

# Standard City of San José Consultant Agreement

(Capital Projects)

CPMS Contract No. 9958

This Agreement is between the City of San José, a municipal corporation (“City”), and JMA Civil, Inc., a California corporation (“Consultant”).

This Agreement is made and entered into this 21st day of October, 2021 (“Contract Date”)

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

## 1. AGREEMENT SCOPE

- 1.1 **General:** This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City.
- 1.2 **Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
  - Exhibit A-1:** Project Schedule
  - Exhibit B:** Compensation
  - Exhibit C:** Insurance Requirements
- 1.3 **Director:** “Director” means the Director of Transportation or the Director’s designee.
- 1.4 **Business Days:** “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.
- 1.5 **Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 **Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

The Agreement term is from the Contract Date to December 31, 2024, inclusive, unless terminated earlier pursuant to Section 19 below.

### 3. SCOPE OF SERVICES

- 3.1 Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Director’s satisfaction.
- 3.2 Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate to the Project but are not included in the Basic Services.
- 3.2.1 Authorization:** The City will not compensate the Consultant for any Additional Services without the Director’s prior written authorization.
- 3.2.2 Director’s Authorization:** The Director may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Director is authorized to execute the amendment for Additional Services for the City.

### 4. DESIGN SERVICE REQUIREMENTS

- 4.1 General:** This Section applies to any design services the Consultant performs as part of the Basic Services or Additional Services.
- 4.2 Standard Documents:** The Consultant is, or will become, familiar with the City of San José, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San José, Department of Public Works, Standard Details, dated July 1992 (and any amendments thereto), and any other standard documents the City uses to design and implement its capital projects (collectively “Standard Project Documents”).
- 4.3 Use of Standard Documents:** Unless the Director provides prior written approval to the contrary, the final design documents prepared by the Consultant must be based on, and must incorporate, the Standard Project Documents.

### 5. CITY’S CONTRACT MANAGER

The City’s contract manager for this Agreement is:

Name: Stacey Lu	Phone No.: 408-975-3271
Department: Transportation	E-mail: stacey.lu@sanjose.ca.gov
Address: 200 East Santa Clara St, 8 <sup>th</sup> Floor, San Jose	

The Director can change the above contract manager by giving the Consultant written notice.

### 6. CONSULTANT’S STAFFING

- 6.1 Consultant’s Project Manager and Other Staffing:** Identified below are the following: (a) the Consultant’s project manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 (“Form 700”), and the

individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Consultant must comply with the requirements of Subsection 17.2 below.

		<b><u>Required to File Form 700?</u></b>		
		<b>Yes Already Filed (Insert Date Filed)</b>	<b>Yes Need to File</b>	<b>No</b>
<b><u>Consultant's Project Manager</u></b>				
Name: Mohammed Abushaban	Phone No.: 925.400.4360			<b>X</b>
Address: 383 4 <sup>th</sup> Street Ste. 201 Oakland, CA 94607	E-mail: mabushaban@jmacivil.com			
<b><u>Other Staffing</u></b>				
<b><u>Name:</u></b>	<b><u>Assignment:</u></b>			
1. Jon Marshall	Principal In Charge	X (3/31/21)		
2. Allene Rieger	QC Manager			<b>X</b>
3. Arka Ghosh	Designer			<b>X</b>
4. Zhaoyang Wang	Designer			<b>X</b>
5. Ramya Tanikella	Designer			<b>X</b>
6. Ke Zheng Ong	Designer			<b>X</b>

**6.2 Project Manager's Authority:** The Consultant's contract manager is authorized to act on behalf of the Consultant.

**6.3 Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in this provision.

## 7. USE OF SUBCONSULTANTS

**7.1 Authority to Use:** Whichever of the following is marked applies to this Agreement:

- The Consultant can **not** use any subconsultants without the Director's prior written approval.

- The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Director's prior written approval.

Subconsultant's Name	Area of Work
1. Bess Testlab Inc.	Utility Locate and Potholing
2.	
3.	

- 7.2** **Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

## 8. INDEPENDENT CONTRACTOR

- 8.1** **General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
- 8.2** **Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.
- 8.3** **Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

## 9. STANDARD OF PERFORMANCE

The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

## 10. COMPENSATION

- 10.1** **Maximum Total Compensation:** The maximum amount the City will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$130,000** ("Maximum Total Compensation").
- 10.2** **Intentionally Omitted.**
- 10.3** **Exhibit B - Compensation:** The City will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**.

