

# Standard City of San José Consultant Agreement

(Non-Capital Projects)

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

This Agreement is made and entered into this 14th of February 2022 (“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 B:** Compensation
  - Exhibit C:** Insurance Requirements
  - Exhibit D:** Notice of Exercise of Option to Extend Agreement Form
- 1.3 Director:** “Director” means the Director of Human Resources Department 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

- 2.1 Initial Term:** The Agreement term is from January 1, 2022 to December 31, 2024, inclusive, unless terminated earlier pursuant to Section 19 below (“Initial Term”).
- 2.2 Optional Term:** After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two (2) additional one-year terms (“Option Term(s)”) up through December 31, 2026.

**2.2.1 Notice:** The City shall provide the Consultant with no less than thirty (30) calendar days' prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form.

**2.2.2 Appropriation of Funds Contingency:** The City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. The Consultant acknowledges that the City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that any Option Term(s) is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the City shall pay Consultant for any services performed in accordance with this Agreement up to the date of termination.

**2.3 Retroactive Services:** The Consultant provided services before the Contract Date in anticipation of the Agreement's execution. The Director accepts and approves the services provided before the Contract Date; the City will compensate the Consultant for those services in accordance with the terms of the Agreement. However, in no event will the City compensate the Consultant for services performed before January 1, 2022.

### 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 but are not included in the Basic Services.

**3.2.1 Authorization:** The City will not compensate 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. INTENTIONALLY OMITTED

### 5. CITY'S CONTRACT MANAGER

The City's contract manager for this Agreement is:

Name: Joseph Gregory	Phone No.: (408) 975-1403
Department: Human Resources	E-mail: joseph.gregory@sanjoseca.gov

Address: 200 E. Santa Clara Street, 4 <sup>th</sup> Floor Tower San José, CA 95113-1905	
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The Director can change the above contract manager by giving the Consultant written notice.

## 6. CONSULTANT'S STAFFING

- 6.1 Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract 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.

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		<b>Yes Already Filed (Insert Date Filed)</b>	<b>Yes Need to File</b>	<b>No</b>
Name: Dave Mills	Phone No.: (925) 362-2265			X
Address: 14 Crow Canyon Court San Ramon, CA 94583	E-mail: dmills@scm- safety.com			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1. Marisa Gonzalez	Assistant General Manager			X
2.				
3.				

- 6.2 Contract 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.	
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 for the Initial Term and Option Terms from January 1, 2022 through December 31, 2026 is **\$375,000**. (“Maximum Total Compensation”).

**10.1.1 Maximum Total Compensation for Initial Term:** 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 for the Initial Term of January 1, 2021 through December 31, 2024 is \$225,000.

**10.1.2 Maximum Total Compensation for Option Terms:** 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 for the Option Term of January 1, 2025 through December 31, 2025 is \$75,000. 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 for the Option Term of January 1, 2026 through December 31, 2026 is \$75,000.

**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 (lump-sum) 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 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 markup 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 contract 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 contract 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 markup 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 Obligation:** The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Consultant's negligent performance of all or any part of the Basic Services and any Additional Services; or
- 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; or
- 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
- Any breach of this Agreement.

**11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.



- 11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.
- 11.5 Survival:** The Consultant's obligations under this Section 11 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, 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 Intentionally Omitted.**
- 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 Intentionally Omitted.**

**16.3 Subcontracts:** The Consultant shall include Subsection 16.1 of this Agreement 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 Section 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 services under this Agreement and 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 served 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  
Human Resources Department  
Attn: Joseph Gregory  
200 East Santa Clara Street, 4<sup>th</sup> Floor Tower  
San José, CA 95113-1905  
(408) 975-1403  
Joseph.gregory@sanjoseca.gov

To the Consultant:              Safety Compliance Management, Inc.  
Attn: Dave Mills  
14 Crow Canyon Court  
San Ramon, CA 94583  
(925) 362-2265  
dmills@scm-safety.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.**

\_\_\_\_\_ 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 10.8 of this Agreement.

