Mr. Scott Alman, P.E., as the Clayton City Engineer. ([View Here](#))  
(City Manager)

Staff recommendation: Following staff report and opportunity for public comment, that Council by motion approve the one year Professional Engineering Services Agreement with Harris & Associates for city engineering services, appoint Mr. Scott Alman, P.E., as its City Engineer, and authorize the City Manager to execute the Agreement for and on behalf of the City of Clayton.

**5. ADJOURNMENT – Mayor Diaz.**

The next regularly scheduled City Council meeting is September 19, 2017.

# # # # #

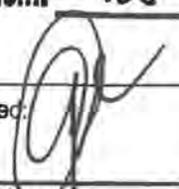
Consent Calendar Item 3(a) was pulled from the  
Special Meeting of the Clayton City Council for  
August 14, 2017.



Agenda Date: 8-14-2017

Agenda Item: 4a

Approved:

  
Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: CITY MANAGER**

**DATE: 14 AUGUST 2017**

**SUBJECT: APPROVE ONE-YEAR CONTRACT WITH HARRIS & ASSOCIATES FOR CONTRACT CITY ENGINEERING SERVICES**

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## **RECOMMENDATION**

It is recommended the City Council, by motion, approve a one (1) year Professional Engineering Services Agreement with Harris & Associates (Concord, CA) for contract city engineering services to and on behalf of the City of Clayton, authorize the City Manager to execute the Agreement for and on behalf of the City, and appoint Mr. Scott Alman, P.E., from the consulting firm as the City Engineer for the City of Clayton, CA.

## **BACKGROUND**

Since November 1986 the private firm of Permco Engineering and Management has served the City of Clayton for necessary and requested city engineering services. Mr. Rick Angrisani, P.E., and President of Permco, has been the point person for these municipal services and has been the contract City Engineer. On 12 July 2017 by mutual arrangement, Mr. Angrisani tendered his written resignation as City Engineer with a contractual termination date of 10 August, 2017, which date has now concluded.

During the interim period the City Manager solicited approximately seven (7) engineering firms with offices in the local area seeking their interest in providing the range of city engineering services for the City. From those contacts, three (3) engineering firms were further vetted and requested to submit proposals for this contract opportunity. At a special meeting duly noticed on July 25<sup>th</sup> and at its regular public meeting on August 1<sup>st</sup>, the City Council interviewed and evaluated the qualifications and depth of personnel resources offered by the three (3) firms. From those interviews, the City Council instructed its City Manager to negotiate an acceptable contract for city engineering services with the firm of Harris & Associates.

### **PROPOSED CONTRACT**

The mutually-agreeable contract for city engineering services with Harris & Associates is attached hereto as "Attachment A". The term of the Agreement will commence on 15 August 2017 and carries an initial one (1) year period with the opportunity for further time extension by written amendment (ref. Section 5. Term, pg. 2). Exhibit A of the Agreement provides the Scope of Services and Schedule of Charges applicable to the full range of city engineering services required by the City and to be provided or arranged through Harris & Associates.

Section 19. Organization (ref. pg. 9) specifies the Consultant (i.e., Harris & Associates) shall assign Mr. Scott Alman, P.E., as the contract City Engineer for the City of Clayton. For purposes of internal and public contacts, Mr. Alman will essentially serve as the new point person for city engineering services provided by and to the City.

### **FINANCIAL IMPACT**

During the past Fiscal Year of 2016-17, Permco provided general engineering services to the City [General Fund] costing \$104,216 in expenses. The approved City Budget for Fiscal Year 2017-18 incorporated a city engineering line item of \$90,000 [General Fund]. However, without a rate increase since 2006, Permco recently submitted to the City Council a rate increase request averaging 28.5% for the firm [29.6% on the City Engineer's basic services hourly rate; 36% on City Project rates; and 30% on Third Party Project rates]. The application of Permco's stated average rate increase request of 28.5% to the actual billings experienced in FY 2016-17 would have resulted in a General Fund expense in FY 2017-18 of \$133,918 (and likely more since the City Engineer's higher hourly billing rate historically comprises the largest percentage of hourly service billings). The City Council took no action on the rate increase request by Permco.