**10.3.1 Compensation Table: Exhibit B** sets forth a compensation table establishing the manner in which the City will pay the Maximum Compensation to the Consultant (“Compensation Table”). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

**10.3.2 Schedule of Rates and Charges:** If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the Consultant’s rates and charges (“Schedule of Rates and Charges”). The Schedule of Rates and Charges is subject to the following requirements:

**10.3.2.1 Premium Pay:** “Premium Pay” is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay Consultant Premium Pay.

**10.3.2.2 No Increases:** The City will *not* increase the Schedule of Rates and Charges during the Agreement term.

**10.3.2.3 Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

**10.4 Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.

**10.4.1 Task Numbers (Column 1):** Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

**10.4.2 Basis of Compensation (Column 2):** Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee basis.

**10.4.3 Invoice Period (Column 3):** Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10<sup>th</sup> Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director’s satisfaction. If invoicing is upon the completion of all work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all work to the Director’s satisfaction.

**10.4.3.1 Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Director’s satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director’s approval of such undisputed amount.

**10.4.3.2 Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will

include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

**10.4.3.3 Monthly Invoices Based on Fixed Fee:** If the Consultant invoices monthly for a “fixed fee,” then the Consultant will base its monthly invoice on the percentage of work completed during the previous month. If the task(s) completed the previous month involve the Consultant performing construction administration services, the percentage of work completed during the previous month will be measured based on the percentage of construction completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

**10.4.4 Compensation (Column 4):** Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

**10.4.4.1 Time & Materials:** If time and materials is the basis of compensation, then the amount in Column 4 is a “not-to-exceed” or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director’s sole discretion) *may* use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

**10.4.4.2 Fixed Fee:** If “fixed fee” is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

**10.5 Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

**10.5.1 Subconsultants:** The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of subconsultants.

**10.5.2 Maximum Amount of Reimbursable Expenses:** The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

**10.5.3 Expenses That Are Reimbursable:** Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a mark up is specified

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup

3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's project manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's project manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any other expenses expressly identified in <b>Exhibit B</b> as being reimbursable.	As specified, not to exceed 10%

**10.6 Compensation Table – Part 3:** Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

**10.6.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant plus a specified mark up not to exceed 5 percent.

**10.6.2 Schedule of Rates and Charges:** Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

**10.6.3 Maximum Amount:** The City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

**10.7 Compensation Table – Part 4:** Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the City.

**10.8 Tax Forms Required:** The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

**10.8.1 U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

**10.8.2 Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

## 11. INDEMNIFICATION

- 11.1 Indemnification:** The Consultant will defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities (collectively "Indemnifiable Event") to the extent such Indemnifiable Event arises out of, pertains to, or relates to any of the following: **(a)** the Consultant's negligent performance of any Services, **(b)** any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its subcontractors, anyone directly or indirectly employed by either the Consultant or any of its subcontractors, or anyone that they control, **(c)** any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any Services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement, or **(d)** any breach of this Agreement.
- 11.2** Omitted.
- 11.3 Applicable Law/Duty to Defend:** The Consultant's indemnity obligations apply to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, must defend any suit or action that is subject to the Consultant's indemnity obligations.
- 11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 of this Agreement does not relieve the Consultant from its indemnity obligations. The Consultant's indemnity obligations apply whether or not the insurance required by this Agreement covers any damages or claims for damages.
- 11.5 Survival:** The Consultant's indemnity obligations survive the expiration or earlier termination of the Agreement.

## 12. INSURANCE REQUIREMENTS

- 12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

## 13. OWNERSHIP OF WORK PRODUCT

- 13.1 Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Consultant or any other person engaged directly or indirectly by the Consultant to perform the Consultant's services pursuant to this Agreement: reports, drawings, plans, data, software, models, elevations, sections, details, schedules, diagrams, specifications, studies,



surveys, information, sketches, and documents or other materials developed or discovered (collectively "Work Product").

- 13.2 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.
- 13.3 City's Reuse:** Notwithstanding Subsection 13.1, the City's reuse of any Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.
- 13.4 Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

## 14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4 Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.

## 15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and
  - All Work Product and other records evidencing Consultant's performance.
- 15.2 Producing Records:** At any time during the Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.

- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

## 16. NON-DISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Conditions of Prohibition:** The prohibition in Subsection 16.1 is subject to the following conditions:
- 16.2.1 Reasonable Accommodation:** The prohibition is not intended to preclude the Consultant from providing a reasonable accommodation to a person with a disability.
- 16.2.2 Compliance Reports:** The City's "Compliance Officer", as defined in Section 4.08.020 of the San José Municipal Code, is responsible for administering this Section 16. The Compliance Officer may require the Consultant to file, and cause any Subcontractor to file, reports demonstrating compliance with this Section 16. Any such reports shall be filed in the form and at such times as the Compliance Officer designates. They shall contain such information, data and/or records as the Compliance Officer determines is needed to show compliance with this provision.
- 16.2.3 Waiver:** The Compliance Officer may waive any of the requirements of this Section if the Compliance Officer determines that the Consultant has its own nondiscrimination/nonpreference requirements or is bound in the performance of this Agreement by the nondiscrimination/nonpreference requirements of another governmental agency, and the nondiscrimination/nonpreference provisions of the Consultant or other governmental agency are substantially the same as those imposed by the City.
- 16.2.4 Violation:** A violation of the prohibition or any part of this Section 16 constitutes the following: (a) a material breach of this Agreement, (b) a misdemeanor violation of Chapter 4.08 of the San José Municipal Code and (c) a ground for debarment in accordance with Chapter 4.10 of the San José Municipal Code.
- 16.3 Subcontracts:** The Consultant shall include the requirements of this Section in each subcontract that it enters into in furtherance of this Agreement.

## 17. CONFLICT OF INTEREST

- 17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the

City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

**17.2 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Sections 81000 et seq.), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700, to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Director;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing the services under this Agreement, and complete and file all subsequent Form 700s, in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

**17.3 Future Services:** The Consultant acknowledges each of the following with regard to performing future services for the City:

- The Consultant's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;
- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

## **18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

**18.1 General:** The Consultant shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

**18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or

- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

**18.3 Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Consultant's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

## 19. TERMINATION

- 19.1 For Convenience:** The Director may terminate this Agreement at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.
- 19.2 For Cause:** The Director may terminate this Agreement immediately upon written notice for any material breach by the Consultant. If the Director terminates the Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.
- 19.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.
- 19.4 Compensation:** The City will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.

- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

## 20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City:                      City of San José  
                                                 Department of Transportation,  
                                                 Attn: Stacey Lu  
                                                 200 East Santa Clara St, 8<sup>th</sup> Floor  
                                                 San José, CA 95113  
                                                 (408) 975-3271  
                                                 stacey.lu@sanjoseca.gov

To the Consultant:              JMA Civil Inc.  
                                                 Attn: Mohammed Abushaban  
                                                 383 4<sup>th</sup> Street, Ste. 201  
                                                 Oakland, CA 94607  
                                                 (925) 400-4360  
                                                 mabushaban@jmacivil.com

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

## 21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.

- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.
- 21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

**IN WITNESS WHEREOF**, the City and Consultant have caused this Agreement to be executed by their respective duly authorized representatives as follows.

**NOTE:** The Consultant must make one of the following representations by placing its initials in the space provided. The City will not process this Agreement unless the Consultant has initialed one of the provisions.

EH The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.


Or

\_\_\_\_\_ If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.9 of this Agreement.

**City of San José**

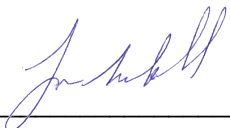
By  10/21/21  
Name: Sarah Zarate Date  
Title: Director, City Manager's Office

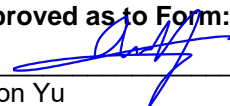
**JMA Civil Inc.**

By  10/04/2021  
Name: Ethan Hartsell Date  
Title: President

**Approval as to Form (City Attorney):**

**Form Approved by the Office of the City Attorney**  
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

By  10/04/2021  
Name: Jon Marshall Date  
Title: Secretary

**Approved as to Form:** 10/15/2021  
 Date  
Aaron Yu  
Deputy City Attorney

## EXHIBIT A: SCOPE OF BASIC SERVICES

(Capital Projects)

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

---

**General Description of Project:** Consultant will provide professional engineering services to the City of San José to prepare the Plans, Specifications and Estimates (“PS&E”) based on a conceptual improvement plan that (i) enhances safety and improves circulation for all users at the intersection and rail crossings located at 7<sup>th</sup> Street and Jackson Street in San José, (ii) achieves Federal Railroad Administration (“FRA”)-defined supplementary safety measures at these two crossings, and (iii) meets minimum qualifications for a quiet zone, i.e. with railroad crossing gates at all vehicular approaches.

---

### Task No. 1: Kick Off Meeting

- A. Services** Consultant will organize and attend a kick-off meeting with the City, Union Pacific Railroad (“UPRR”), the California Public Utilities Commission (“CPUC”) and the FRA to present the City’s draft geometric layouts and overall vision for improving the rail crossings located at 7<sup>th</sup> Street and Jackson Street in San José and obtaining initial input for stakeholder requirements and preferences. The meeting will be in-person or virtual, as agreed by the parties.

Consultant will attend a pre-meeting conference call with the City to ensure mutual alignment to the goals and objectives for the project. Consultant will prepare a detailed agenda and minutes for all meetings attended over the course of the project.

