

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**Project Management Services**  
**Agreement # \_\_\_\_\_**

**THIS AGREEMENT** is executed this \_\_\_\_ day of September, 2022, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and 4LEAF, Inc. (hereinafter "Consultant"), collectively referred to herein as the "parties".

**WHEREAS**, the City wishes to engage Consultant to perform the services required by this Agreement; and

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

**WHEREAS**, Consultant represents that it is trained, experienced and competent and holds all necessary licenses and certifications to perform the services required by this Agreement.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

**1. SERVICES**

- A. **Scope of Services.** Consultant agrees to provide to the City, as the scope of services ("Scope of Services") under this Agreement, the following: Project Management and Construction Management Services for the following annual paving and facility renovation-oriented Capital Improvement Program (CIP) projects.
- a. FY 2019/20 Citywide Annual Paving Project (funded in FY 2021/22 Budget) – Bidding and Construction Phases.
  - b. Police Building Renovation Project, including Additional Scope - Design.
  - c. Resilience Infrastructure Pilot Project - Planning and Design Phases
  - d. Electrical Panel Upgrades for City Hall, Public Works, Sunset Center, and Vista Lobos Facilities - Design.

The Scope of Services is attached hereto as Exhibit "A". The Scope of Services under this Agreement should include, but is not limited to, a project description, project phases, task descriptions, identification of key personnel, identification of subconsultants, their key personnel and general description of services that will be performed, as further set forth in this Agreement and attachments hereto. Consultant agrees to all of the following:

- i. Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.

- ii. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit "B," Key Personnel, Compensation, and Fee Schedule, which is made a part of this Agreement.
- iii. Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- iv. Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- v. Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- vi. City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- vii. The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

**B. Change Orders.**

- i. Agreements and Change Orders exceeding \$24,999 require City Council approval to be valid.
- ii. The City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by the City Council and any service provided by Consultant in the absence of such approval are at Consultant's sole risk.
- iii. Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.

- iv. If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Administrator with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.

C. **Familiarity with Services and Site.**

- i. By executing this Agreement, Consultant represents that Consultant:
  - a. has thoroughly investigated and considered the Scope of Services to be performed;
  - b. has carefully considered how the services should be performed;
  - c. understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
  - d. possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- ii. If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform District of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

**2. COMPENSATION**

- A. **Total Fee.** Subject to any limitations set forth in this Agreement, the City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement, hourly fees as set forth in Consultant's Key Personnel, Compensation, and Fee Schedule (Exhibit "B"). The total fee is one hundred seventy-nine thousand eight hundred dollars (\$179,800). Supplemental Services may be requested by the City, in writing, with a limit of an additional seventeen thousand, nine hundred and eighty dollars (\$17,980). The "Maximum Authorized Expenditure" under this Agreement is One Hundred Ninety-Seven Thousand Seven Hundred and Eighty Dollars (\$197,780). The Fee Schedule includes, but is not limited to, fees for each phase and task, not-to-exceed total fee, hourly rates, reimbursable rates and subconsultant mark-up rates. The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount. Payment of any compensation to Consultant is contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If the City determines that the Services set forth in the written invoice have not performed in accordance with the terms of this Agreement, the City is not responsible for payment until the Services have been satisfactorily performed.
- B. **Invoicing.** Consultant must submit to the City monthly written invoices to the City's Project Representative, identified in Section 5 below. Invoices must be prepared in a form satisfactory to the City, describing the services rendered and associated costs for the period covered by the invoice. The City will provide invoicing format upon request. Consultant may not bill the City

for duplicate services performed by more than one person. Consultant's invoices must include, but are not limited to, the following information:

- i. Project Title, the City's Purchase Order number and City's Project Code(s) for each project;
- ii. Invoice number and date;
- iii. A brief description of services performed for each project phase and/or task;
- iv. The budgeted amount for each phase, task and item, including the total amount, with the same for approved Change Orders, if any;
- v. Amount invoiced to date divided by the agreed total compensation, expressed as a percentage, with the same for approved Change Orders, if any;
- vi. The amount earned and invoiced to date for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- vii. The amount previously invoiced for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- viii. The amount due for the period covered by this invoice for each phase, task, and/or item, including the total amount, with the same for approved Change Orders, if any;
- ix. For time and materials authorizations, the number of hours spent, by whom and their hourly rate for each phase, task and/or item, including the total amount;
- x. The costs incurred, including reimbursables, for each phase, task, and/or item for the agreed total compensation and approved Change Orders, if any, along with a brief description of those costs;
- xi. The total amount due for the period covered by this invoice, including subconsultants and vendors of services or goods;
- xii. Copies of subconsultant, vendor, and reimbursable invoices including hourly breakdowns when requested by City.
- xiii. Copies of subconsultant and vendor lien releases.

Any such invoices must be in full accord with any and all applicable provisions of this Agreement. Consultant must submit invoices to the City on or before the sixteenth (16<sup>th</sup>) day of each month for services performed in the preceding month.

The City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid.

Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, the City will pay on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement. If any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission, and the City will not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant. Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment. City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found to be non-conforming to the terms of this Agreement.

The City is not obligated to pay Consultant a greater percentage of the Maximum Authorized Expenditure than the actual percentage of services completed as of the invoice date.

Consultant agrees to remit and is responsible for all withholding taxes, income taxes, unemployment insurance deductions, and any other deductions required by applicable federal, state or local laws and regulations for Consultant, its employees, subconsultants and vendors of services or goods.

- C. **Adjustment of Maximum Authorized Expenditure.** The City may increase or decrease the Maximum Authorized Expenditure by issuing a Change Order to the Agreement in accordance with Section 1.B "Change Orders" above. Should Consultant consider that any request or instruction from the City's Project Representative constitutes a change in the scope of services, Consultant will advise the City's Project Representative, in writing, within fourteen (14) calendar days of such request or instruction. Without said written advice within the time period specified, the City is not obligated to make any payment of additional compensation to Consultant.
- D. **Hourly Rates.** Payment for all authorized services, including payment for authorized on-call, as-needed services, will be made by the City to Consultant in accordance with the various hourly rates as set forth in the Consultant's Compensation & Fee Schedule (Exhibit "C").
- E. **Subconsultants and Vendors.** Invoices for subconsultants and vendors of services or goods will be paid by the City to Consultant in accordance with the various rates as set forth in the Consultant's Compensation & Fee Schedule (Exhibit "C"). All reimbursable expenses will be considered as included within the Maximum Authorized Expenditure. Consultant is solely responsible for payment to subconsultants and vendors of services or goods, and the City is not responsible or liable for any payments to subconsultants and vendors, either directly or indirectly.
- F. **Audit and Examination of Accounts:**
  - i. Consultant must keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.
  - ii. Any audit conducted of books of records and accounts must be kept in accordance with generally accepted professional standards and guidelines for auditing.

- iii. Consultant must disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.
- iv. Consultant must include the requirements of Section 2F, "Audit and Examination of Accounts", in all contracts with assignees or subconsultants under this Agreement.
- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of the Services. All records, which pertain to actual disputes, litigation, appeals or claims, must be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

### 3. AGREEMENT TERM

- A. **Term.** The work under this Agreement will commence by September 15, 2022 and must be completed by June 30, 2024 unless sooner terminated or the City grants an extension of time in writing pursuant to the terms of this Agreement, except for provisions in this Agreement that will survive the termination or completion of this Agreement. Consultant will perform Change Order services as set out in Section 1.B, "Amendment of Services (Change Orders)", in a timely manner or in accordance with the agreed upon Change Order Project Schedule.
- B. **Timely Work.** Consultant will perform all Services in a timely fashion, as set forth more specifically in Section 3.A, "Term", and Section 3.C, "Project Schedule", of this Agreement. Failure to perform is deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.
- C. **Project Schedule.** Services must be completed by Consultant in accordance with the Project Schedule set forth in Exhibit "C". The parties may, from time to time, by Change Order, alter the Project Schedule. Consultant will provide the Services pursuant to the Project Schedule or any applicable Project Schedule Change Order. If at any time Consultant discovers that the Project Schedule cannot be met, Consultant must promptly notify the City in writing and provide a revised Project Schedule for review and consideration by City.
- D. **Notice to Proceed.** Upon execution of this Agreement by both parties and the receipt of all documentation required by this Agreement to be provided by Consultant to the City, including proof of insurance and tax identification numbers, the City will issue a written Notice to Proceed to the Consultant. The City may, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Consultant will diligently proceed with the Services authorized and complete those Services within the agreed time specified in said notice. Consultant will not proceed with any of the Services unless they have received a Notice to Proceed from the City.

### 4. CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS

- A. **Listed Employees and Subconsultants.** Consultant will perform the Services using the individuals listed in the Key Employees and Subconsultants List attached hereto in Exhibit "B".
- B. **Substitution of Employees or Subconsultants:**
- i. Consultant may not substitute any key employee or subconsultant listed in Exhibit "B" without the prior written approval of the City, and such approval will not be unreasonably withheld. The City will not approve removal or substitution of employees or subconsultants for the reason that Consultant or its affiliates has called on such individuals to perform services for another client of the Consultant.
  - ii. If, at any time, the City reasonably objects to the performance, experience, qualifications, or suitability of any of Consultant's employees or subconsultants, then Consultant may, upon written request from the City, replace such employee or subconsultant. Consultant must, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience.
  - iii. Whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City will not be liable to pay additional compensation to Consultant for any replacement or substitution.
- C. **Sub-agreements with Subconsultants.** Consultant will incorporate the terms and conditions of this Agreement into all sub-agreements with subconsultants in respect of the Services necessary to preserve all rights of the City under this Agreement. Consultant is fully responsible to the City of all acts and omissions of subconsultants and of persons employed by any subconsultant.
- D. **Not an Agent of the City.** Nothing in this Agreement will be interpreted to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.
- E. **Independent Contractor:**
- i. Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City may not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for in this Agreement. Consultant is solely liable for the work quality and conditions of any partners, employees and subconsultants.
  - ii. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant may not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant will be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes

and social security, arising out of Consultant's performance of Services under this Agreement. Consultant will defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

## 5. REPRESENTATIVES AND COMMUNICATIONS

- A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Consultant.

