

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 Cooperative Personnel Services dba CPS HR Consulting, a California Joint Powers Authority (“Consultant”).

This Master Agreement is made and entered into this 28th day of February 2023 (“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:

Training Services

- 1.1.1. Essential Skills for Supervisors
- 1.1.2. Career Development
- 1.1.3. Analysis and Evaluation
- 1.1.4. Communication Skills
- 1.1.5. Critical Thinking and Problem Solving
- 1.1.6. Leadership
- 1.1.7. Designing and Delivering Public Presentation Skills
- 1.1.8. Project Management and Planning
- 1.1.9. Teamwork/Building Effective Teams
- 1.1.10. Coaching Skills
- 1.1.11. Computer Skills
- 1.1.12. Health and Wellness

Organizational Development

- 1.1.13. Coaching
- 1.1.14. Strategic Planning
- 1.1.15. Leadership Assessments and 360 Degree Feedback

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
- Exhibit F:** State of California Secretary of State Certificate of Filing of Joint Exercise of Powers Agreement

1.3 **Director:** “Director” means the Director of Human Resources 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 Agreement term is from the Contract Date to June 30, 2026, inclusive, unless terminated earlier pursuant to Section 19 below (“Initial Term”).

2.2 **Optional Term:** After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two (2) additional one-year terms (“Option Term(s)”) up through June 30, 2028.

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

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

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 **\$320,000** ("Maximum Total Compensation").

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 10th 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.
- 13.5 Ownership of Training Materials:** Consultant agrees to notify the City in writing of any Preexisting Works used in connection with any work product produced under this Agreement. Preexisting Works are defined as inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, algorithms, and other intellectual property which existed prior to commencement of this Agreement. No property rights to any Pre-existing Works (including any classes offered in Consultant's course catalog or any other classes taught by Consultant or Consultant's instructors) shall enure to the City. To the extent that Consultant incorporates Pre-existing Work into a derivative work for City, Consultant will retain ownership of such derivative work, but City shall have the right to use such derivative work without restriction or limitation.
- Apart from the above, any other work product, created exclusively for the City with funds provided under this Agreement, shall be considered works made for hire and shall be owned by the City.

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/home/showdocument?id=12833>. 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
 Human Resources
 Attn: Randi Perry
 200 E. Santa Clara Street,
 4th Floor Tower
 San José, CA 95113
 (408) 535-1285
 randi.perry@sanjoseca.gov

To the Consultant: Cooperative Personnel Services dba CPS HR Consulting
 Attn: Karen Evans
 2450 Del Paso Road, Suite 220
 Sacramento, CA 95834
 (916) 471-3342
 kevans@cpsshr.us

- 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.

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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.*

— 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

x 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.

***In lieu of the Consultant placing its initials in the space provided above, Consultant provides its State of California Secretary of State Certificate of Filing in accordance with Section 6503.5 or 6503.7 of the Government Code and the Joint Exercise of Powers Agreement creating Cooperative Personnel Service (Exhibit F) Consultant is a public agency as defined in Section 6500 of the Government Code. As a California joint powers authority, Consultant represents is it exempt from filing with the Internal Revenue Service and the California Franchise Tax Board. Consultant will provide W-9.**

City of San José

Bv



Email: sarah.zarate@sanjoseca.gov
Date: 02/28/2023 GMT

Name: Sarah Zarate
Title: Director, City Manager's Office

Consultant

Bv



Email: smacdonald-hopp@cpshr.us
Date: 02/27/2023 GMT

Name: Sandy McDonald-Hopp
Title: Chief Financial Officer

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
Suzanne Hutchins



Email: suzanne.hutchins@sanjoseca.gov
Date: 02/27/2023 GMT

Name: Suzanne Hutchins
Title: Sr. Deputy City Attorney

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

Cover Page

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: _____

9. Consultant Approval: _____

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: _____
(Sr.) Deputy City Attorney

11. City Director Approval: _____

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.”***

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

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:	\$
Maximum Service Order Compensation (sum of Parts 1 through 3):			\$

Exhibit B: Schedule of Rates and Charges

(Non-Capital Projects)

