

# Master City of San José Consultant Agreement

(Non-Capital Projects)

This Master Agreement is between the City of San José, a municipal corporation (“City”), and The Code Group, Inc. dba VCA Code, a California corporation (“Consultant”).

This Master Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_ (“Contract Date”).

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

## 1. AGREEMENT SCOPE

**1.1 General:** The Consultant will provide professional consulting services to the City on an as-needed basis pursuant to individual service orders issued in accordance with the terms and conditions of this Master Agreement. The type of professional consulting services the Consultant will provide can be described generally as: Provide temporary staffing services for Planning, Building Plan Check, Building Inspections, and related services.

**1.2 Exhibits:** This Master Agreement consists of this agreement form, all Approved Service Orders (defined in Subsection 3.2 below), and the following exhibits, which are incorporated herein by reference:

**Exhibit A:** Approved Service Order Form

**Exhibit B:** Schedule of Rates and Charges

**Exhibit C:** Insurance Requirements

**Exhibit D:** Schedule of Specific Services

**Exhibit E:** Notice of Exercise of Option to Extend Agreement Form

**1.3 Director:** “Director” means the Director of Planning, Building & Code Enforcement 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 regular business with the public.

**1.5 Entire Agreement:** This Master 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 Master Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

**2.1 Initial Term:** The term of this Master Agreement is from the Contract Date to June 30, 2023, 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 Master Agreement for up to four (4) additional one-year terms (“Option Term(s)”) up through June 30, 2027.

**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 Master Agreement. See Exhibit E for Notice of Exercise of Option to Extend Agreement Form.

**2.2.2** **Appropriation of Funds Contingency:** The City’s funding of this Master 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 Master Agreement. Accordingly, the parties agree that any Option Term(s) is contingent upon the appropriation of funds by the City. This Master Agreement will terminate immediately if funds necessary to continue the Master 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.

### 3. SERVICE ORDERS

**3.1** **General:** The Consultant will provide professional services to the City as set forth in **Exhibit D** and as further described pursuant to individual service orders. Each service order will describe the services and deliverables (collectively “Work”) the Consultant must provide the time limit within which the Consultant must complete the Work and the compensation for the Work.

**3.2** **Approved Service Order:** The City will not compensate the Consultant for any Work until the Director has executed the service order for such Work (“Approved Service Order”).

**3.3** **Obligation to Issue:** The City has no obligation to issue any Approved Service Orders under this Master Agreement. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation (defined in Subsection 10.1 below).

**3.4** **Preparation:** Each Approved Service Order will be in substantially the form specified in **Exhibit A**. Subject to the terms and conditions of this Master Agreement, the Consultant and the City will negotiate the specific requirements of each Approved Service Order.

**3.4.1** **Director’s Request to Prepare Proposal:** The Director will request the Consultant to prepare a written service order proposal. The Director will either request the Consultant to include a draft scope of Work in its proposal, or provide the Consultant with a draft scope of Work upon which the Consultant must base its proposal.

**3.4.2** **Meeting/Site Inspection:** As part of the Director’s request for the Consultant to prepare a service order proposal, the Director may require the Consultant to meet to discuss the scope and location of the Work, the schedule of performance, and any other relevant details.

**3.4.3** **Consultant Proposal:** The Consultant will prepare a written service order proposal in accordance with the Director’s request. The Consultant will provide the proposal in both paper and electronic form. The proposal must include, but is not limited to, the following:

- The proposed scope of Work;

- The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
- The names of any subconsultants the Consultant would use and the portion of Work they would perform;
- A time schedule and cost for providing the Work; and
- Any other information requested by the Director.

**3.4.4 Final Service Order:** Once the Consultant and the Director agree on the terms and conditions of the proposed service order, the City will prepare the final service order.

**3.5 Incorporation of Terms and Conditions:** Each Approved Service Order incorporates the terms and conditions of this Master Agreement, and becomes a part of this Master Agreement.

**3.5.1 No Conflicts:** An Approved Service Order must be consistent with, and cannot alter the terms and conditions of this Master Agreement.

**3.5.2 Agreement Controls:** The terms and conditions of this Master Agreement control over the terms and conditions contained in an Approved Service Order – even if the Approved Service Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Service Order are invalid and unenforceable.

**3.6 Performance:** Subject to Subsection 3.5 above, the Consultant must perform the Work in accordance with the specific requirements of the Approved Service Order. The Consultant must coordinate and cooperate with City staff, consultants and contractors in performing the Work, and must perform the Work to the Director's satisfaction.

## 4. INTENTIONALLY OMITTED

## 5. CITY'S CONTRACT MANAGER

Attachment B of each Approved Service Order will identify the City's contract manager. The City can change its contract manager by providing the Consultant with written notice.

## 6. CONSULTANT'S STAFFING

**6.1 Consultant's Contract Manager and Other Staffing:** Attachment B of each Approved Service Order will identify the following:

- The Consultant's contract manager, and
- The Consultant(s) and/or employee(s) of the Consultant ***principally responsible*** for providing the Work.

Attachment B will also indicate whether any of the identified persons are required to file a Statement of Economic Interests, Form 700 ("Form 700"), provided that the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City. Anyone required to file a Form 700 must do so in accordance with the requirements of Subsection 17.2 below.

**6.2 Contract Manager's Authority:** The Consultant's contract manager must be authorized to act on behalf of the Consultant for purposes of decisions regarding the Approved Service Order.