In comparison, the proposed contract with Harris & Associates specifies a flat monthly retainer of \$9,585.00 per month (\$115,020/year) for all city engineering basic services provided by the Consultant [General Fund]. For other Capital Improvement Project services (CIP), assessment district expenses, Third Party (land development services), etc., Exhibit A lists the schedule of applicable hourly rates. Annual expenses in these service categories will vary depending on the extent of requested city engineering services in the coming year.

**CITY OF CLAYTON  
PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

This Agreement is made and entered into as of August 14, 2017 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 Harris & Associates, Inc., a California Corporation, with its principal place of business at 1401 Willow Pass Road, Suite 500, Concord, CA 94520 (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 for the following project:

City Engineer and Engineering Services (hereinafter referred to as "the Project").

B. Consultant desires to perform and assume responsibility for the provision of certain professional engineering services required by the City on the terms and conditions set forth in this Agreement. Consultant is duly licensed and has the necessary qualifications to provide such range and scope of 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 professional engineering services described in the Scope of Services attached hereto as Exhibit "A."

For the purposes of the services provided by this Agreement, the Consultant shall report directly to and take assignments from the City Manager. The Consultant and the City Manager will meet on a weekly basis, at the discretion of the City, to discuss and review the progress of services provided under this Agreement.

With respect to claims that may be asserted by third parties arising from the Consultant's actions as City Engineer, the Consultant shall be entitled to assert any immunities or similar defenses that would be available to the City in defense of such actions against a City employee or official provided such immunities or similar defenses are legally extendable to Consultant. The City shall use commercially reasonable efforts to include language in third party contracts requiring third party contractors and consultants to provide insurance and indemnification protection to City's agents, including Consultant, to the same extent the City is provided insurance and indemnification protection. Notwithstanding anything to the contrary, nothing herein shall be construed or interpreted to be a guarantee that such insurance and indemnification protection shall be afforded to Consultant by third party contractors and consultants and their insurers.

2. Compensation.

a. The City shall pay for services satisfactorily rendered by Consultant under this Agreement in accordance with the Schedule of Charges set forth in Exhibit "A."

b. The Schedule of Charges may be adjusted by mutual agreement of the City and the Consultant once annually, any changes to be effective on September 1st of the next year.

c. Consultant shall submit to City monthly itemized statement(s) which identifies the specific project(s) worked on, indicates the work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services provided since the effective date of this Agreement through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved and undisputed charges thereon. Consultant shall not be reimbursed for any expenses unless it received prior written authorization from the City or such expenses are otherwise authorized herein.

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 and services rendered under this Agreement 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. Upon termination or expiration of this Agreement, all such records shall be delivered to the custody of the City within thirty (30) calendar days of the effective date of such termination or expiration.

5. Term.

Consultant shall perform its services in a prompt and timely manner and as directed and authorized by the City Manager. The term of this Agreement is one (1) year (twelve consecutive months) from its effective date and shall go into effect on 15 August 2017. The Agreement may be extended by written amendment. Consultant shall complete the services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual written consent, extend the term of this Agreement. Consultant's performance may be evaluated and reviewed by City on a periodic basis, as determined by the City in its sole discretion. A copy of the evaluation will be sent to Consultant for comments. If performed, the evaluation, together with the comments shall be retained as part of the Agreement record.

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.

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 prior 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 is nor shall become an employee of City by virtue of this Agreement. 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 procure 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 exact 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 include or 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 negligent 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

\$2,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits under General Liability and Automobile Liability.

(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 under General Liability and Automobile Liability 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 reasonably approved by the City), indemnify and hold the City, the City Council, members of the City Council, its employees, and authorized volunteers free and harmless from claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to any negligent 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 expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, the City Council, members of the City Council, its employees, or authorized volunteers.

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. 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 elected 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, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

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.

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, design works, City-procured software, electronic files and records, 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, design works, electronic files and records, City-procured software, 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. Any modifications made by the City or any agents of the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant.

19. Organization

Consultant shall assign Scott Alman, PE, as City Engineer. The City Engineer 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 herein.

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:

Harris & Associates  
1401 Willow Pass Road, Suite 500  
Concord, CA 94520  
Attn: Scott Alman, P.E.

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 agrees 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 provision, 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.