Description	Rate	Maximum number of attendees per training	Does In Person Trainings require travel reimbursement? Yes/No
Individual / Group Coaching: In person	Individual coaching, \$300.00 per hour Group Coaching \$300.00 per hour / per person		Yes
Individual / Group Coaching: Virtual	Individual \$300.00 per hour Group \$300.00 per hour / per person		
Creating Customized Training Course / Program	\$210.00 per hour		
Attending Meetings Related to Course Design on-site	\$180.00 per hour		Yes
Attending Meetings Related to Course Design virtual	\$180.00 per hour		
Consulting Fee for on-site consulting	\$210.00 per hour		Yes
Consulting Fee for virtual consulting	\$210.00 per hour		

Cost Form # 1 will be used for Service Nos. 1-14 as needed, and as set forth in Exhibit D: Schedule of Specific Services.

Cohort Course name	Rate Per Training (In Person)	Rate Per Training (Virtual)	Maximum # of attendees per training (In Person)	Maximum # of attendees per training (Virtual)
2-hour course	\$1,800.00	\$1,000.00	30	30
3-hour course	\$2,400.00	\$1,450.00	30	30
½ day course (4 hours total)	\$3,000.00	\$1,800.00	30	30
1-day course (8 hours total)	\$4,800.00	\$3,300.00	30 15 (computer skills courses)	30 15 (computer skills courses)
1.5-day course (12 hours total)	\$7,000.00	\$4,950.00	30 15 (computer skills courses)	30 15 (computer skills courses)
2-day course (16 hours total)	\$9,000.00	\$6,600.00	30 15 (computer skills courses)	30 15 (computer skills courses)
2.5-day course (20 hours total)	\$11,250.00	\$8,250.00	30 15 (computer skills courses)	30 15 (computer skills courses)
3-day course (24 hours total)	\$13,500.00	\$9,900.00	30 15 (computer skills courses)	30 15 (computer skills courses)

Cost Form # 2 will be used for Service Nos. 1-14 as needed, and as set forth in Exhibit D: Schedule of Specific Services.

NOTE: Any CPS HR training course offered can be delivered to a cohort

Leadership Assessment Form	
Assessment / organizational assessment	Cost per assessment
CPS HR 360 assessment	\$300
MBTI (Myers–Briggs Type Indicator)	\$25
DiSC (Dominance, Influence, Steadiness and Compliance) and reports	Varies, \$60; \$100 - \$150 per report
Strengths Finder and reports	Varies; \$40 – 60 per assessment; \$100 per report
Leadership Practices Inventory Plus	\$350
CI-Q Catalyst 360 Tool and EQ in Action Profile	\$400

Leadership Assessment Form will be used for Service No. 15 as set forth in Exhibit D: Schedule of Specific Services.

Exhibit C: Insurance Requirements

(Non-Capital Projects)

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

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

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

C. Deductibles and Self-Insured Retentions

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

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages

- a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Consultant; products and completed operations of Consultant; premises owned, leased or used by Consultant; and automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, and agents.
- b. Consultant's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of Consultant's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by Consultant shall not affect coverage provided CITY, its officers, employees, 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 Jose, its officers, employees, and agents.

3. All Coverages

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

E. Acceptability of Insurers

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

F. Verification of Coverage

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

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

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

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.

General Description of Project for which Consultant will Provide Services: The City will issue service orders for the Consultant to conduct training and organizational development services on an as-needed basis for supervisors and employees for the purpose of enhancing employee development, increase organizational effectiveness, and improve community outcomes.

Training Services

Service No. 1: Essential Skills for Supervisors

Description: Communication Skills, Team Building, Creative Problem Solving, Collaboration, Editing and Proofreading, Leadership, Time Management, Emotional Intelligence, Leading Diverse Teams

Service No. 2: Career Development

Description: Career Exploration, Job Interviewing, Equitable and Inclusive Employee Performance Management, Fostering Inclusive Environments

Service No. 3: Analysis and Evaluation

Description: Problem Solving for Equity and Transformational Change, Collecting and Analyzing Disaggregated Data, Data Visualization, Data Informed Decision Making, Recommending Solutions Effectively