- 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 Attachment B of an Approved Service Order.

## 7. USE OF SUBCONSULTANTS

- 7.1 **Authority to Use:** Attachment B of each Approved Service Order will state whether or not the Consultant can use subconsultants to provide any part of the Work. If Attachment B does not authorize the Consultant to use subconsultants, then the Director's prior written approval is required for the Consultant to use a subconsultant to perform any part of the Work.
- 7.2 **Use of Subconsultants:** If Attachment B of an Approved Service Order authorizes the use of one or more subconsultants, then it will identify the name of each such subconsultant and the portion of Work each such subconsultant will perform. The Director's prior written consent is required for the Consultant to remove, replace or add to the subconsultants identified in Attachment B.
- 7.3 **Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultant 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 does 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 Master Agreement and/or any Approved Service Order (collectively "Subcontractors"). Subject to the requirements of Section 7 above, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Master 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 will only perform Work for which it possesses all necessary training, licenses and permits. The Consultant represents that its performance of all such Work 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 Compensation:** There is a maximum compensation for this Agreement and a separate maximum compensation for each Approved Service Order.
- 10.1.1 **Maximum Total Compensation – Agreement:** The maximum *total, aggregate* compensation the City will pay the Consultant for all professional fees, costs and expenses for all Approved Service Orders issued under this Master Agreement shall not exceed **Two Million Dollars (\$2,000,000) annually** ("Maximum Total Compensation"), subject to the appropriation of funds, and subject to a maximum aggregate compensation amount not to

exceed Four Million Dollars (\$4,000,000) annually for all City agreements to provide temporary staffing services for Planning, Building Plan Check, Building Inspections, and related services.

- 10.1.2 Maximum Compensation – Service Order:** The cover page of each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work (“Maximum Service Order Compensation”). The Consultant shall complete all Work required by the Approved Service Order for no more than the Maximum Service Order Compensation.
- 10.2 Exhibit B – Schedule of Rates and Charges:** Exhibit B sets forth a schedule of the Consultant’s rates and charges (“Schedule of Rates and Charges”) that applies to any services provided in an Approved Task Order on a time and materials basis. The Schedule of Rates and Charges is subject to the following requirements:
- 10.2.1 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 the Consultant Premium Pay.
- 10.2.2 No Increases:** The City will not increase the Schedule of Rates and Charges during the Master Agreement term.
- 10.2.3 Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.
- 10.3 Compensation Table:** Attachment C of each Approved Service Order is a compensation table setting forth the manner in which the City will pay the Maximum Service Order Compensation (“Compensation Table”). Each Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.
- 10.4 Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks performed in accordance with the Approved Service Order. 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 Attachment A of the Approved Service Order. If a task number included in Attachment 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 attached to this Master Agreement as **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 below 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 expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.  | 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 Work. 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 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:** For each Approved Service Order, 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 Intentionally Omitted.**

**10.8 Tax Forms Required:** The following are conditions on the City's obligation to process any payment under the Master Agreement or any Approved Service Order:

**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 services or deliverables provided pursuant to an Approved Service Order; 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 an Approved Service Order; or
- Any breach of this Master Agreement.

**11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above does 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 below 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 Master 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 Master Agreement.

## 12. INSURANCE REQUIREMENTS

- 12.1 **General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Master 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 types of work product (including electronic equivalents) without restriction or limitation upon their use immediately when and as created by the Consultant or any other person engaged directly or indirectly by Consultant to perform Consultant's services pursuant to an Approved Service Order: reports, drawings, plans, specifications, 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 any Work.
- 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 by and between the Consultant and its Subcontractors that are needed to perform any Work.
- 14.4 **Survival:** This Section 14 survives the expiration or earlier termination of this Master 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 Master 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 Master 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 Master Agreement if the compensation of the Maximum Total Compensation exceeds \$10,000.

## 16. NONDISCRIMINATION/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 the above Subsection 16.1 in each subcontract that it enters into in furtherance of this Master 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 Master 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 Master Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Master 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 Master Agreement, and identified in Attachment B of an Approved Service Order 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 date the person begins performing services under the Approved Service Order 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 Work in an Approved Service Order 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 when the Work in an Approved Service Order comprises 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 Work in an Approved Service Order might have on its ability to obtain contracts to perform future services.

**17.4 Violations:** The Consultant's violation of Subsections 17.1 or 17.2 above is a material breach.

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

**18.1 General:** The Consultant shall perform its obligations under this Master 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 any 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 Master Agreement and/or any Approved Service Order(s) 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 Master Agreement and/or any Approved Service Order(s) immediately upon written notice for any material breach by the Consultant. If the Director terminates the Master Agreement and/or any Approved Service Order(s) 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 Master Agreement and/or any Approved Service Order(s) – 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 Work satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For Work to be "satisfactorily rendered," the Director must determine that the Consultant provided the Work in accordance with the terms and conditions of this Master Agreement and/or any applicable Approved Service Order. The Director will determine the reasonable value of satisfactorily rendered Work based on the Schedule of Rates and Charges and the Compensation Table attached to the appropriate Approved Service Order.
- 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 Master 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 Business Days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding a specific Approved Service Order must be given to the individuals identified in the Approved Service Order. All notices and other communications between the parties regarding the Master Agreement must

be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José  
Planning Building & Code Enforcement  
Attn: Page Benway  
200 E. Santa Clara Street  
Tower 3<sup>rd</sup> Floor  
San José, CA 95113-1905  
page.benway@sanjoseca.gov  
408-535-7887