**City of San José**

**Consultant**

By

*Sarah Zarate*

Email: sarah.zarate@sanjoseca.gov

Name: Sarah Zarate

Title: Director, City Manager's Office

Date

By

*Dave Mills*

Email: dmills@scm-safety.com

Name: Dave Mills

Title: General Manager

Date



**Approved as to Form:**

Attorney

Suzanne Hutchins

*Suzanne Hutchins*

Email: suzanne.hutchins@sanjoseca.gov

## EXHIBIT A: SCOPE OF BASIC SERVICES

(Non-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.

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**General Description of Project:** Regulatory/Program Specific Safety Trainings

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**Task No. 1:** Regulatory/Program Specific Safety Trainings as requested by the City.

- A. Services:** The Consultant will provide any or all of the required health and safety trainings below. These trainings will be up to the requirements of Cal OSHA and other regulatory agencies mandated health and safety trainings.

Trainings will only be provided if and when requested by the City.

- Bloodborne Pathogen
- Hazard Communication
- Hazardous Waste Management
- Hazwoper Initial (40 Hour) and Recertification (8 Hour)
- Lockout/Tagout
- Permit Required Confined Space Entry (Including Practical Application)
- Confined Space Technical Rescue
- Confined Space Awareness
- Fall Protection
- High and low angle rope access and rescue
- Forklift Operation (New and Re-certification)
- Aerial Devices (Scissor, Vertical, Telescoping Boom, Cherry Picker, Truck Mounted)
- Agriculture Equipment (Loader/Backhoe, Skid Steer, Tractor etc...)
- Traffic Control – Flaggers
- National Safety Council Defensive Driving Class (4 Hour)
- Lead Awareness
- Heat Illness Prevention
- Hearing Conservation (occupational noise)
- Chemical Hygiene for Labs
- Excavation, Trenching and Shoring – Competent Person
- First Responder Awareness (FRA)
- Incident Commander
- Respiratory Protection
- Scaffold Awareness
- Welding and Cutting Safety
- Pesticide Safety
- Electrical Safety Awareness
- Workplace Violence
- Back Injury Prevention



- Food Safety
- Asbestos Consultation and Training. Provide as needed asbestos checks on City buildings
- Provide at minimum the following classes per the OSHA Requirements:
  - Asbestos / Asbestos Awareness Class for class 3 and class 4 workers (must be at least 2 hours)
  - Lead Class for class 3 and class 4 workers (must be at least 2 hours)
  - Asbestos Operation and Maintenance (O&M) training for Class 3 Workers (must be at least 16 hours with certification of accreditation)
  - Cardiopulmonary Resuscitation (CPR), Automated External Defibrillators (AED) and First Aid (FA) Training. Training should be Certification of Compliance with applicable OSHA regulations – 8 CCR, Section 3400 and 8 CCR section 1509. Training must provide 2-year certification and be at least 8 hours per class. Training must include certificate of completion and wallet cards.
- Consultant will be expected to provide certain trainings on site as required by the City other trainings upon agreement with the City could be virtual with agreement of both parties.
- Consultant will be expected to provide on-site training at multiple City locations throughout the year.
- Consultant will prepare a sign-in sheet to log participants in all trainings.
- All training classes shall comply with Federal and California State OSHA standards, requirements and regulations.

**B. Deliverable:** Trainings upon request of the City

**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: As agreed upon with City throughout the term of this Agreement.
- On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 2: Sign in sheets**

**A. Services:** Consultant will submit the sign in sheets for each training to the City's Safety Officer.

**B. Deliverable:** sign-in sheets.

**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 5 Business Days from the end of each Class:

**Task No. 3: Quarterly Reports**

**A. Services:** Consultant will submit the sign in sheets for each training to the City's Safety Officer as well as a quarterly report of any trainings done for the City with a list of attendees.

**B. Deliverable:** Quarterly report and sign-in sheets.

**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 15 Business Days from the end of each quarter:

Quarter 1: January 1 – March 31

Quarter 2: April 1 – June 30

Quarter 3: July 1 – September 30

Quarter 4: October 1 – December 31



## EXHIBIT B: COMPENSATION

### 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
1-3	See Section 2 Schedule of Rates and Charges	<p><b>Initial Term:</b> 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 for the Initial Term of January 1, 2022 through December 31, 2024 is \$225,000.</p> <p><b>Optional Term 1:</b> 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 for the Option Term of January 1, 2025 through December 31, 2025 is \$75,000.</p> <p><b>Optional Term 2:</b> 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 for the Option Term of January 1, 2026 through December 31, 2026 is \$75,000.</p> <p><b>Maximum Total Compensation:</b> 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 for the Initial Term and Option Terms through December 31, 2026 is <b>\$375,000</b>.</p>	