Name: Robert Harary, P.E.  
Title: Director of Public Works  
Address: P.O. Box CC, Carmel, CA 93921  
Telephone: (831) 620-2021  
Email: rharary@ci.carmel.ca.us

- B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager").

Name: Gene Barry, P.E.  
Title: Vice President  
Company: 4LEAF, Inc.  
Address: 2126 Rheem Drive, Pleasanton, CA 94588  
Telephone: (925) 462-5959  
Email: gbarry@4leafinc.com

- C. **Meet and Confer.** Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as may be required by the City to insure timely and adequate performance of this Agreement.
- D. **Communications and Notices.** All communications between the City and Consultant regarding this Agreement, including performance of Services, will be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and will be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

## 6. INDEMNIFICATION

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant will defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs,



reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee will not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

In no event will the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782, 2782.6, and 2782.8.

## 7. INSURANCE

Consultant must submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant must maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will have a policy for professional liability coverage that provides coverage on an occurrence basis or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.
- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant must maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
  - i. All insurance required under this Agreement must be written by an insurance company either:
    - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; or

- b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.
- ii. Each insurance policy required by this Agreement may not be canceled, except with prior written notice to the City.
- iii. All liability and auto policies must:
  - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
  - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea is excess to the Consultant's insurance and will not contribute with it.
  - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
  - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.
- iv. Prior to the start of work under this Agreement, Consultant will file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant will file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, may in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which will continue in full force and effect. All coverage available to the Consultant as named insured will also be available and applicable to the additional insured. Notwithstanding these insurance requirements, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. All policies must be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retentions ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured will reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event will any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction

of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.

- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- viii. Consultant must require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements in this Agreement.
- ix. If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant's expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.
- x. The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.
- xi. Consultant must give City prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.
- xii. The Consultant hereby waives any right of subrogation that any of its insurers may have or that they may accrue out of the payment of any claim related to the Consultant's performance of this Agreement, regardless of whether any endorsements required by this section are obtained.

## **8. PERFORMANCE STANDARDS**

- A. Consultant warrants that Consultant and Consultant's agents, employees, and subconsultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.
- B. Consultant, its agents, employees, and subconsultants must perform all Services in a safe and skillful manner consistent with the usual and customary standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields in accordance with sound

professional practices. All work product of Consultant must comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and will advise City of any changes in any laws that may affect Consultant's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel must be performed in accordance with such licensing requirements.

- C. Consultant must furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant may not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
- D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City's Project Representative or his or her designee will evaluate the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

## 9. CITY INFORMATION AND RESOURCES

- A. **Available Information.** The City will make available to Consultant all relevant information, plans, maps, reports, specifications, standards, and pertinent data which is in the hands of the City and is required by Consultant to perform the Services. Consultant may rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.
- B. **City Resources.** The City acknowledges that Consultant's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor will Consultant be entitled to extra compensation for same. Consultant's sole remedy shall be an extension of time to complete the Scope of Services.
- C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City will derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services will be and remain with Consultant.

## 10. OWNERSHIP AND USE OF MATERIALS

- A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and will remain the property of the City even though Consultant or another party may have physical possession of them or a portion

thereof. Consultant hereby waives, in favor of the City, any moral rights Consultant, its employees, subconsultants, vendors, successors or assignees may have in the Materials.

- B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, will be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.
- C. **Delivery and Use of the Materials.** All Materials will be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event Consultant must forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.
- D. **Survival of Ownership and Use Provisions.** The provisions contained in Section 10, Ownership and Use of Materials survives the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.
- E. **Additional Copies.** If the City requires additional copies of reports, or any other material that Consultant is required to furnish as part of the Services under this Agreement, Consultant must provide such additional copies, and the City will compensate Consultant for the actual costs related to the production of such copies by Consultant.

## 11. CONFIDENTIALITY

- A. **No Disclosure.** Consultant must keep confidential and may not disclose, publish, or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant may not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant must promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section will survive the expiration or earlier termination of this Agreement.
- B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant will not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received will be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or otherwise by law, the City will not be liable or responsible for the disclosure of any such records and the Consultant will indemnify, defend, and hold the City harmless for any such disclosure.

## 12. CONFLICT OF INTEREST

Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City relating to this Agreement or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.), and California Government Code section 1090.