**B. Assumptions and Exclusions:**

1. Site visits and in-person meetings other than those listed in this Agreement are not included.
2. Preparation of the GO-88B application(s) and coordination with UPRR, the CPUC and others for their concurrence and ultimate approval by the CPUC for the crossing improvements shall be performed by the City.
3. Except for submission of engineering submittals as described above and limited coordination for their review by UPRR and attendance at described field meetings and calls, all coordination with UPRR, including for execution of Preliminary Engineering agreement (PE Letter), Construction and Maintenance agreement(s) and Right-of-Entry or other agreements shall be performed by the City.

**C. Deliverable:**

1. Attend Pre-Meeting and Kick-off Meeting
2. Prepare Agenda and meeting minutes



**D. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

On or before the following date: \_\_\_\_\_.

On or before 30 Business Days from Notice To Proceed.

### **Task No. 2: Alternative Analysis**

**A. Services** Based on the City's draft geometric layouts and input received from the City and the railroad stakeholders in Task 1, Consultant will prepare two (2) concepts for the improvement of each crossing. The single sheet concepts will be prepared as 11x17 color exhibits on aerial background, in the format preferred by UPRR. The conceptual layouts will meet all applicable UPRR requirements, FRA quiet zone requirements, American Railway Engineering and Maintenance-of-Way Association guidelines, Americans with Disabilities Act and other applicable standards (Manual on Uniform Traffic Control Devices, American Association of State Highway and Transportation Officials). Consultant will review the concepts with the City in a conference call and prepare revisions based on City comments. The City will select a preferred concept for each crossing following this review.

If elected by the City, Consultant will organize and attend a review call with the rail stakeholders to present the preferred alternative for each crossing. If supportive of advancing the project, Consultant will revise the preferred concepts based on rail stakeholder and City comments, presenting final concepts for each crossing.

### **B. Assumptions and Exclusions:**

1. Site visits and in-person meetings other than those listed in this Task No. 2 are not included.
2. Environmental assessment or investigation of the site for the presence of hazardous or toxic materials in the soil, groundwater or air is not included.
3. Flood studies or area-wide hydraulics and hydrology studies are not included.
4. Traffic studies and other special studies are not included.
5. Payment of all railroad fees, and any plan check, permit and filing fees will be paid by City.
6. Consultation and permit coordination with agencies other than those noted in this Task No. 2 is not included.
7. Except for submission of engineering submittals as described above and limited coordination for their review by UPRR and attendance at described field meetings and calls, all coordination with UPRR, including for execution of Preliminary Engineering agreement (PE Letter), Construction and Maintenance agreement(s) and Right-of-Entry or other agreements shall be performed by the City.

### **C. Deliverable:**

1. Two (2) Concept Drawings

**D. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

On or before the following date: \_\_\_\_\_.

On or before 60 Business Days from completion of Task 1.

### **Task No. 3: Site Investigations and C3 Analysis**

#### **A. Services:**

##### **Site Investigations**

The City will perform the topographic survey and geotechnical investigation required for the project. Consultant will support the City's performance of these elements, including preparing and/or reviewing and commenting on requested scopes of work for these services, and organizing and attending a site visit with the surveyor and geotechnical engineer, to ensure appropriate limits and important features are obtained from these investigations. Consultant will supplement prior site visit photographs (obtained during the initial quiet zone study completed in 2020) and prepare detailed photo contact sheets for the crossings.

If agreed upon by the City, Consultant may engage qualified subconsultants to perform these services or recommend these consultants to the City for engagement. Site investigation data must be provided to Consultant prior to the start of design. City will proceed with this Task immediately after providing Notice To Proceed for the project, in conjunction with Tasks 1 and 2 above.

##### **Utility Locating and Potholing**

Consultant will engage Bess Testlab to perform a limited utility locating and potholing at the subject crossings, a total of two (2) days of utility locating and six (6) potholes of typical depth. Following the utility locating, Consultant will share the data obtained with the City in utility exhibit format and determine an appropriate scope of work for the potholing of railroad signal foundations and other utilities of interest to the project.

Consultant will prepare a utility matrix identifying the location, type and data known of any utilities with the potential to conflict with the crossing improvements. Consultant will facilitate an initial call with any impacted utilities to identify their process and requirements for protection or relocation of these utilities. Consultant will provide standard details of protection (split casing or similar) of utilities; however, design of special protections or relocation of any utilities is not included. Preparation of Utility B or C letters and any other coordination with impacted utilities is not included.