To the Consultant: VCA Code  
Attn: Bob Heinrich  
1845 W. Orangewood  
Avenue #210  
Orange, CA 92868  
714-363-4700  
BHeinrich@vcacode.com

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Master 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 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 Master 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 Master 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 Master 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 Master Agreement term.
- 21.7 Assignability:** Except to the extent this Master Agreement authorizes the Consultant to use Subcontractors, the Consultant shall not assign any part of this Master Agreement without the Director's prior written consent. The Director, at the Director's discretion, may terminate this Master Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the construction and enforcement of this Master Agreement.
- 21.9 Disputes:** Any litigation resulting from this Master Agreement will be filed in and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.
- 21.10 Survival of Provisions:** If a court finds any part of this Master 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.
- 21.12 Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 21.13 Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

## **22. STATUS OF TEMPORARY PERSONNEL**

- 22.1 General.** All individuals assigned to provide services to City pursuant to this Master Agreement shall be considered employees of Consultant. Consultant shall treat all such individuals as employees and not as independent contractors.
- 22.2 Taxes.** Consultant shall assume sole and exclusive responsibility for the payment of wages to individuals for services performed and payment and/or withholding and reporting of all applicable federal and state payroll taxes, including but not limited to income taxes, Medicare and Social Security taxes under the Federal Insurance Contributions Act ("FICA taxes"), unemployment insurance, state disability insurance and employment training tax (all referred to herein collectively as "Payroll Taxes").
- 22.3 Workers' Compensation.** Consultant shall be responsible for securing and maintaining workers' compensation insurance coverage as further described in Exhibit C of this Master Agreement, entitled "Insurance Requirements", for its employees, including employees assigned to provide services to City, which coverage shall apply to all claims and liabilities arising out of or during, or related to, the employees' assignment with City. For purposes of Division 4 of the California Labor Code, including Labor Code Section 3602, Consultant shall be the general employer and City shall be the special employer of the assigned employees.

**22.4 Material Breach.** Any violation of the requirements of this Section will constitute a material breach of this Master Agreement, subject to termination of the Master Agreement by City.

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

**NOTE:** The Consultant must sign one of the following. **The City will not process the Master Agreement unless the Consultant has signed one of the provisions.**

*Tom VanDorpe, S.E.*

Email: tvandorpe@vcacode.com  
Date: 12/13/2022 GMT

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 Master 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 Master Agreement.

**City of San José**

By *Sarah Zarate*  
Email: sarah.zarate@sanjoseca.gov  
Date: 12/15/2022 GMT

Name: Sarah Zarate  
Title: Director, Office of the City Manager

**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.)

**Approved as to Form:**  
Attorney  
Arlene Silva

*Arlene Silva*  
Email: arlene.silva@sanjoseca.gov  
Date: 12/15/2022 GMT

Name: Arlene Silva  
Title: Sr. Deputy City Attorney

**Consultant**

By *Tom VanDorpe, S.E.*  
Email: tvandorpe@vcacode.com  
Date: 12/13/2022 GMT

Name: Tom VanDorpe  
Title: President

By *Gina Birkett*  
Email: gina.birkett@vcastructural.com  
Date: 12/14/2022 GMT

Name: Gina Birkett  
Title: Chief Financial Officer

Exhibit A  
Master City of San José Consultant Agreement  
Approved Service Order Form  
(Non-Capital Projects)

Cover Page

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1a. Intentionally Omitted 1b. AC Contract No.: [Insert AC No.]

2. Approved Service Order No. [Insert Number]

3. Consultant's Name: [Insert Consultant's Legal Name as it Appears on the Master Agreement] ("Consultant")

---

4. Project Name: [Insert Name of Project for which Consultant will provide services] ("Project")

5. Project Location: [Insert the location of the Project, if applicable]

6. The Consultant and the City will implement this Approved Service Order in accordance with the Master Agreement, this cover page and Attachments "A" (Tasks), "B" (Terms and Conditions), and "C" (Compensation Table), and Exhibit "D" (Schedule of Specific Services) which are incorporated herein by references.

---

7. Budget/Fiscal:

a. Current **unencumbered** amount in Master Agreement: \$

b. **Maximum Service Order Compensation for this Approved Service Order:** \$

c. New unencumbered balance in Master Agreement (7.a – 7.b): \$

d. **Appropriation Certification:** I certify that an unexpended appropriation in the amount of the Maximum Service Order Compensation is available in the following fund(s) and that such fund(s) will be encumbered to pay for this Approved Service Order.

|             |             |           |                  |
|-------------|-------------|-----------|------------------|
| Fund: _____ | Appn: _____ | RC: _____ | Amount: \$ _____ |
| Fund: _____ | Appn: _____ | RC: _____ | Amount: \$ _____ |
| Fund: _____ | Appn: _____ | RC: _____ | Amount: \$ _____ |

**Authorized Signature:** \_\_\_\_\_ Date: \_\_\_\_\_

---

8. **Division Analyst Approval:** \_\_\_\_\_ Date: \_\_\_\_\_

9. **Consultant Approval:** \_\_\_\_\_ Date: \_\_\_\_\_

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

Service Order Form Approved by the Office of the City Attorney  
(Maximum Service Order Compensation is \$100,000 or less, and the provisions of the service order form are not altered.)