Consultant is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

In addition, Consultant, Consultant's employees, and subconsultants agree as follows:

- A. That they will conduct their duties related to this Agreement with impartiality, and must, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;
- B. May not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;
- C. May not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;
- D. May have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant must promptly declare it to the City, and;
- E. May not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

### 13. DISPUTE RESOLUTION

- A. **Dispute Resolution Procedures.** The parties will make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement (“Dispute”) using the Dispute Resolution Procedures set forth in this Section.
- B. **Negotiations.** First, the City’s Project Representative and Consultant’s Project Manager will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter will be promptly referred to the City Administrator or designee, and the Consultant’s Principal, who will meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.
- C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the City Administrator pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court’s Court-Directed Mediator Panel list. The duration of any such mediation may not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) will be borne equally by the parties, and each party will bear its own costs of participating in mediation. The mediation will take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 will be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute will be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

- D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator will have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and is subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A “Prevailing Party” will be determined in the Arbitration, and the prevailing party will be entitled to reasonable attorney’s fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs will include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees will be considered costs recoverable in that proceeding, and be included in any award.

### 14. TERMINATION OF AGREEMENT

- A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Consultant or any subconsultant defaults or fails to deliver the

Services in accordance with the terms and conditions of this Agreement. Such termination must be in writing, setting forth the effective date of termination, and will not result in any penalty or other charges to the City, and may be issued without any prior notice. Without limitation, Consultant is in default of its obligations contained in this Agreement if Consultant, or any subconsultant:

- i. Fails to perform the required Services within the term and/or in the manner provided under this Agreement;
- ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;
- iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;
- iv. Fails to observe or comply with the City's reasonable instructions;
- v. Breaches the Conflict of Interest provisions of this Agreement; or
- vi. Otherwise violates any provision of this Agreement.

B. **Termination for Convenience.** The City may, at its option and sole discretion, terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term for the convenience of the City, upon ten (10) days written notice to the Consultant.

C. **Steps after Termination:**

- i. Upon termination of this Agreement by the City for any reason, the City will pay Consultant for satisfactorily performed Services and disbursements incurred by Consultant to the date of termination pursuant to this Agreement, less any amounts necessary to compensate the City for damages or costs incurred by the City arising from Consultant's default. Termination will be without prejudice to any other rights or remedies the City may have.
- ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Consultant must:
  - a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and
  - b. Deliver to the City all the Materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such Materials are to be delivered to the City in completed form; however, notwithstanding the provisions of Section 10, Ownership and Use of Materials, herein, the City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such Materials.



- iii. If this Agreement is terminated by the City for any reason, the City is hereby expressly permitted to assume the projects and Services, and to complete them by any means including, but not limited to, an agreement with another party.

## 15. LEGAL ACTION / VENUE

- A. Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.
- B. Venue for any such action relating to this Agreement will be in Monterey County.
- C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party may recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

## 16. MISCELLANEOUS PROVISIONS

- A. **Non-discrimination.** During the performance of this Agreement, Consultant, and its subconsultants, may not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.
- B. **Acceptance of Services Not a Release.** Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.
- C. **Force Majeure.** Either party is absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
- D. **Headings.** The headings do not govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.
- E. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations

and agreements, whether oral or written, relating to the subject matter thereof pursuant to Section 1B, "Change Order of Services". Any Change Order to this Agreement will be effective only if it is in writing signed by both parties hereto and will prevail over any other provision of this Agreement in the event of inconsistency between them.

- F. **Conflict between Agreement and Exhibits**. In the event of a conflict between a provision in this Agreement and a provision in an Exhibit attached to this Agreement, the provisions in this Agreement will take precedence.
- G. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and may be signed in counterparts, but all of which together will constitute one and the same Agreement.
- H. **Multiple Copies of Agreement**. Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that governs should any difference exist among counterparts of this Agreement.
- I. **Authority**. Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- J. **Severability**. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Limitations of liability and indemnities will survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- K. **Non-exclusive Agreement**. This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.
- L. **Assignment of Interest**. The duties under this Agreement are not assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer constitutes a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.
- M. **City Business License**. Prior to receiving a Notice to Proceed from the City, Consultant will obtain and maintain a valid City of Carmel-by-the-Sea Business License for the duration of the Agreement. Costs associated with the license are the responsibility of Consultant.
- N. **Laws**. Consultant agrees that in the performance of this Agreement it will comply with all applicable federal, state, and local laws and regulations. This Agreement will be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA

CONSULTANT

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Consultant Signature

Chip Rerig  
Printed Name Date

Gene Barry  
Printed Name Date

\_\_\_\_\_  
City Administrator  
Title

\_\_\_\_\_  
Vice President  
Title

4LEAF, Inc.  
Consultant Legal Company Name

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brian Pierik, City Attorney

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

**ATTEST:**

By: \_\_\_\_\_  
Nova Romero, MMC, City Clerk

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

- Exhibit "A"      Scope of Services
- Exhibit "B"      Key Personnel, Compensation, and Fee Schedule
- Exhibit "C"      Project Schedule

## EXHIBIT A – SCOPE OF SERVICES

4LEAF, Inc. (4LEAF) will perform the following Project Management (PM) and / or Construction Management (CM) / Resident Engineer (RE) services for the following four (4) Capital Improvement Program (CIP) projects outlined below.