Service No. 4: Communication Skills

Description: Oral, Written Communication, Email, Cross-Cultural Communication

Service No. 5: Critical Thinking and Problem Solving

Description: Cognitive Load Management, Risk Management, Decision Making

Service No. 6: Leadership

Description: Team Building with a Diverse Workforce, Change Management, Strategic Thinking

Service No. 7: Designing and Delivering Public Presentation Skills

Description: Public Speaking, Meeting Management

Service No. 8: Project Management and Planning

Description: Project Management and Planning

Service No. 9: Teamwork/Building Effective Teams

Description: Collaboration, Accountability, Team Dynamics, Fostering Healthy and Safe Team Environments

Service No. 10: Coaching Skills

Description: Coaching for Supervisors

Service No. 11: Computer Skills

Description: Microsoft Applications, GIS

Service No. 12: Health and Wellness

Description: Mindfulness, Meditation, Healthy Eating, Weight Loss

Organizational Development

Service No. 13: Coaching

Description: Executive Coaching, Coaching Teams with Equity Practices

Service No. 14: Strategic Planning

Description: Embedding Racial Equity in strategic planning, Racial Equity Action Plans

Service No. 15: Leadership Assessments and 360 Degree Feedback

Description: CPS HR 360 assessment , MBTI (Myers – Briggs Type Indicator), DISC (Dominance, Influence, Steadiness and Compliance) and Reports, Strengths Finder and reports

Exhibit E: Notice of Exercise of Option to Extend Agreement

AGREEMENT TITLE: DATE:	
CONSULTANT Name: Address: Email:	
DATE OF OPTION:	

(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:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin Date:	
End Date:	

MAXIMUM COMPENSATION for New Option Term:	
--	--

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 a municipal corporation By _____ Name: Title:
--

Exhibit F: California Secretary of State Certificate of Filing and Joint Exercise of Powers Agreement

State of California
Secretary of State

CERTIFICATE OF FILING

I, **DEBRA BOWEN**, Secretary of State of the State of California hereby certify:

That on the 11th April, 1985, a Notice of a Joint Powers Agreement was filed in this office in accordance with Section 6503.5 or 6503.7 of the Government Code of the State of California for the following:

Cooperative Personnel Services

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
5th day of February 2009



A handwritten signature in cursive script that reads 'Debra Bowen'.

DEBRA BOWEN
Secretary of State

**COOPERATIVE PERSONNEL SERVICES
DBA CPS HUMAN RESOURCE SERVICES
RESOLUTION
APPROVAL TO AMEND THE JPA TO ADD
NEW BOARD AGENCY NAMES**

The Board of Directors of CPS Human Resource Services voted to adopt the following amendment to the JPA agreement: (see attached revised JPA document)

- Remove the Board Agency names from the first paragraph of the JPA and from Section 3. B., and instead list the board agency names on an attachment roster at the end of the JPA.



RESOLUTION # 09-02
RESOLVED BY THE BOARD OF DIRECTORS
CPS HUMAN RESOURCE SERVICES
AT THE MARCH 20, 2009 MEETING

VOTE:	
EAST BAY MUD	AYE
CITY OF ANAHEIM	AYE
CITY OF LAS VEGAS	AYE
HAYWARD USD	AYE
CA STATE PERSONNEL BOARD	AYE
SAN FRANCISCO CITY/CO	AYE
SACRAMENTO COUNTY	AYE
CITY UNIVERSITY OF NEW YORK	AYE

CERTIFIED:


SECRETARY, BOARD OF DIRECTORS

DATED: 04-02-09

Joint Exercise of Powers Agreement
Cooperative Personnel Services

This Joint Exercise of Powers Agreement, originally dated the fifteenth day of March, 1985, and subsequently amended from time to time, is made by and between the government agencies listed on the Roster of Member Agencies attached hereto as Attachment "1" ("the parties"). The parties make the following recitals:

Whereas, there is a need for the establishment of an agency to provide the opportunity for the parties to discuss, study and solve common or similar problems with respect to modern human resource and related management processes; and

Whereas, the parties possess the power and desire to solve human resource and related management problems and may make joint associations and expend public funds for such purposes; and

Whereas, the parties are of the opinion that they should join together to provide modern human resource and related management services for their common benefit, and to the extent permissible, to provide such services on a contractual basis to their own and other public agencies and non-profit organizations.