Approved as to Form: \_\_\_\_\_ Date: \_\_\_\_\_  
(Sr.) Deputy City Attorney

11. **City Director Approval:** \_\_\_\_\_ Date: \_\_\_\_\_

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## Attachment A: Tasks

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract manager.

---

**General Description of Project for which Consultant will Provide Services:** [Insert a general project description to provide context for the tasks.]

---

**Task No. 1:** [Insert title of deliverable.]

- A. **Services:** [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]
- B. **Deliverable:** The Consultant will provide the following to the City's Contract Manager: [Insert a description of the deliverable.]
- 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 \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 2:** [Insert title of deliverable.]

- A. **Services:** [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]
- B. **Deliverable:** The Consultant will provide the following to the City's Contract Manager: [Insert a description of the deliverable.]
- 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 \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 3:** [Insert title of deliverable.]

- A. **Services:** [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]
- B. **Deliverable:** The Consultant will provide the following to the City's Contract Manager: [Insert a description of the deliverable.]
- 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 \_\_\_\_ Business Days from \_\_\_\_\_.

## Attachment B: Terms and Conditions

1. **City’s Contract Manager:** The City’s contract manager for this Approved Service Order is:

|             |            |
|-------------|------------|
| Name:       | Phone No.: |
| Department: | Email:     |
| Address:    |            |

2. **Consultant’s Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant’s contract manager for this Approved Service Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must comply with the requirements of Subsection 17.2 of the Master Agreement, entitled “Filing Form 700.”***

| <b><u>Consultant’s Contract Manager</u></b> |                           | <b><u>Required to File Form 700?</u></b> |                     |    |
|---|---------------------------|--|---------------------|----|
|   |                           | Yes<br>Already Filed<br>(Date Filed)     | Yes<br>Need to File | No |
| Name:                                       | Phone No.:                |  |                     |    |
| Address:                                    | Email:                    |  |                     |    |
| <b><u>Other Staffing</u></b>                |                           |  |                     |    |
| <b><u>Name:</u></b>                         | <b><u>Assignment:</u></b> | <b><u>Email:</u></b>                     |                     |    |
| 1.  |                           |  |                     |    |
| 2.  |                           |  |                     |    |
| 3.  |                           |  |                     |    |

**3. Subconsultants:** Whichever of the following is marked applies to this Approved Service Order:

- The Consultant can **not** use any subconsultants.
- The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

| <u>Subconsultant's Name</u> | <u>Area of Work</u> |
|-----------------------------|---------------------|
| 1.                          |                     |
| 2.                          |                     |
| 3.                          |                     |

**4. Reimbursable Expenses:** If the Compensation Table set forth in **Attachment C** of this Approved Service Order states that the City will reimburse the Consultant for expenses, then only the expenses identified in Subsection 10.5.3 of the Master Agreement are Reimbursable Expenses unless the following box is marked and additional reimbursable expenses are set forth:

- In addition to the expenses identified in Subsection 10.5.3 of the Master Agreement, the following expenses are Reimbursable Expenses:

| <u>Additional Reimbursable Expense(s)</u> | <u>Mark-up</u> |
|---|----------------|
| 1. _____                                  | _____          |
| 2. _____                                  | _____          |
| 3. _____                                  | _____          |

**Notwithstanding the foregoing, any additional reimbursable expense(s) set forth in the above table will be disregarded if the Compensation Table states that the City will *not* reimburse the Consultant for any expenses.**

**5. Background Check Confirmation:** As the Consultant's Project Manager, I certify that Consultant has conducted or caused to be conducted a criminal history background check of the Temporary Personnel selected for this Approved Service Order and that the assigned employee(s) listed in this Approved Service Order meet the City of San José's Background Clearance Requirements.

|  |      |
|--|------|
| <b>Date of Background Check:</b>                                     |      |
| <b>Consultant Project Manager:</b>                                   |      |
| By _____   |      |
| Name: <span style="color: red;">[Insert Name.]</span>                | Date |
| Title: <span style="color: red;">[Insert Title of Signature.]</span> |      |

## Attachment C: Compensation Table

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table. This Compensation Table is subject to the terms and conditions set forth in the Master Agreement, including without limitation Section 10 of the Master Agreement.

| Part 1 – Compensation for Services and Deliverables   |  |   |              |
|---|--|---|--------------|
| Column 1  | Column 2   | Column 3  | Column 4     |
| Task Nos. from Attachment A   | Basis of Compensation  | Invoice Period  | Compensation |
|   | <input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | \$           |
|   | <input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | \$           |
|   | <input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | \$           |
|   | <input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee | <input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work | \$           |
| Part 2 – Reimbursable Expenses  |  |   |              |
| <input 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 the maximum amount of:                                     | \$           |
| Part 3 – Subconsultant Costs  |  |   |              |
| <input type="checkbox"/> Subconsultant costs are <i>not</i> separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs. |  | <input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:                           | \$           |
| <b>Maximum Service Order Compensation</b> (sum of Parts 1 through 3):   |  |   | \$           |

## Exhibit B: Schedule of Rates and Charges

(Non-Capital Projects)