**[SIGNATURES ON FOLLOWING PAGE]**

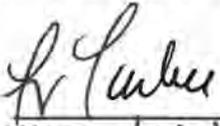
**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF CLAYTON  
AND HARRIS & ASSOCIATES**

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

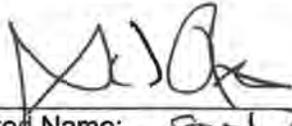
CITY OF CLAYTON

HARRIS & ASSOCIATES

By: \_\_\_\_\_  
Gary A. Napper  
City Manager

By:   
Printed Name: Lisa V. Lavallee  
Its: CEO

ATTEST:  
By: \_\_\_\_\_  
City Clerk

By:   
Printed Name: Paul J. DeKoster  
Its: CFO

**EXHIBIT A**

**Scope of Services and Schedule of Charges**

(attach Exhibit A hereto)



Harris &amp; Associates

## CITY OF CLAYTON RATES:

Effective Contract NTP Date 2017 - August 31, 2018Administrative (Funded by General Fund (G.F.))CLAYTON MONTHLY RATE

Monthly Lump Sum Retainer

\$9,585.00/mo.

Scope:

- Day-to-Day engineering related questions and calls from staff and public;
- Attendance at City Council meetings as requested by the City Manager;
- Attendance at weekly staff meetings;
- Compilation of the City's Capital Improvement Program (CIP) Budget;
- Administration of the City's encroachment permit program;
- Coordination with the Maintenance Department regarding maintenance, operations and the repair of public facilities;
- Enforcement and continuous update of the City's Standard Plans and Specifications for design and construction;
- Enforcement of City's Stormwater Management Program;
- Representation of the City's interests in regional transportation and funding issues;
- Flood plain administration including responses to flood zone information requests.

Assessment District/GHAD Administration (Hourly, Non-G.F.)CLAYTON HOURLY RATE

Scott Alman	\$190
Alison Bouley	\$190
Brian Brown	\$180
Dennis Klingelhofer	\$230
Ka Chow	\$105
Teddy Alicante	\$105

Capital Improvement Program (Hourly, Non-G.F.)

Scott Alman	\$190
Jasmine Cuffee	\$190
Vijay Pulijal	\$180
Siva Natarajan	\$165
Kyle Carbert	\$165
Daniel Wilkins	\$140
Alvin Armstrong	\$140
Ka Chow	\$105
Teddy Alicante	\$105

Land Development (Hourly, Non-G.F.)

Scott Alman	\$220
Siva Natarajan	\$175
Kyle Carbert	\$175
Daniel Wilkins	\$150
Ka Chow	\$110
Teddy Alicante	\$110



**GENERAL ENGINEERING SERVICES (Hourly, Non-G.F.)**

**STANDARD HOURLY RATE**

Project Directors	\$230
Senior Project Managers	\$200
Project Managers	\$170
Senior Project Engineers	\$140
Project Engineers	\$90
Senior Technical Support	\$130
Technical Support	\$90

**GENERAL ENVIRONMENTAL SERVICES (Hourly, Non-G.F.)**

**STANDARD HOURLY RATE**

Project Director	\$230
Sr. Project Manager	\$190
Project Manager	\$150
Sr. Project Analyst	\$120
Project Analyst	\$90
Technical Support	\$90

**Notes:** Rates are subject to adjustment based on staff promotions during the effective period of the schedule.

Specific Scope of Services covered by the monthly lump sum retainer rate is detailed in the Scope of Services section of the contract between City of Clayton and Harris & Assoc. Those duties are the Day-to-Day operational duties that are funded through the City's General Fund.

Unless otherwise indicated in the cost proposal, hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large quantities such as construction documents for bidding purposes).

\*Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

All sub-consultant charges are subject to a 10% markup.



# SPECIAL MEETING

OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (GHAD)  
MONDAY, AUGUST 14, 2017

5:30 P.M.

*First Floor Conference Room, Clayton City Hall  
6000 Heritage Trail, Clayton, CA 94517*

**Chairman:** David Shuey  
**Vice Chair:** Tuija Catalano

**Board Members**

Jim Diaz  
Keith Haydon  
Julie K. Pierce

*Pursuant to CA Government Code Section 54957 and upon order of Chairman David Shuey, a Special Meeting is called for **August 14, 2017 at 5:30 P.M.** for the purpose of the following matter:  
1). Approve an Agreement for GHAD Engineering Services and Appoint Scott Alman, P.E., as General Manager for the Oakhurst Geological Hazard Abatement District (GHAD).*

Signed: \_\_\_\_\_  
*David T. Shuey, Chairman*

Date: \_\_\_\_\_

\*\*\*\*\*

- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Clayton Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street; and 4) [www.ci.clayton.ca.us](http://www.ci.clayton.ca.us)
- If one has a physical impairment that requires special accommodations to participate, please call the City Clerk's Office at least 72 hours in advance of the meeting at 925.673-7304.