##### **C3 Analysis and Preliminary Drainage Report**

Based on the preferred concepts, City-provided survey data and applicable requirements, Consultant will perform an analysis of the stormwater quality and drainage conditions for the crossings. Consultant will follow the C3 guidelines for addressing water quality mitigations as may be needed. Consultant's findings will be prepared as a draft storm water quality and drainage report, including applicable calculations, checklists, narrative and illustrations. It is assumed that storm water flows will be discharged to existing City facilities, following potential C3 storm water quality mitigation elements that may be required. It is assumed that bioswales and similar low impact development solutions will be applicable for the sites. Design of any pump stations or basins is not included.

Consultant will review the existing and proposed conditions for the sites for storm water quality and drainage in a conference call with the City and will revise the report and proposed solutions based on City comments and preferences.

The preliminary storm water quality and drainage report will be progressed through the design submittals in Task 4 and will be finalized as an element of the 100% plans.

**B. Assumptions and Exclusions:**

1. Property boundary, American Land Title Association survey and topographic survey, and construction staking, are not included. All survey required for the project will be performed by the City or others.
2. Costs for flagging, if necessary, are not included.
3. Geotechnical engineering investigation is not included. The City or others will perform geotechnical analysis and provide the geotechnical report.
4. Site visits and in-person meetings other than those listed in this proposal are not included.
5. Environmental assessment or investigation of the site for the presence of hazardous or toxic materials in the soil, groundwater or air is not included.
6. Flood studies or area-wide hydraulics and hydrology studies are not included.
7. Traffic studies and other special studies are not included.
8. Payment of all railroad fees, and any plan check, permit and filing fees will be paid by City.

**C. Deliverable:**

1. C3 Analysis and Drainage Report
2. Utility Matrix

**D. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 400 Business Days from completion of Task 2.

**Task No. 4: Plans, Specifications and Estimates (PS&E)**

**A. Services:** Based on the preferred concepts for each crossing, site investigations data, railroad stakeholder input and preliminary storm water quality and drainage analysis, Consultant will prepare the final design for the crossing improvements. The design level submittals will match UPRR requirements, as follows

- City 35% Submittal – this will be prepared as the 25% submittal for UPRR
- City 65% Submittal – this will be prepared as the 30% submittal for UPRR
- City 90% Submittal – this will be prepared as the 90% submittal for UPRR

- City Final Submittal – this will be prepared as the 100% submittal for UPRR

It is not atypical for UPRR to require resubmittals of any design level, to reflect the incorporation of their comments (as opposed to reflecting UPRR comments in the subsequent design level submittal). Such preferential resubmittal requests will be resisted by the design team to the extent possible.

Consultant will prepare the appropriate plans indicated for each design level submission to UPRR. The plans will be prepared in UPRR's required/preferred formats. The final plan set for each crossing will approximately include:

- Title Sheet, Key Map, General Notes, Survey Control Sheet (prepared by others), Legend and Abbrev., 4-5 sheets
- Crossing Plan and Profile, 1-2 sheets
- Crossing Grading and Drainage Plan, 1-2 sheets
- Typical Section, 1 sheet
- Cross Sections (2), 1 sheet
- Erosion Control Plans and Details, 2-3 sheets
- Crossing and Civil Details, 2 sheets
- Construction Phasing and Staging, 1 sheet

Consultant will prepare the UPRR submittal checklists for each submittal. Consultant will prepare draft and final specifications in UPRR format at the 90% and Final design levels. Consultant will advance the storm water quality and drainage report and the basis of design narrative at each design level.

Consultant will prepare an engineer's estimate of probable construction costs at the 35% and 90% design levels. Two (2) total cost estimates will be prepared for each crossing; cost estimating at additional design levels can be provided for an additional fee.

Consultant will facilitate up to two (2) design review meetings as conference calls at each design level. It is assumed one will be with the City and the other will include UPRR and other rail stakeholders, if applicable.

Consultant will provide the applicable plan sheets to the City for incorporation into the draft and final GO-88B application(s) or applications to the FRA for a quiet zone. Preparation of supplemental exhibits to support the City's coordination of CPUC and/or FRA approvals is not included.

#### Lighting Analysis & Design

The City will perform the necessary lighting analysis at the crossings, following UPRR's approval of the 35% submittal. Consultant will incorporate City electrical mark ups to our plan sheet and prepare an electrical sheet for each crossing, for the 65% design submittal. This sheet will ultimately be stamped by the City's engineer (electrical) and Consultant (civil) for the Final plans.