### **BUILDING PLAN CHECKER**

For Building Plan Check, Basic Experience means having the qualifications and experience described as Minimum Qualifications in Exhibit D.A-Personnel Qualifications.1. Advanced Experience as used herein means Basic Experience plus at least five (5) years professional planning work experience in the public sector.

| Term                  | Basic Experience |                          | Advanced Experience |                          |
|-----------------------|------------------|--------------------------|---------------------|--------------------------|
|                       | Hourly Rate      | Daily Rate*<br>(Maximum) | Hourly Rate         | Daily Rate*<br>(Maximum) |
| Year 1<br>(2022-2023) | \$110            | \$880                    | \$120               | \$960                    |
| Year 2<br>(2023-2024) | \$115            | \$920                    | \$126               | \$1,008                  |
| Year 3<br>(2024-2025) | \$120            | \$960                    | \$132               | \$1,056                  |

\* Based on eight (8) hours per day. For hours worked less than or in excess of eight hours per day, the CITY shall compensate the CONTRACTOR at the hourly rates listed above based on level of experience.

### **CPI Adjustment (Option Terms Only)**

For any Option Terms, CITY will consider an annual adjustment of the CONTRACTOR's compensation rates, which adjustment would be made on the first day of the Option Term ("Adjustment Date") and may be up to but not exceeding the increase in the Consumer Price Index ("CPI"). The maximum adjustment would be calculated as follows:

- A. The base for computing the maximum adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San José area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the applicable Adjustment Date ("Extension Index"), shall be compared with the Index published most immediately preceding the prior year's Adjustment Date or, for the first annual adjustment, the Index published most immediately preceding the commencement date of the initial term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the maximum compensation rates for the Option Term shall be determined by multiplying the then expiring year or term's compensation rates by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new compensation rates, and attach the same as a revised exhibit to the Agreement.
- B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with

which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

- C. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the maximum compensation rate that may be paid during the extension term shall be: \$ X (the then expiring term's daily compensation rate) multiplied by 124/115.

**BUILDING PERMIT SPECIALIST**

For Building Permit Specialist, Basic Experience means having the qualifications and experience described as Minimum Qualifications in Exhibit D.A-Personnel Qualifications.2. Advanced Experience as used herein means Basic Experience plus at least five (5) years professional planning work experience in the public sector.

| Term               | Basic Experience |                       | Advanced Experience |                       |
|--------------------|------------------|-----------------------|---------------------|-----------------------|
|                    | Hourly Rate      | Daily Rate* (Maximum) | Hourly Rate         | Daily Rate* (Maximum) |
| Year 1 (2022-2023) | \$65             | \$520                 | \$71                | \$568                 |
| Year 2 (2023-2024) | \$68             | \$544                 | \$74                | \$592                 |
| Year 3 (2024-2025) | \$71             | \$568                 | \$78                | \$624                 |

\* Based on eight (8) hours per day. For hours worked less than or in excess of eight hours per day, the CITY shall compensate the CONTRACTOR at the hourly rates listed above based on level of experience.

**CPI Adjustment (Option Terms Only)**

For any Option Terms, CITY will consider an annual adjustment of the CONTRACTOR's compensation rates, which adjustment would be made on the first day of the Option Term ("Adjustment Date") and may be up to but not exceeding the increase in the Consumer Price Index ("CPI"). The maximum adjustment would be calculated as follows:

- A. The base for computing the maximum adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San José area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the applicable Adjustment Date ("Extension Index"), shall be compared with the Index published most immediately preceding the prior year's Adjustment Date or, for the first annual adjustment, the Index published most immediately preceding the commencement date of the initial term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the maximum compensation rates for the Option Term shall be determined by multiplying the then expiring year or term's compensation rates by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new compensation rates, and attach the same as a revised exhibit to the Agreement.
- B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States

Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

- C. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the maximum compensation rate that may be paid during the extension term shall be: \$ X (the then expiring term’s daily compensation rate) multiplied by 124/115.

**PLANNER**

For Planner, Basic Experience means having the qualifications and experience described as Minimum Qualifications in Exhibit D.A-Personnel Qualifications.3. Advanced Experience as used herein means Basic Experience plus at least five (5) years professional planning work experience in the public sector. Principal Experience as used herein means Basic Experience plus at least ten (10) years professional planning work experience in the public sector.

| Term               | Basic Experience |                       | Advanced Experience |                       | Principal Experience |                       |
|--------------------|------------------|-----------------------|---------------------|-----------------------|----------------------|-----------------------|
|                    | Hourly Rate      | Daily Rate* (Maximum) | Hourly Rate         | Daily Rate* (Maximum) | Hourly Rate          | Daily Rate* (Maximum) |
| Year 1 (2022-2023) | \$85             | \$680                 | \$105               | \$840                 | \$145                | \$1,160               |
| Year 2 (2023-2024) | \$89             | \$712                 | \$110               | \$880                 | \$152                | \$1,216               |
| Year 3 (2024-2025) | \$93             | \$744                 | \$115               | \$920                 | \$160                | \$1,280               |

\* Based on eight (8) hours per day. For hours worked less than or in excess of eight hours per day, the CITY shall compensate the CONTRACTOR at the hourly rates listed above based on level of experience.