1. **CALL TO ORDER AND ROLL CALL** – Chairman David Shuey.

2. **PUBLIC COMMENT PERIOD**

3. **CONSENT CALENDAR** – None.

**4. ACTION ITEM**

- (a) Consider the approval a proposed Agreement for Professional Engineering Services with Harris & Associates (Concord, CA) for the provision of GHAD engineering services at applicable rates of \$105.00 - \$190.00 per hour, and appoint Mr. Scott Alman, P.E., as General Manager of the Oakhurst Geological Hazard Abatement District. ([View Here](#))  
(City Manager)

Staff recommendation: Following staff report and opportunity for public comment, that the GHAD Board of Directors, by motion, approve the rates of \$105.00 - \$190.00 per hour, as contained in the Professional Engineering Services Agreement with Harris & Associates for GHAD engineering services, and appoint Mr. Scott Alman, P.E., as General Manager of the Oakhurst Geological Hazard Abatement District.

**5. ADJOURNMENT – Chairman Shuey**

The next meeting of the GHAD Board of Directors will be scheduled when needed.

# # # # #

Agenda Date: 8-14-2017

Agenda Item: 4a GHAD

Approved:

  
\_\_\_\_\_  
Gary A. Napper  
City Manager

# GHAD REPORT

**TO: HONORABLE CHAIRMAN AND BOARD MEMBERS**  
**FROM: CITY MANAGER**  
**DATE: 14 AUGUST 2017**  
**SUBJECT: APPROVE ONE-YEAR CONTRACT WITH HARRIS & ASSOCIATES FOR CONTRACT GHAD ENGINEERING SERVICES**

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## **RECOMMENDATION**

It is recommended the GHAD Board of Directors, by motion, approve the rates of \$105.00 - \$190.00 per hour, as contained in the attached Professional Engineering Services Agreement with Harris & Associates (Concord, CA) for contract engineering services to and on behalf of the GHAD, and to appoint Mr. Scott Alman, P.E., from the consulting firm as the General Manager of the Oakhurst Geological Hazard Abatement District (GHAD).

## **BACKGROUND**

Since July 1990, Mr. Rick Angrisani (P.E., and President of Permco Engineering and Management) has served as the General Manager of the Oakhurst Geological Hazard Abatement District (ref. GHAD Resolution No. 1-90). On 12 July 2017 by mutual arrangement, Mr. Angrisani tendered his written resignation as the GHAD's General Manager with a contractual termination date of 10 August, 2017, which date has now concluded.

Mr. Angrisani concurrently served as the contract City Engineer for the City of Clayton and resigned from that position as well. From interviews with three (3) prospective and qualified engineering firms, the City Council instructed its City Manager to negotiate an acceptable contract for replacement city engineering services with the firm of Harris & Associates. The City Council is expected to approve that Agreement at its special meeting on August 14<sup>th</sup>. Consistent with past practice and experience, it is beneficial and economical for the GHAD to retain the same engineering firm to perform its necessary services for this geologic hazard abatement district, a legal public entity separate and distinct from the City.

### **PROPOSED CONTRACT**

The mutually-agreeable contract for city engineering services with Harris & Associates is attached hereto as "Attachment A". The term of that Agreement will commence on 15 August 2017 and carries an initial one (1) year period with the opportunity for further time extension by written amendment (ref. Section 5. Term, pg. 2). Exhibit A of the Agreement provides the Scope of Services and Schedule of Charges applicable to the full range of city engineering services required by the City and to be provided or arranged through Harris & Associates. Included within that Schedule of Charges are hourly rates for services applicable to "Assessment District/GHAD Administration" [ref. pg. 1 of Exhibit A].

Section 19. Organization (ref. pg. 9) specifies the Consultant (i.e., Harris & Associates) shall assign Mr. Scott Alman, P.E., as the contract City Engineer for the City of Clayton. For purposes of internal and public contacts, Mr. Alman will essentially serve as the new point person for city engineering services provided by and to the City.