### **Project #1. FY 2019/20 Citywide Annual Paving Project (funded in FY 2021/22 budget)**

The following represents major tasks and typical responsibilities that will be associated with providing part-time Resident Engineer duties for the City of Carmel-by-the-Sea's FY 2019 / 20 Citywide Annual Paving Project. The following tasks will be performed remotely except when on-site presence is required for in-person meetings or addressing site issues. **City staff will be responsible for performing full-time Construction Inspections for the project.**

#### **Task 1. Bid Phase**

- Complete the unfinished bid package (contract documents).
- Assist the City and Design Team in advertising the project for public bidding.
- Chair a bid conference for prospective contractors (including preparing the agenda, maintaining sign-in sheets, and preparing meeting minutes),
- Work with the City and Design Team in preparing responses and clarifications to bidder questions and issuing as-needed addendum.
- Assist the City with issuing the notice to proceed (NTP) for the selected contractor.

#### **Task 2. Pre-Construction Phase**

- Attend one public meeting regarding the proposed median landscape plan.
- Set up and organize project files, construction forms, and communications documents.
- Provide as-needed assistance to City staff for verifying the contractor and subcontractor's compliance with any City permit requirements.
- Provide as-needed assistance with the City's Inspector for coordination with utility companies and other stakeholders.
- Establish coordination and communication procedures between the project team.
- Establish procedures for receiving, logging, and transmitting submittals, requests for information (RFI's) and requests for changes (RFC's).
- Coordinate with the Design Team for submittal and RFI reviews.

- Conduct community public outreach efforts, including handing out notices, and providing up to date information and construction notices regarding the project construction schedules, roadway and sidewalk closures, and construction progress updates.
- Respond to complaints from the public.
- Conduct a pre-construction conference and prepare and distribute agenda and meeting minutes to all parties.
- Confirm the contractor performs a pre-construction conditions inspection including with digital photographs and/or video.

### **Task 3. Construction Phase**

- Conduct weekly progress meetings with the City, the contractor, the Design Team (if necessary), and other project stakeholders. We assume these weekly meetings will be conducted virtually using Microsoft Teams, Zoom, or other video conferencing platform.
- Prepare agendas and minutes to meetings, as necessary, and distribute hard copies to attendees and interested parties.
- Provide document control for all construction correspondence and contractor submittals, RFIs, activities, etc.
- Evaluate, assign, and process RFIs, submittals, CCOs, and design changes. 4LEAF assumes that the City's project's Designer of Record will remain engaged in the Project throughout construction. Our part-time Resident Engineer will receive and process all submittals, RFIs, CCOs, design changes, etc. for review and approval by the City and Design Team. Our Resident Engineer will provide an initial "sanity check" of submittals, RFIs, CCOs, etc. to confirm they are complete prior to forwarding them to the Design Team. This will streamline the document review process for all parties, preventing the Design Team from wasting their time reviewing a document package that may not meet contract requirements. The document package will be tracked via a submittal, RFI, or CCO log and status will be updated at each weekly progress meeting with "Ball in Court" status indicating whose action is required to move the document package review process along as efficiently as possible.
- Maintain communications with the City's Inspector and prepare a generalized checklist for the City Inspector to verify or confirm the following items are being maintained or addressed throughout construction:
  - measuring and documenting accurate quantities of materials placed by the contractor and utilize this information to perform a timely review of the contractor's monthly pay applications
  - monitoring and inspecting the methods, workmanship and materials used by the contractor to assure compliance with the City's contract documents

- identifying and documenting work that is not in conformance with the contract documents and work that may result in a CCO or claim
- routinely monitoring the contractor's traffic control is implemented per approved traffic control plans and inspect detour and construction signing for soil import or off haul, and material deliveries to ensure public safety
- collecting material tags to verify materials on site meet the project specifications and project submittals
- verifying that the contractor continues to provide the required notifications to the surrounding community and various project stakeholders
- tracking and documenting all approved time and materials work or force account work activities being performed by the contractor.
- developing and maintaining a punch list throughout
- monitoring the contractor's records of as-built conditions on the contract drawings and specifications.

The City's Construction Inspector will be responsible for performing the necessary inspections with general industry standards and 4LEAF does not assume any responsibility for items not identified or inspected by the City's Construction Inspector during construction activities.

- Maintain a record set of conformed contract documents with all revisions and CCO's.
- Solicit input from the City's Construction Inspector and review and make recommendations regarding payments to the contractor, including CCOs, when applicable, and make recommendations regarding any proposed changes.
- Routinely review the contractor's construction schedule, request updates as appropriate, and track delays or accelerations based on actual contractor operations.
- Routinely analyze the contractor's schedule for critical activities and review the contractor's plan to avoid or mitigate potential delays.
- Assist with problem resolution involving the flow of information between the contractor, the City, the design team.

We assume that all Quality Assurance (QA) materials testing and special inspections are being performed by others.