**CPI Adjustment (Option Terms Only)**

For any Option Terms, CITY will consider an annual adjustment of the CONTRACTOR’s compensation rates, which adjustment would be made on the first day of the Option Term (“Adjustment Date”) and may be up to but not exceeding the increase in the Consumer Price Index (“CPI”). The maximum adjustment would be calculated as follows:

- A. The base for computing the maximum adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San José area, published by the United States Department of Labor Statistics (“Index”), which is published most immediately preceding the applicable Adjustment Date (“Extension Index”), shall be compared with the Index published most immediately preceding the prior year’s Adjustment Date or, for the first annual adjustment, the Index published most immediately preceding the commencement date of the initial term (“Beginning Index”). If the Extension Index published has increased over or decreased under the Beginning Index, the maximum compensation rates for the Option Term shall be determined by multiplying the then expiring year or term’s compensation rates by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new compensation rates, and attach the same as a revised exhibit to the Agreement.

- B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
- C. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the maximum compensation rate that may be paid during the extension term shall be: \$ X (the then expiring term's daily compensation rate) multiplied by 124/115.

## Exhibit C: Insurance Requirements

(Non-Capital Projects)

Consultant, at Consultant's sole cost and expense, shall procure and maintain for the duration of this Master 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 Master 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 Master 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 or subconsultants as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

## Exhibit D: Schedule of Specific Services (Non-Capital Projects)

The Consultant shall provide the schedule of services set forth in this Exhibit. The Consultant shall provide all services required by this Exhibit to the satisfaction of the City's contract manager.

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**General Description of Project for which Consultant will Provide Services:** Consultant shall provide temporary personnel to City on an on call or as-needed basis for various private development projects in the City. "Temporary personnel" as used herein means the Consultant's employees assigned to perform services for City under this Master Agreement.

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### Service No. 1:

#### Building Plan Checker Services

##### Description:

1. The temporary personnel shall perform Building Plan Check on an "on call or as-needed" basis for various private development projects in the City.
2. Reviewing and commenting in writing with reference to plans requiring building permits to ensure compliance with California Building Codes and related rules and regulations as adopted by the City of San José, including those listed below:
  - a. California Building Code - *CBC reviews will include both Vols. 1 & 2 (e.g. life/safety, accessibility, noise control, structural, etc.) and Title 24 envelope energy compliance.*
  - b. California Mechanical Code - *CMC reviews will include Title 24 mechanical energy compliance.*
  - c. California Plumbing Code
  - d. California Residential Code
  - e. California Green Buildings Standards Code
  - f. California Electrical Code - *CEC reviews will include Title 24 lighting energy compliance.*
  - g. California Energy Regulations
  - h. California Code for Building Conservation
  - i. OSHPD-3 Reviews
  - j. California Historical Building Code
  - k. Commercial Modular ("Commercial Coach") Site and Foundation Reviews
  - l. City of San José Reach Codes
3. Readdressing reviews as necessary to include departmental officers/staff review comments.
4. Examining plans, calculations, and specifications for commercial, industrial, and residential buildings (single family and multifamily), including complex major structures for adequacy and general compliance with governing laws, codes, ordinances. and regulations.

5. Making independent analyses on proposed buildings when required to justify the safety of the proposed design for consideration by departmental officers/staff.
6. Advising building inspectors on problems arising in the field during the construction of a building project.
7. Instructing inspectors and technicians in the review of building plans.
8. Preparing reports, standard forms, and letters.

## **Service No. 2: Building Permit Specialist Services**

### **Description:**

1. The temporary personnel shall process permits and provide customer service on an “on call or as-needed” basis for various private development projects in the City.
2. Processing and issuing permits for single family residential, large scale multi-family and tract home projects and commercial projects, provides assistance to Residential Plan Check Engineers in preparing approved plans for permit issuance.
3. Receiving, processing, and reviewing plan check submittals, applications, and other related documents.
4. Establishing, assigning, changing, correcting, and verifying building addresses within the City.
5. Providing counter and telephone service to general public; answering code related issues and supplying information regarding permit processing, policies, and procedures.
6. Verifying SITUS information and performs plan checks on qualified minor projects.
7. Performing minor clerical and filing duties related to the permit process.
8. Logging, filing, tracking, and retrieving permitted plans for new residential and commercial projects.
9. Interfacing with contractors, management, co-workers, supervisors, and the general public.
10. Routing drawings, specs, and other related documents to staff, consultants, and other agencies.
11. Performing other duties of a similar nature or level.

## **Service No. 3: Planning Services**

### **Description:**

1. Review and process a broad range of development applications (from simple tree removals to complex mixed-use developments), which includes but is not limited to conducting plan review, zoning conformance reviews of Building permit applications, writing staff reports, communicating with applicant and public, and working with City staff and other agencies’ staff, etc.
2. Review and comment on Administrative Draft Environmental Impact Reports (EIRs) to ensure consistency and compliance with the California Environmental Quality Act (CEQA).
3. Prepare or review Initial Studies, Negative Declarations, Mitigation Monitoring Reports, and other documents for compliance with CEQA and the National Environmental Policy Act (NEPA) etc.
4. Develop draft ordinances and policies in coordination with City staff.

5. Assist City staff with the preparation of Urban Village Plans, including writing the Plan, preparing graphic information, conducting public engagement efforts and meetings, communicating verbally and in writing with a wide range of community stakeholders, etc.
6. Organize, prepare materials, and develop agenda for and conduct community meetings.
7. Contact other agencies to benchmark services and ordinances, or to ask other questions.
8. Update the City's Planning Division website with new content as needed.
9. Create new webpages for the City's Planning Division.
10. Other duties as assigned.