Since Mr. Alman will be the City's new contract engineer, it is recommended the GHAD Board of Directors also formally appoint him as its General Manager of the Oakhurst Geological Hazard Abatement District.

### **FINANCIAL IMPACT**

During the past Fiscal Year of 2016-17, Permco provided GHAD engineering services at the rate of \$116.75 per hour, which amount resulted in a fiscal year expense last year of \$7,388.27. The current Fiscal Year GHAD Budget was adopted by the Board with a line item expense of \$5,000 for GHAD basic district management and engineering services.

Mr. Angrisani was seeking a rate increase of the City that averaged 28.5% across the board for all contract services. Based on that submittal, the GHAD may have been presented with a similar rate request which would have resulted in an hourly billing rate of \$149.70. Extrapolating that hourly rate increase request to current and prior fiscal years, the GHAD Budget might have experienced a higher range in annual expenses of \$6,425 - \$9,494, respectively, depending on the applied fiscal base line.

The proposed Schedule of Charges (Exhibit A) specifies Harris & Associates will charge between \$105.00 - \$190.00 per hour for similar services, depending on which of its professionals actually performs the required GHAD services. In any case, it is probable the incurred GHAD expenses this coming year will exceed the allocated \$5,000 line item but its operational budget has an expected excess of \$2,947 plus reserves.

**CITY OF CLAYTON  
PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

This Agreement is made and entered into as of August 14, 2017 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 Harris & Associates, Inc., a California Corporation, with its principal place of business at 1401 Willow Pass Road, Suite 500, Concord, CA 94520 (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 for the following project:

City Engineer and Engineering Services (hereinafter referred to as "the Project").

B. Consultant desires to perform and assume responsibility for the provision of certain professional engineering services required by the City on the terms and conditions set forth in this Agreement. Consultant is duly licensed and has the necessary qualifications to provide such range and scope of 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 professional engineering services described in the Scope of Services attached hereto as Exhibit "A."

For the purposes of the services provided by this Agreement, the Consultant shall report directly to and take assignments from the City Manager. The Consultant and the City Manager will meet on a weekly basis, at the discretion of the City, to discuss and review the progress of services provided under this Agreement.

With respect to claims that may be asserted by third parties arising from the Consultant's actions as City Engineer, the Consultant shall be entitled to assert any immunities or similar defenses that would be available to the City in defense of such actions against a City employee or official provided such immunities or similar defenses are legally extendable to Consultant. The City shall use commercially reasonable efforts to include language in third party contracts requiring third party contractors and consultants to provide insurance and indemnification protection to City's agents, including Consultant, to the same extent the City is provided insurance and indemnification protection. Notwithstanding anything to the contrary, nothing herein shall be construed or interpreted to be a guarantee that such insurance and indemnification protection shall be afforded to Consultant by third party contractors and consultants and their insurers.

2. Compensation.

a. The City shall pay for services satisfactorily rendered by Consultant under this Agreement in accordance with the Schedule of Charges set forth in Exhibit "A."

b. The Schedule of Charges may be adjusted by mutual agreement of the City and the Consultant once annually, any changes to be effective on September 1st of the next year.

c. Consultant shall submit to City monthly itemized statement(s) which identifies the specific project(s) worked on, indicates the work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services provided since the effective date of this Agreement through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved and undisputed charges thereon. Consultant shall not be reimbursed for any expenses unless it received prior written authorization from the City or such expenses are otherwise authorized herein.

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 and services rendered under this Agreement 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. Upon termination or expiration of this Agreement, all such records shall be delivered to the custody of the City within thirty (30) calendar days of the effective date of such termination or expiration.

5. Term.

Consultant shall perform its services in a prompt and timely manner and as directed and authorized by the City Manager. The term of this Agreement is one (1) year (twelve consecutive months) from its effective date and shall go into effect on 15 August 2017. The Agreement may be extended by written amendment. Consultant shall complete the services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual written consent, extend the term of this Agreement. Consultant's performance may be evaluated and reviewed by City on a periodic basis, as determined by the City in its sole discretion. A copy of the evaluation will be sent to Consultant for comments. If performed, the evaluation, together with the comments shall be retained as part of the Agreement record.

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.

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 prior 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 is nor shall become an employee of City by virtue of this Agreement. 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 procure 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 exact 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 include or 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 negligent 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

\$2,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits under General Liability and Automobile Liability.