Therefore Be it Resolved, that the parties, for and in consideration of the mutual promises and agreements herein contained and the performance thereof, and for other good and valuable and adequate consideration, do agree as follows:

Section 1. Purpose: This Agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500, hereinafter called "the Act") relating to the joint exercise of powers common to city, county, special district, and state government. Each party possesses the power referred to in the recital hereof. The purpose of this Agreement is to exercise such powers by creating an agency to assist the parties in their efforts to develop and implement modern human resource and related management procedures including but not limited to: (1) acting as an agent of responsible change and a technical resource so as to encourage, support, and provide for intergovernmental cooperation in technical personnel areas; (2) providing sophisticated consulting services to public agencies and non-profit organizations; (3) providing increased technical training for persons involved in public personnel management; (4) increasing and supporting the development and use of validated selection programs; (5) encouraging and supporting the conduct of applied research in the field of public personnel selection and management; and (6) providing other human resource and management services as needed. Such purpose will be accomplished by said common powers exercised in the manner hereinafter set forth.

Section 1.1. Other Participating Agencies: In addition to the agencies who are parties to this Agreement, any agency which may desire to participate in or take advantage of the services

or activities of the Joint Powers Authority may do so as provided in regulations adopted by the Board of Directors or by executing an agreement with the Joint Powers Authority upon such terms and conditions as may be agreed upon. Such participating agencies shall not be entitled to membership on the Board of Directors.

Section 2. Term: This Agreement shall continue in full force and effect unless terminated as provided herein.

Section 3. Agency:

- A. Creation of Agency: Pursuant to Section 6507 of the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as Cooperative Personnel Services (hereinafter referred to as "CPS"). Its debts, liabilities, and obligations do not constitute debts, liabilities, or obligations of all or any party to this Agreement. CPS shall be the administering entity for this Agreement.
- B. Governing Board: CPS shall be administered by a Board of Directors equal in number to the number of parties who become and remain parties to this Agreement. Each party to the Agreement shall designate one representative as a member of the Board of Directors. The designated members of the Board of Directors and their alternates shall be managers knowledgeable in the fields of human resources, finance, public administration or management. These designated members shall be entitled to membership on the Board only during such time as the party through whom they derived their office remains a party to this Agreement.

Each member has the option to appoint an alternate member who shall serve on the Board at any meeting when the member appointing him or her is absent. Such alternate member when so serving shall have all the powers of a member. Each member shall file with the Board of Directors a written notice of the appointment of his or her alternate. The appointment of an alternate member may be revoked at any time by the member who appointed him or her, provided, however, that such revocation of appointment shall not be effective until filed with the Board of Directors.

C. Meetings of the Governing Board

1. Regular Meetings, Rules: The Board shall provide for its regular, adjourned regular, and special meetings, and shall hold at least one regular meeting in each year. The date, the hour, and the place of any regular meeting shall be fixed by the Board by resolution and filed with each party hereto. The Board shall also adopt rules for the conduct of its meetings, including voting requirements.
2. Ralph M. Brown Act: All meetings of the Board, including, without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with section 54950 of the Government Code).

- D. Officers: The Board shall elect a Chairperson and a Secretary from among its members. The Board shall have the power to appoint such other officers and employees as it may deem necessary and shall adopt a set of bylaws for the conduct of the business of CPS.

The Treasurer/Auditor shall be the Chief Financial Officer of CPS. The Treasurer/Auditor shall cause an independent financial audit to be performed annually by a firm approved by the Board of CPS. In performing such duties, the Treasurer/Auditor shall comply with and conform to all the provisions of Article 1 (commencing with Section 6500), Chapter 5, Division 7, Title 1 of the Government Code. (See Section 8.2. of the charter, *infra*.)