## **A. PERSONNEL QUALIFICATIONS**

Consultant shall provide City with temporary personnel meeting the Minimum Qualifications and, to the extent reasonably feasible, the Desired Qualifications set forth in this section.

### **1) Building Plan Checker**

#### **a) Minimum Qualifications:**

##### **i) Education:**

- (1) For Building Plan Review – A Bachelor's Degree from an accredited college or university in Architectural, Civil, Structural Engineering, or Architecture of a closely related field (e.g. Construction Management).
- (2) For Specialty Trade Plan Review (electrical, plumbing or mechanical) – High School Diploma or General Equivalency Diploma (G.E.D.)

##### **ii) Experience:**

- (1) For Building Plan Review – Four (4) years of plan review experience in architecture and/or engineering design.
- (2) For Specialty Trade Plan Review – Four (4) years of varied construction experience equivalent to either a journey level tradesperson in a given trade, or related contractor including one (1) year in a supervisory capacity; or two (2) years of combination inspection experience and two (2) years of journey level trade work.

##### **iii) Licenses or Certificates:**

- (1) General – Current certification as an ICC Plans Examiner for specific disciplines (e.g. ICC Building Plan Examiner, ICC Electrical Plans Examiner, etc.), and a valid California driver's license.
- (2) For Specialty Trade Review – Current certification as an ICC Inspector in the specific trade is an acceptable substitute to certification as a plans examiner.

##### **iv) General: Ability to work well with other people, dress and behave professionally, communicate clearly in English, respect local ordinances and policies, and contribute to a positive work environment.**

#### **b) Desired Qualifications:**

##### **i) Experience:**

- (1) Four (4) years of progressively responsible professional design experience in structural engineering work.

##### **ii) Licenses or Certificates:**

- (1) Registered as a Civil Engineer or Structural Engineer with the California Board of Registration for Civil and Professional Engineers (candidates are required to submit proof of registration) or as an Architect with the California Architects Board.

**2) Building Permit Specialist**

**a) Minimum Qualifications**

**i) Education and Experience:**

(1) Associate's degree from an accredited college AND one (1) year of substantial public contact experience in planning, building, construction, or fire prevention office work.

**ii) Licenses or Certificates:**

(1) Possession of a valid State of California driver's license.

**iii) General**

(1) Knowledge of:

(a) Construction drawings and plans related to occupancy classifications, construction types, and plan and tract specifications.

(b) Construction permit processes, including public rights-of-way, private and public easements, set-backs, zoning and engineering requirements, and the need for variances.

(c) The California Building Code, construction practices, and legal aspects of code administration.

(d) Records management practices and general office operations.

(e) Basic accounting methods and cash or payment handling procedures.

(f) Basic math as well as standard geometric knowledge for computing areas and dimensions.

(g) Modern office procedures, methods, and computer equipment.

(h) Public administration principles.

(i) Safety equipment and procedures.

(j) Supervision principles, when required to lead or supervise.

(2) Ability to read and understand blueprints, plans and specifications.

(3) Ability to understand and explain local ordinances, regulations, and procedures.

(4) Ability to work well with other people, dress and behave professionally, communicate clearly in English, respect local ordinances and policies, and contribute to a positive work environment.

**3) Planner**

**a) Minimum Qualifications**

- i) Education
  - (1) A Bachelor's Degree in Urban and Regional Planning, or related field
- ii) Experience
  - (1) At least one (1) year of professional planning work experience in the public, private, or non-profit sectors
- iii) General
  - (1) Working knowledge of Microsoft Word software
  - (2) Ability to work independently, follow direction, seek clarification prior to completion of work assignment, analyze quantitative data and qualitative information, and think creatively and critically
  - (3) Ability to write well-organized reports regarding complex planning issues that are free from error, grammatically correct, and easy to read and understand by the general public
  - (4) Ability to work well with other people and be culturally sensitive, dress and behave professionally, communicate clearly in English, respect local ordinances and policies, and contribute to a positive work environment.

**b) Desired Qualifications**

- i) Member in good standing of the American Planning Association (APA) and/or the Association of Environmental Professionals (AEP)
- ii) Member in good standing of American Institute of Certified Planners (AICP)
- iii) Five (5) or more years of professional planning work experience in the public sector or related organizations.
- iv) Demonstrate urban design experience
- v) Demonstrate CEQA (or NEPA) experience in terms of (1) writing Initial Studies, CEQA resolutions, and related material; (2) evaluating EIRs and environmental analysis for consistency with regulatory requirements and compliance with CEQA/NEPA; and (3) mitigation monitoring compliance
- vi) Demonstrable experience using Excel, PowerPoint, and/or Geographic Information Systems (GIS) for analytical purposes
- vii) Ability to make professional presentations to the Council, City Commissions, and other decision-making bodies, as well as community organizations.
- viii) Familiarity with Historic Preservation Planning, including but not limited to compliance with NHPA, SHPO Consultation, Tribal Consultation, Secretary of Interior Standards, etc. as applicable to development review, and affordable housing development.