(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 under General Liability and Automobile Liability 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 reasonably approved by the City), indemnify and hold the City, the City Council, members of the City Council, its employees, and authorized volunteers free and harmless from claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to any negligent 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 expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, the City Council, members of the City Council, its employees, or authorized volunteers.

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. 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 elected 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, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

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.

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, design works, City-procured software, electronic files and records, 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, design works, electronic files and records, City-procured software, 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. Any modifications made by the City or any agents of the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant.

19. Organization

Consultant shall assign Scott Alman, PE, as City Engineer. The City Engineer 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 herein.

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:

Harris & Associates  
1401 Willow Pass Road, Suite 500  
Concord, CA 94520  
Attn: Scott Alman, P.E.

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 agrees 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 provision, 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.

**[SIGNATURES ON FOLLOWING PAGE]**

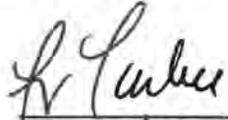
**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF CLAYTON  
AND HARRIS & ASSOCIATES**

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

CITY OF CLAYTON

HARRIS & ASSOCIATES

By: \_\_\_\_\_  
Gary A. Napper  
City Manager

By:   
Printed Name: Lisa V. Lavatree  
Its: CEO

ATTEST:  
By: \_\_\_\_\_  
City Clerk

By:   
Printed Name: Paul J. Anderson  
Its: CFO

**EXHIBIT A**

**Scope of Services and Schedule of Charges**

**(attach Exhibit A hereto)**



Harris &amp; Associates

## CITY OF CLAYTON RATES:

Effective Contract NTP Date 2017 - August 31, 2018Administrative (Funded by General Fund (G.F.))CLAYTON MONTHLY RATE

Monthly Lump Sum Retainer

\$9,585.00/mo.

Scope:

- Day-to-Day engineering related questions and calls from staff and public;
- Attendance at City Council meetings as requested by the City Manager;
- Attendance at weekly staff meetings;
- Compilation of the City's Capital Improvement Program (CIP) Budget;
- Administration of the City's encroachment permit program;
- Coordination with the Maintenance Department regarding maintenance, operations and the repair of public facilities;
- Enforcement and continuous update of the City's Standard Plans and Specifications for design and construction;
- Enforcement of City's Stormwater Management Program;
- Representation of the City's interests in regional transportation and funding issues;
- Flood plain administration including responses to flood zone information requests.

Assessment District/GHAD Administration (Hourly, Non-G.F.)CLAYTON HOURLY RATE

Scott Alman	\$190
Alison Bouley	\$190
Brian Brown	\$180
Dennis Klingelhofer	\$230
Ka Chow	\$105
Teddy Alicante	\$105

Capital Improvement Program (Hourly, Non-G.F.)

Scott Alman	\$190
Jasmine Cuffee	\$190
Vijay Pulijal	\$180
Siva Natarajan	\$165
Kyle Carbert	\$165
Daniel Wilkins	\$140
Alvin Armstrong	\$140
Ka Chow	\$105
Teddy Alicante	\$105

Land Development (Hourly, Non-G.F.)

Scott Alman	\$220
Siva Natarajan	\$175
Kyle Carbert	\$175
Daniel Wilkins	\$150
Ka Chow	\$110
Teddy Alicante	\$110



**GENERAL ENGINEERING SERVICES (Hourly, Non-G.F.)**

**STANDARD HOURLY RATE**

Project Directors	\$230
Senior Project Managers	\$200
Project Managers	\$170
Senior Project Engineers	\$140
Project Engineers	\$90
Senior Technical Support	\$130
Technical Support	\$90

**GENERAL ENVIRONMENTAL SERVICES (Hourly, Non-G.F.)**

**STANDARD HOURLY RATE**

Project Director	\$230
Sr. Project Manager	\$190
Project Manager	\$150
Sr. Project Analyst	\$120
Project Analyst	\$90
Technical Support	\$90

**Notes:** Rates are subject to adjustment based on staff promotions during the effective period of the schedule.

Specific Scope of Services covered by the monthly lump sum retainer rate is detailed in the Scope of Services section of the contract between City of Clayton and Harris & Assoc. Those duties are the Day-to-Day operational duties that are funded through the City's General Fund.

Unless otherwise indicated in the cost proposal, hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large quantities such as construction documents for bidding purposes).

\*Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

All sub-consultant charges are subject to a 10% markup.