**B. Assumptions and Exclusions:**

1. Site visits and in-person meetings other than those listed in this proposal are not included.
2. Preparation of Storm Water Pollution Prevention Plans ("SWPPP"), if required, will be by contractor.
3. Design of retaining walls, box culverts, foundations or any structural elements is not included.
4. Coordination of railroad or site easements or preparation of easement documents is not included.
5. Except as noted above, relocation or special protection of existing utilities is not included.
6. Except as noted above, lighting analysis and design is not included.
7. Landscaping and irrigation design is not included.
8. Railroad signal design will be performed by UPRR.
9. Design of off-site improvements is not included.
10. Planning, land use and environmental permitting support is not included.
11. Environmental assessment or investigation of the site for the presence of hazardous or toxic materials in the soil, groundwater or air is not included.
12. Flood studies or area-wide hydraulics and hydrology studies are not included.
13. Traffic studies and other special studies are not included.
14. Payment of all railroad fees, and any plan check, permit and filing fees will be paid by City.
15. We have assumed that the construction drawings will be prepared in a single package. Preparation of multiple or phased construction packages are not included.
16. Consultation and permit coordination with agencies other than those noted in this proposal is not included.
17. Preparation of the GO-88B application(s) and coordination with UPRR, the CPUC and others for their concurrence and ultimate approval by the CPUC for the crossing improvements shall be performed by the City.
18. Except for submission of engineering submittals as described above and limited coordination for their review by UPRR and attendance at described field meetings and calls, all coordination with UPRR, including for execution of Preliminary Engineering agreement (PE Letter), Construction and Maintenance agreement(s) and Right-of-Entry or other agreements shall be performed by the City.

**C. Deliverable:**

1. 35%, 65%, 90% and Final Design Drawings
2. Specifications
3. Two (2) Engineer Estimates

**D. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 400 Business Days from completion of Task 3.

**Task No. 5: Construction Support**

**A. Services:** Consultant will provide support services throughout construction phases of the project. These services will be performed on an as-requested basis, and may include the following:

- Respond to written technical questions from City's construction contractor ("Contractor") and City (Requests For Information);
- Attend one (1) site visit during construction. The timing of this site visit will be determined by the City;
- Coordination with City staff and others during construction;
- Attend two (2) progress review calls; and
- Prepare and stamp plan revisions.

Consultant assumed approximately 56 hours will be required for this Task. If additional support or site visits are required beyond this effort, Consultant will prepare an estimate of the additional services required at that time. Construction phase services related to materials testing, subgrade inspection and/or compaction are not included.

**B. Assumptions and Exclusions:**

1. Payment of all railroad fees, and any plan check, permit and filing fees will be paid by City.
2. Preparation of SWPPP, if required, will be by Contractor.
3. The construction drawings will be prepared in a single package. Preparation of multiple or phased construction packages are not included.
4. Consultation and permit coordination with agencies other than those noted in this proposal is not included.
5. Preparation of the GO-88B application(s) and coordination with UPRR, the CPUC and others for their concurrence and ultimate approval by the CPUC for the crossing improvements shall be performed by the City.

6. Except for submission of engineering submittals as described above and limited coordination for their review by UPRR and attendance at described field meetings and calls, all coordination with UPRR, including for execution of Preliminary Engineering agreement (PE Letter), Construction and Maintenance agreement(s) and Right-of-Entry or other agreements shall be performed by the City.
7. Administration of construction contract, negotiation of construction change orders and processing acceptance and final payment for construction work will be performed by City.
8. Bid Support Services are not included.
9. Full or part-time on-site construction representation is not included.
10. Review of Contractor's shop drawings and construction submittals is not included.
11. Preparation of as-built drawings based on Contractor mark-ups are not included.