#### **Task 4. Project Closeout**

4LEAF's part-time Resident Engineer will work with the City's Construction Inspector to perform **Document Closeout** activities by assembling and transferring the required contract files from 4LEAF and

the City's Construction Inspector to the City when the contract is complete. Documents typically include project correspondence, CCO's, design clarifications, RFIs, submittals, the contractor's red-lined versions of the project plans, daily inspection reports and photographs, and any claims.

## **Project #2. Project 2A – Police Department Building Renovation Project and Project 2B – Police Building Renovation Additional Scope Project.**

This project has experienced several iterations over time. The City Council has appropriated additional funds to address added functional scope [Emergency Operations Center (EOC) / community room, locker room modernization, report taking/interview rooms, electric vehicle (EV) charging capability and any required code upgrades], but a detailed analysis of the impact of these functional scope additions has not been completed. These new scope additions will most likely require code upgrades for fire protection systems and potentially other facility components. Adding further complexity is the City's desire to initiate implementation of its recently adopted Climate Action Plan by increasing the resilience profile of the Police Department / Public Works building, the Youth Center complex and potentially the Vista Lobos Facility that currently houses the City's IT Department and its equipment.

The following provides the tasks and scope of work to be performed for Project #2. **It is important to emphasize that the project itself has not yet been defined, so many of the tasks outlined below are general in nature and our best estimate of the effort that will be required. We anticipate frequent check-ins with the City as we manage the process of developing the project scope and assess the specific functional and code requirements that will ultimately come from the City's project need descriptions.**

**Task 1- Develop and Negotiate Architect's Scope and Fees.** 4LEAF's first task will be to perform Project Management for the development of this essential phase of the Architect's new contract. As stated above and below, this front-end project definition work is essential for the City, 4LEAF, and the Architect to define an initial project scope and current working estimate. These pieces of information are critical to gain City direction and approval for the project scope and initial budget estimate.

This front-end phase/effort by the Architect and his subconsultants is essential to adequately define the scope of the ultimate project. That scope definition will drive the scope of the ultimate Police Department building's functional upgrade requirements and associated code upgrades. Managing and identifying the impact of these changes will be necessary for accurately developing the total project scope, design costs, and a current working estimate for the required construction, equipment/furnishings, IT requirements, and swing space strategy and cost during construction. This sequential process is suggested to move the project development forward quickly and enable the City Manager and Council to make appropriate policy and budget decisions on the project as early in the process as possible. It will also reduce the probability of later surprises to the Council and Public on project costs.

This initial design effort by the consultant Architect will also assist in developing a more accurate project scope and budget for the next phase of the consultant Architect's contract for design development and the development of construction documents.

4LEAF's Project Manager will aggressively manage and coordinate Carmel staff requirements and forward input to the City's consultant Architect and work with the Architect to complete design contract amendment(s) as required during Subtask A and/or Tasks 2 and 3 below. The duration to complete this task may be impacted by the availability of the Architect's subconsultants for key engineering disciplines such as electrical, seismic, and mechanical. The electrical disciplines will be particularly critical for the resilience component of the project. The resilience component of the project will very likely require inclusion of resilience work necessary to upgrade the Public Works facility as there will be economies of scale associated with completing an integrated resilience capability. 4LEAF's Project Manager will schedule and manage periodic progress meetings with the City's consultant Architect and City staff to include agendas, meeting notes, and action items.

- **Subtask A – Manage Architect's Development of Scope and Current Working Estimate.** 4LEAF's Project Manager will manage the process for defining the Police Department building design scope including functional and code upgrades and essential maintenance backlog. We assume that the scope of improvements to the Police Department building will require upgrades based on current seismic, handicap, plumbing, fire, and electrical codes. We assume the City's consultant Architect's initial tasking will be based on these requirements, but it is possible that other facility components may require further upgrade and therefore future amendment to the Architect's contract.

4LEAF's Project Manager will manage and work with the consultant Architect to evaluate the Police Department building's essential maintenance requirements, functional upgrades, and code compliance project scope. The results of this analysis will be provided to the Public Works Director, City Manager/City Council for go/no-go direction on scope and costs. When that policy decision is received, 4LEAF will manage and work with the consultant Architect's team to develop a contract amendment, if necessary, for the Architect to provide for design development and construction documents for the project scope ultimately approved by the City.