**B. BACKGROUND CHECK**

- 1) Consultant shall have the fingerprinting and criminal history background check conducted through the State of California Department of Justice to the extent allowed by law. If Consultant is not and cannot be an authorized recipient of state summary criminal history information from the Department of Justice, then Consultant shall conduct the criminal background check through another source that searches public records for records of felony and misdemeanor convictions.
- 2) The criminal history background check of a temporary employee assigned to work with the City must have been conducted within the six months prior to commencing hi/her assignment with the City. It is the obligation of the Consultant to keep those background checks up to date and ensure that the employee remains eligible to continue performing services for the City for the duration of the employee's assignment.

**C. PERFORMANCE STANDARDS**

- 1) The Consultant and any temporary personnel assigned to the City shall perform all services to the satisfaction of the City's Director of Planning, Building and Code Enforcement, or the City's respective designees.
- 2) All of the services furnished by the Consultant and its temporary personnel under this Master Agreement shall be of the currently prevailing professional standards and quality by professionals of similar knowledge and skills engaged in related work throughout California under the same or similar circumstances.
- 3) All work performed by temporary personnel under this Master Agreement shall be authorized by a Work Assignment. Temporary personnel shall not perform any services unless authorized by a Work Assignment. Any unauthorized services performed by temporary personnel shall be at no cost to the City.
- 4) Consultant and any temporary personnel engaged by the City shall be responsible for any coordination with City, federal state and local agencies that are necessary for all services authorized under the Master Agreement.
- 5) Any temporary personnel assigned to the City shall be expected to adhere to and abide by the terms and conditions set forth in the City Policy Manual, including, but not limited to, the following Policies.
  - a) Discrimination and Harassment (1.1.1)
  - b) Nepotism Policy (1.1.3)
  - c) Code of Ethics (1.2.1)
  - d) Gift Policy (1.2.2)
  - e) Workplace Violence (1.3.1)
  - f) Drug-Free Workplace (1.4.1)
  - g) Substance Abuse (1.4.2)
  - h) Personal Use of City Equipment (1.6.2)
  - i) Use of Email, Internet Services, and Other Electronic Media (1.7.1)
  - j) Cellular Telephone (1.7.4)
  - k) Use of City and Personal Vehicles (1.8.1)

**D. REQUESTING TEMPORARY PERSONNEL**

- 1) Consultant will designate one or more Agency Coordinators who will be the point of contact for each Service Area listed as Service No. 1 through 5 above in the beginning of this Exhibit. The City will designate a Staffing Coordinator for each Service Area who will work directly with the Agency Coordinator(s) regarding all items relating to the temporary personnel assigned to the City under this Master Agreement.
- 2) To initiate a staffing placement, the City's Staffing Coordinators will create a Work Assignment detailing the number of staff needed, the approximate duties and an estimated length of time for the assignment. Work Assignments will be forwarded via email to Agency Coordinators who will email resumes of suitable and available candidates to the Staffing Coordinator within three business days of the request.
- 3) The City's Staffing Coordinator(s) may select temporary personnel directly from the resumes received or may request an interview with one or more candidates. Once the temporary personnel have been selected, the Staffing Coordinator will confirm the name(s) of the selected candidate(s) and the start date(s) to the Agency Coordinator.
- 4) The duration of a Work Assignment for any individual temporary personnel may range from a minimum of one day (eight hours) to a maximum of six months. The City, through the Staffing Coordinator, may terminate a Work Assignment or request that the Consultant assign different temporary personnel at any time for any business reason by notifying the Agency Coordinator.

## **E. CITY RESPONSIBILITIES**

- 1) Items supplied to temporary personnel
  - a) The City will provide the following for all temporary personnel:
    - i) A supervisor who will assign work, decide on start/end/break times and sign for hours worked.
    - ii) Two paid fifteen minute breaks in an eight hour workday.
    - iii) One unpaid 30 or 60 minute lunch hour (length determined by supervisor in consultation with temporary personnel).
    - iv) City Identification badge.
    - v) Parking in the employee garage.
    - vi) Supplies to perform the City's Work Assignment.
    - vii) The City will also provide a computer workstation and relevant software for temporary personnel performing on-site services as Building Plan Checkers or Code Enforcement Inspectors.
- 2) Contract Administrator
  - a) The City will designate a Contract Administrator who will monitor the funding related to this Master Agreement and resolve any issues not handled by the Staffing and Agency Coordinators.

## **F. CONSULTANT RESPONSIBILITIES**

- a. Transportation/Vehicles
  - i. Consultant shall ensure that the temporary personnel have adequate transportation to perform the services under this Master Agreement, which includes a vehicle for temporary personnel performing Building Inspection or Code Enforcement Inspection services.

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

|   |  |
|---|--|
| <b>AGREEMENT TITLE:</b><br><b>DATE:</b>                               |  |
| <b>CONSULTANT</b><br><b>Name:</b><br><b>Address:</b><br><b>Email:</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 (“City”) hereby exercises its option to extend the term under the following provisions:

|                   |  |
|-------------------|--|
| <b>OPTION NO.</b> |  |
|-------------------|--|

#### NEW OPTION TERM

|             |  |
|-------------|--|
| Begin Date: |  |
| End Date:   |  |

|  |  |
|--|--|
| <b>MAXIMUM COMPENSATION for New Option Term:</b> |  |
|--|--|

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 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<br>a municipal corporation<br><br>By _____<br><br>Name:<br>Title: |
|--|