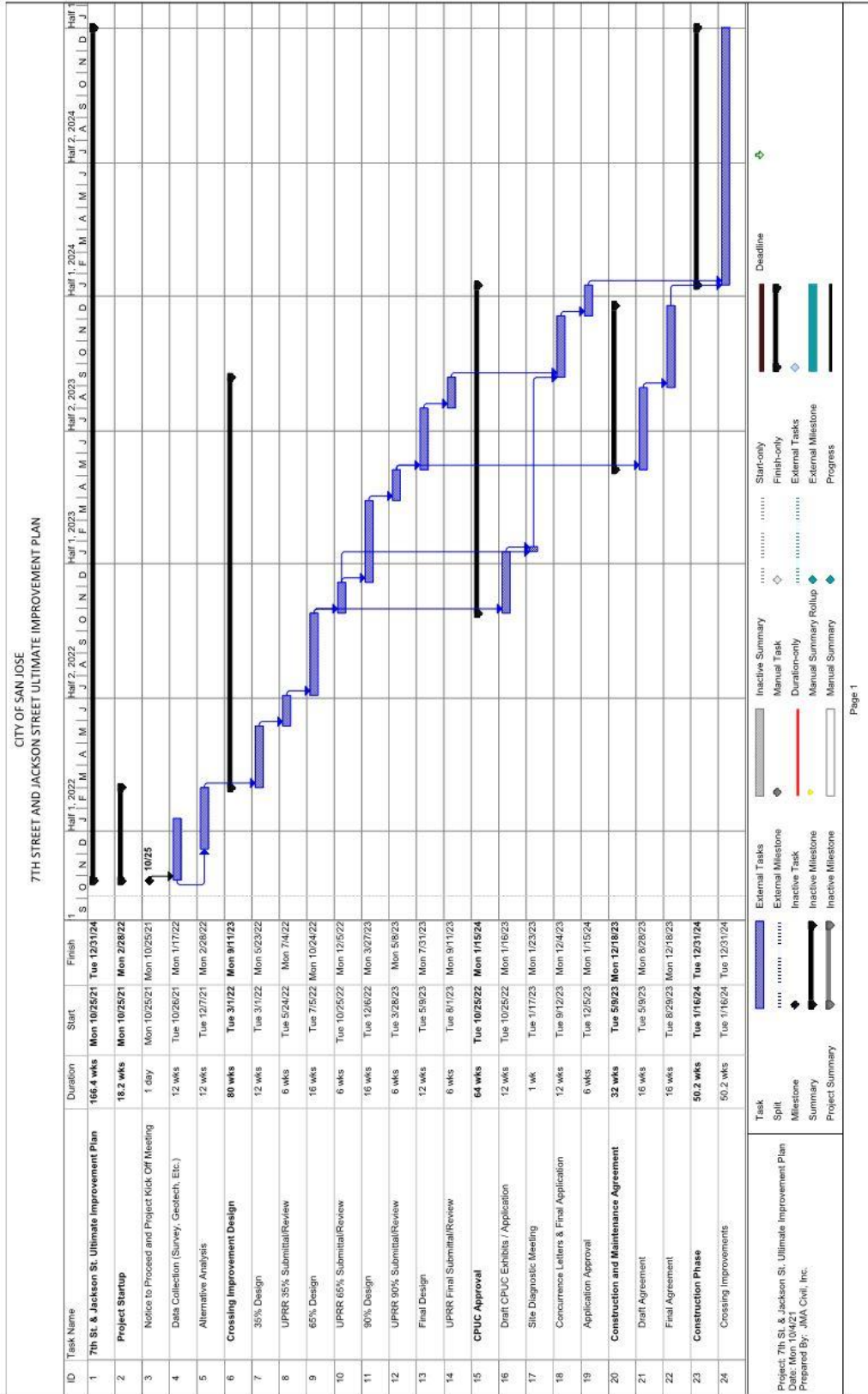
**C. Deliverable:**

1. Respond to Requests for Information
2. Attend Meetings
3. Prepare and stamp plan revisions

**C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 300 Business Days from completion of Task 4.

## EXHIBIT A-1: PROJECT SCHEDULE





## EXHIBIT B: COMPENSATION (Capital Projects)

### Section 1 – Compensation Table

Part 1 – Compensation for Basic Services						
Column 1	Column 2		Column 3			Column 4
Task Nos.	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$3,940
2	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$12,400
3	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$23,915
4	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$70,730
5	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$10,170
Part 2 – Reimbursable Expenses						
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:			\$
Part 3 – Subconsultant Costs						
<input checked="" type="checkbox"/> Subconsultant costs are <i>not</i> separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.			<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:			\$
Part 4 – Additional Services						

<input type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.	<input checked="" type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:	\$8,845
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):		\$130,000

**Section 2 – Schedule of Rates and Charges**

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

Name	Title	Hourly Billing Rate
Jon Marshall	Principal Engineer	\$275.00
Allene Rieger	Sr. Civil Engineer	\$225.00
Mohammed Abushaban	Sr. Civil Engineer	\$225.00
Arka Ghosh	Civil Engineer	\$175.00
Zhaoyang Wang	Civil Engineer	\$175.00
Ke Zheng Ong	Sr. Project Engineer	\$130.00
Ramya Tanikella	Project Engineer	\$120.00

Reimbursement for direct costs will be charged at cost.

## EXHIBIT C: INSURANCE REQUIREMENTS

Consultant, at Consultant's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Consultant, its agents, representatives, employees or subcontractors.

### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

### B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” or umbrella basis.

### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager.