- **Subtask B – Manage Evaluating Impact of Resilience Requirements.** 4LEAF's Project Manager will manage and work with the Architect's team to determine the impact of the resilience requirements for the Police Department building and associated facilities defined in Project #3a on the basic electrical requirements of Project 2. The electrical systems for the Police Department building and Public Works building are intertwined. The completion of the required electrical components of the Police Department building upgrade and the required resilience measures will most likely also require addressing the current maintenance and safety issues associated with the extensive roof leaks that cause rainwater to sheet down the wall where the building electrical panels are located as well as rainwater leaks at numerous points in the equipment bays.
- **Subtask C.** 4LEAF's Project Manager will manage and work with the Architect's team to determine if addressing currently failing Public Works building components such as the roof leaks and other component upgrades will be required prior to the design development of the resilience improvements necessary for supporting continuing operations and adding/increasing capacity for EV charging stations.
- **Task 2 – Manage Design Phase Development and Approval.** Following approval of the updated design scope and budget, 4LEAF's Project Manager will manage the City's consultant Architect in



completing the design of the approved project scope. 4LEAF's Project Manager will provide assistance to the City's Architect and his subconsultants in interfacing with City staff. The objective during this task will be to manage the design development, obtain Advisory Commission and City Council approvals. 4LEAF will support City staff with the preparation and presentation of the Project before the advisory bodies and City Council. This Task of design development, advisory body review and Council project and budget approval is estimated to take nine months depending on the scheduling of the various commissions and City Council meetings.

- **Task 3 – Manage Final Design Phase.** Following the City Council's approval of the project scope and budget, 4LEAF's Project Manager will work with the Architect to review and update their amended contract's scope and budget if necessary. 4LEAF will manage the process of final design development and preparation of construction drawings and associated plan checks. This task is estimated to take approximately four months after receiving a notice to proceed.

Although not included under this scope of services for PM services, 4LEAF can provide Plan Review of the various design drawing submittals as a Supplemental Service or an Amendment.

- **Task 4 – Manage Development of Contract Documents.** 4LEAF will manage the development of the contract documents (e.g. plans / specifications and bid documents) that will be prepared by the Architect.
- **Potential Future Task 5.** It is likely that the City will need to develop a strategy for the swing space that will be necessary for City staff who are occupying buildings that will be impacted during construction. The design development for implementing the swing space strategy will need to become a project in its own right. **This scope of work is not included in our current scope of work and it is too early to identify and assign a level of effort for this task until future discussions are held with various City staff.**

### **Project #3A – Infrastructure Resilience Pilot Project Planning and Design.**

4LEAF's Project Manager will work to finalize the scope definition within the total available budget of \$85,000 for the electrical upgrades and resilience requirements for the upgrade of the Public Works / Public Safety / Public Service Complex and the Vista Lobos facility. 4LEAF's Project Manager will develop grant requests for design and construction of the identified distributed power, photo voltaic, and microgrid components; and initiate managing the design of resilience project elements.

- **Task 1 – Manage Process of Identifying Electrical Upgrades.** As part of the scope development of the Police Department building project, 4LEAF will work with the Architect's team to define which components of this project should be an integral part of the electrical work associated with the Police Department building and which items should/could be a stand-alone resiliency project. The task will run currently with Subtask B of Task 1 for Project #2.
- **Task 2 – Manage Scope Development and Conceptual Design of Public Safety Resilience Project.** After determining the stand-alone resilience scope, if any, 4LEAF will work with the Architect's sub-consultant or the City selected electrical consultant to develop the operating profile, the project scope, and conceptual designs of the required/desired resilience components. 4LEAF will work with the City to develop the functional resilience capabilities

necessary to provide the continuous operation of the Public Safety Complex such as a microgrid, storage, and distributed generation. This effort should take approximately 4 months.

- **Task 3 – Manage Development of Grant Strategy.** In conjunction with the design development process, 4LEAF will explore grant opportunities to assist in the acquisition of the desired and/or required components of the microgrid system. The acquisition of construction of the various components will likely be phased to maximize the amount of grant money available for the project. It is estimated this task may take more than one year to complete.

### **Project #3B – Electrical Panel Upgrades for City Hall, Public Works, Sunset Center, and the Vista Lobos Facilities**

4LEAF's Project Manager will assist the City in selecting an electrical design consultant and will manage the development of the analysis of the long-term electrical demands and panel upgrades required for the Sunset Center and City Hall within the total available budget of \$75,000. As previously stated, analysis of the electrical needs for the Public Works building and the Vista Lobos Facilities is included in Project 3A. If City resources are available, we will consider the resilience needs and benefits of developing microgrids for the work to finalize the scope definition and budget for the electrical upgrades and resilience requirements for the facilities. This work will require a future amendment of our contract when the City's function resilience objectives and resource availability are better defined.

- **Task 1 – Manage Electrical Load Analysis.** Assist the City's electrical design consultant to complete the required load analysis for Sunset Center and City Hall. This task will take approximately 4 months depending upon the availability of resources and the priority of this work in comparison with the other work listed for Projects 2 and 3A. Coordinate panel upgrade needs with PG&E and the City and prepare PG&E application materials.
- **Potential Future Task 2.** Depending on the City's resilience strategy and desired outcomes, the Sunset Center complex will likely become an important component of the City's overall resilience asset set. Consideration should be given to developing the capability for the complex to operate on a microgrid. The scope of this effort is undeterminable until the City develops a more complete set of resilience objectives and a strategy for achieving those goals. If the City decides to go forward with a microgrid strategy for the Sunset Center and City Hall Complexes as part of their climate mitigation plan, 4LEAF could develop a project management strategy and level of effort for accomplishing this goal.