		<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	
<b>Part 2 – Reimbursable Expenses</b>			
<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:		\$0
<b>Part 3 – Subconsultant Costs</b>			
<input checked="" type="checkbox"/> Subconsultant costs are <b>not</b> 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:		\$0
<b>Part 4 – Additional Services</b>			
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.	<input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:		\$0
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):			\$375,000

**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:

CITY agrees to compensate CONSULTANT at the rates listed below for professional services performed in accordance with the terms and conditions of this AGREEMENT. The chart below outlines the number of attendees per class, per class at fixed cost for in-person trainings, per class at fixed cost for virtual cost, and per student fixed cost if outside the maximum per class. If the number of attendees for a class exceeds the maximum number of attendees per class,

CONSULTANT shall be paid at the fixed cost per class rate, plus the per Student Fixed Cost rate for each Student above the maximum number of attendees for the class.

Class Name	Maximum Number of Students per class size(In Person)	Per Class - Fixed Cost (In Person)	Per Student - Fixed Cost(Virtual)
Bloodborne Pathogen	25	695	35
Hazard Communication	25	695	35
Hazardous Waste Management	25	1295	125
Hazwoper Initial (40hr)	25	8295	Not Available Virtually
Hazwoper Refresher (8hr)	25	1995	110
LOTO	25	895	35
Permit Required Confined Space Entry	25	1095	59
Confined Space Rescue	25	1095	Not Available Virtually
Fall Protection	25	895	25
Forklift (New)	10	1095	69
Forklift (Refresher)	10	1095	69
Aerial Devices (Boom Truck etc..)	25	1095	Not Available Virtually
Heat Illness Prevention	25	495	20
Hearing Conservation	25	495	10
Excavation, Shoring & Trenching - Competent Person	25	695	29
FRA	25	1095	59
Incident Commander	25	1095	105
Respiratory Protection (does not include fit test)	25	495	25
Back Injury Prevention	25	495	20
Electrical Safety Awareness	25	495	Not Available Virtually
Asbestos Awareness	25	695	45
Lead Awareness	25	695	Not Available Virtually
CPR/FA/AED Initial	10	1695	Not Available Virtually
CPR/FA/AED Refresher	10	1095	Not Available Virtually

The total compensation to be paid to Consultant shall not exceed Two Hundred Twenty-Five Thousand Dollars (\$225,000) for the Initial Term (January 1, 2022-December 31, 2024). Consultant shall only be compensated for classes requested by the City during the Initial Term.

The compensation to be paid to Consultant shall not exceed Seventy-Five Thousand Dollars (\$75,000) for Option Term No. 1 (January 1, 2025 – December 31, 2025), subject to the appropriation of funds and the execution by City of a Notice of Exercise of Option to Extend Agreement. Consultant shall only be compensated for classes requested by the City during Option Term No.1.

The compensation to be paid to Consultant shall not exceed Seventy-Five Thousand Dollars (\$75,000) for Option Term No. 2 (January 1, 2026 – December 31, 2026), subject to the appropriation of funds and the execution by City of a Notice of Exercise of Option to Extend Agreement. Consultant shall only be compensated for classes requested by the City during Option Term No. 2.

The total maximum compensation to be paid to Consultant for the Initial Term and the two (2) one-year Option Terms shall not exceed Three Hundred Seventy-Five Thousand Dollars (\$375,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth shall be at no cost to City. There are no reimbursable expenses.

## 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 and Omissions insurance for all Professional Services rendered.

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 and Omissions: \$1,000,000 per claim and \$1,000,000 aggregate.

### **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.
- b. Consultant's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. 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, or agents.
- 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. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. 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  
Risk Management & Insurance  
200 East Santa Clara Street, 14th Floor Tower  
San José, 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.

### EXHIBIT D: NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONSULTANT Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section 2.2 of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
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**NEW OPTION TERM**

Begin date:	
End date:	

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Consultant an amount not to exceed the amount set forth above for Consultant's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSE a municipal corporation  By _____ Name: Title:
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