### **D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San José, its officers, employees, and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Consultant; products and completed operations of Consultant; premises owned, leased or used by Consultant; and automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, and agents.
  - b. Consultant's insurance coverage shall be primary insurance as respects City, its officers, employees, and agents. Any insurance or self-insurance maintained by City, its officers, employees, or agents shall be excess of Consultant's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by Consultant shall not affect coverage provided City, its officers, employees, agents, or contractors.
  - d. Coverage shall state that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

## 2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, and agents.

## 3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

### **E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City's Risk Manager.

### **F. Verification of Coverage**

Consultant shall furnish City with certificates of insurance and endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov):

Certificate Holder  
City of San José – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14<sup>th</sup> Floor  
San Jose, CA 95113-1905

### **G. Subcontractors**

Consultant shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Stacey Lu  
STAFF EMAIL: Stacey.lu@sanjoseca.gov

## SCANNED SIGNATURE AUTHORIZATION

DATE: 10/7/21 TOTAL PAGES: (INCLUDING THIS PAGE) 29

CONSULTANT NAME: Ethan Hartsell  
EMAIL: ehartsell@jmacivil.com  
PHONE: 925-400-4356 xt.1002

I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

### DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS): STACEY.LU@SANJOSECA.GOV

### To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

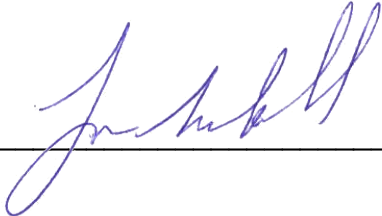
CITY STAFF: Stacey Lu  
STAFF EMAIL: Stacey.lu@sanjoseca.gov

## SCANNED SIGNATURE AUTHORIZATION

DATE: 10/7/21 TOTAL PAGES: 29  
(INCLUDING THIS PAGE)

CONSULTANT NAME: Jon Marshall  
EMAIL: jmarshall@jmacivil.com  
PHONE: 925-400-4356 xt.1001

I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

### DIRECTIONS:

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3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS): STACEY.LU@SANJOSECA.GOV

### To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

## REQUEST FOR INSURANCE SPECIFICATIONS FOR CONTRACTS

Instructions: Complete the form and submit to the Risk Management Inbox ([Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov)).

DATE:

<b>Requesting Department</b>	<b>Division</b>
------------------------------	-----------------

<b>Department Contact</b>	
<b>Phone</b>	
<b>Email</b>	

### CONTRACT INFORMATION

<b>Contract Value or Budget</b> \$	<b>Contracting Company Name</b>
------------------------------------	---------------------------------

**Please provide a concise description of the nature of the engagement for which the Department is requesting insurance specifications (e.g. scope of services, budget, etc.). \***

*\*The information must be summarized and easily understood; do not simply direct Risk Management to review a separate lengthy document with instructions to "see attached."*



Check One:  RFP  Negotiated Contract  Purchase Order

Has there been a similar contract before?  Yes\*  No

*\*If yes, please provide documentation such as right of entry or grant agreement*

Is this contract tied to a separate agreement?  Yes\*  No

*\*If yes, do the contract insurance requirements need to be passed on to the contractor?*  Yes\*  No  N/A

*\*If yes, please provide documentation*

**FOR RISK MANAGEMENT USE ONLY**

Insurance Required? Yes  (see attached) No

Comments:

*MB*

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to  
Dept. (circle one)

Insurance Certificates / Waivers  Electronically Signed:  
 Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable):

Type of Document: \_\_\_\_\_

Type of Contract: \_\_\_\_\_

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667219-000

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contract Description: \_\_\_\_\_

Term Start Date: \_\_\_\_\_ Term End Date: \_\_\_\_\_ Extension: \_\_\_\_\_

Method of Procurement: \_\_\_\_\_ RFB, RFP or RFQ No.: \_\_\_\_\_ Date Conducted: \_\_\_\_\_

Agenda Date (if applicable): \_\_\_\_\_ Agenda Item No.: \_\_\_\_\_

Resolution No.: \_\_\_\_\_ Ordinance No.: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_ Amount of Increase/Decrease: \_\_\_\_\_

Option #: \_\_\_ of \_\_\_ Option Amount: \_\_\_\_\_ NTE/Updated Contract Amount: \_\_\_\_\_

Fund/Appropriation: \_\_\_\_\_

Form 700 Required (Selection mandatory for processing): Business Revenue Agreement: \_\_\_\_\_

Tax Certificate No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Department: \_\_\_\_\_

Department Contact: \_\_\_\_\_ Customer (Finance Only): Á' \_\_\_\_\_

Notes: \_\_\_\_\_

Department Director Signature: Jessica Zenk \_\_\_\_\_ 10/15/2021  
Date

Office of the City Manager Signature: \_\_\_\_\_ Jessica Lowry 10/21/21 \_\_\_\_\_  
Date