**EXHIBIT B – KEY PERSONNEL AND FEE SCHEDULE**

**4LEAF Hourly Rate Sheet**

No.	Key Personnel	Role	Fully-Burdened Hourly Rates		
			07/01/2022 to 06/30/2023	07/01/2023 to 06/30/2024	07/01/2024 to 06/30/2025
1.	Gene Barry, P.E.	Principal-In-Charge	\$205.00	\$211.15	\$217.48
2.	Fred Meurer	Project Manager	\$195.00	\$200.85	\$206.88
3.	Bill Reichmuth, P.E.	Resident Engineer	\$170.00	\$175.10	\$180.35
4.	Tracy Caton	Admin. Support	\$95.00	\$97.85	\$100.79

4LEAF’s fully-burdened rates include the following:

Software	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Vehicles	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Phone / Cell	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Printing	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Mileage (project related)	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Postage / Courier	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

Other costs such as mileage, printing, and postage, etc. will be assessed a 10% Administrative Markup Fee.

## 4LEAF Total Fee Estimate

Note that the estimated Level of Effort for Projects #2, #3A, and #3B are based on limited currently available information and undefined project scopes.

### Project #1. FY 2019/20 Citywide Annual Paving Project (funded in FY 2021/22 budget)

Task 1. Bid Phase.	\$7,790
Task 2. Preconstruction Phase.	\$13,400
Task 3. Construction Phase.	\$28,020
Task 4. Project Closeout.	\$6,260
Project #1 Subtotal:	<u>\$55,470</u>

### Project #2. Project 2A – Police Department Building Renovation Project and Project 2B – Police Building Renovation Additional Scope Project.

Task 1. Develop and Negotiate Architect’s Scope and Fees.	\$39,370
Task 2. Manage Design Phase Development and Approval.	\$37,030
Task 3. Manage Final Design Phase.	\$17,530
Task 4. Manage Development of Contract Documents.	\$5,050
Project #2 Subtotal:	<u>\$98,980</u>

### Project #3A – Infrastructure Pilot Project Planning and Design.

Task 1. Manage Process of Identifying Electrical Upgrades.	\$3,910
Task 2. Manage Scope Development and Conceptual Design of Public Safety Resilience Project.	\$7,410
Task 3. Manage Development of Grant Strategy.	\$11,680
Project #3A Subtotal:	<u>\$23,000</u>

### Project #3B – Electrical Panel Upgrades for City Hall, Public Works, Sunset Center, and the Vista Lobos Facilities

Task 1. Manage Electrical Load Analysis.	\$2,350
Project #3B Subtotal:	<u>\$2,350</u>

<b>Total Fee Estimate:</b>	<b>\$179,800</b>
<b>10% Supplemental Services Upon Prior Written Approval of the City:</b>	<b>\$17,980</b>
<b>Total Not-to-Exceed Amount:</b>	<b>\$197,780</b>

## **EXHIBIT C PRELIMINARY SCHEDULE**

### **Project #1. FY 2019/20 Citywide Annual Paving Project (funded in FY 2021/22 budget).**

Start Date: TBD.

Completion Date: TBD

Task 1 (Bid Phase). Duration: 2 months (approx.)

Task 2 (Preconstruction Phase). Duration: 3 weeks (approx.)

Task 3 (Construction Phase). Duration: 8 weeks (assumed – TBD per contractor’s Baseline Schedule).

Task 4 (Post Construction). Duration: 1 week (approx.)

### **Project #2. Police Department Building Renovation Project and Project 2B – Police Building Renovation Additional Scope Project.**

Start Date: September 2022

Estimated Completion Date: February 2024

Task 1 (Develop and Negotiate Architect’s Scope and Fees). Duration: 1.5 months

Task 2 (Manage Design Phase Development and Approval). Duration: 6 to 9 months (est. – will be dependent on Architect and Design Subconsultant staffing availability)

Task 3 (Manage Final Design Phase). Duration: 4 to 6 months (est. – will be dependent on Architect and Design Subconsultant staffing availability)

Task 4 (Manage Development of Contract Documents). Duration: 2 to 4 months (est. – will be dependent on Architect and Design Subconsultant staffing availability) (est.)

### **Project #3A. Infrastructure Pilot Project Planning and Design.**

Start Date: January 2023

Estimated Completion Date: June 2023

Task 1 (Manage Process of Identifying Electrical Upgrades). Duration: 1.5 months

Task 2 (Manage Scope Development and Conceptual Design of Public Safety Resilience Project). Duration: 1.5 months (will be dependent on information / direction provided by the City).

Task 3 (Manage Development of Grant Strategy). Duration: 1.5 months (will be dependent on availability of local / state / federal resilience funding sources).

### **Project #3B. Electrical Panel Upgrades for City Hall, Public Works, Sunset Center, and the Vista Lobos Facilities.**

Start Date: January 2023

Estimated Completion Date: April 2023

Task 1 (Manage Electrical Load Analysis). Duration: 4 months (est. – will be dependent on Architect and Design Subconsultant staffing availability).