Section 4. Powers: CPS shall have the powers common to the parties set forth in Section 1 of this Agreement. CPS is hereby authorized to do all acts necessary for the exercise of said common powers or said purposes including any or all of the following: to make and enter into contracts; to hire employees and appoint agents; to lease, manage, maintain, purchase, or operate any land, buildings, work or improvement, and to dispose by lease, lease purchase, or sale any property and funds, services and other forms of financial assistance from persons, firms, corporations and any nonprofit-making entity; to, in connection with any federal or state grant, enter into any and all agreements necessary to comply with the procedural requirements of any applicable laws; to incur debts, liabilities, or obligations required by the exercise of these powers which do not constitute a debt, liability or obligation of the parties to this Agreement, or to any of them; and to sue and be sued in its own name. Said powers shall be expressly set forth herein subject only to such restrictions upon the manner of exercising such powers as are imposed on the County of Sacramento in the exercise of similar powers.

Section 5. Fiscal Year: For the purpose of this Agreement, the term "fiscal year" shall mean the period from July 1 to and including the following June 30.

Section 6. Disposition of Assets: Upon termination of this Agreement, all property of CPS shall automatically vest in the parties to this Agreement. All property, other than the money hereinafter provided for, shall be distributed to the agencies who are, or who have been, parties to this Agreement according to the following formula.

Such property, equipment, furniture or furnishings which can be identified as having been contributed by any party to this Agreement shall be transferred to and become the property of the party contributing such property, equipment, furniture or furnishings. Any other property of CPS shall be distributed among the parties to this Agreement, each party to receive the proportion that the amount of money, if any, contributed to CPS by such party bears to the total amount of money contributed to CPS by all parties to this Agreement.

All money on hand at the termination of this Agreement after payment of or making provision for payment of all obligations incurred by CPS under this Agreement shall be distributed to the agencies who are or who have been, parties to the Agreement in proportion to the contributions made by such parties.

Section 7. Accounts and Reports: The Treasurer/Auditor shall establish bank accounts to be designated as the depositories of CPS funds and shall have custody of all the money of CPS from whatever source. The Treasurer/Auditor shall: (a) receive all money of CPS and place it in the proper account; (b) be responsible upon official bond for the safekeeping of all CPS money so held; (c) pay any other sums due from CPS; (d) be responsible for prudent investment of funds as provided in Government Code sections 53600, et seq.; and (e) verify and report in writing as of the first day of July of each year to CPS and to each of the parties to this Agreement the amount of money held by CPS, the amount of receipts since the last report, and the amount paid out since the last report.

Section 7.1. Budget: The Board of Directors of CPS shall annually, not later than June 30, adopt a budget for the fiscal year and shall file a copy of such budget with each party to this Agreement no later than July 15. Amended budgets may be approved at any time.

Section 7.2. Records and Accounts: The Board of Directors shall direct, require and cause the Chief Executive Officer and Treasurer/Auditor to keep proper books of records and accounts in which a complete and detailed entry shall be made of all of its transactions, including all receipts and disbursements. Said books and records shall be kept in accordance with applicable laws. Said books shall be subject to inspection at any reasonable time by the duly authorized representative of each of the parties to this Agreement. Findings of such inspections shall be reported to the Board of Directors. CPS shall prepare annual financial statements in accordance with GASB, including a report of all receipts and disbursement of funds which shall be available at the office of CPS and a copy thereof shall be delivered to each party of this Agreement.

The Treasurer/Auditor shall contract for an independent audit of the accounts and records of CPS to be made annually by a certified public accountant, or public accountant approved by the Board of CPS, in compliance with Section 6505 of the Government Code. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code, and shall conform to generally accepted auditing standards. Such reports shall be filed with CPS within six months of the end of the fiscal year under examination. Any costs of the preparation of financial statements and the audit shall be borne by CPS and shall be a charge against any unencumbered funds of CPS available for the purpose.

Nothing in this Agreement shall preclude the State Auditor General from conducting audits as provided by Government Code Section 10532. Further, the Treasurer/Auditor shall maintain fiscal records for at least three years.

Section 7.3. Expenditures and Obligations: The Board of Directors, its committees and every other official or employee of CPS shall be limited in making expenditures or incurring liabilities to the amount allowed by the budget as adopted by the Board of Directors or thereafter revised by said Board unless income is received in excess of anticipated revenue, in which case the additional revenue can be expended, within Board authorized limits as specified in the Bylaws, upon approval of the Chief Executive Officer without Board action. These additional expenditures shall be reported to the Board at its next regularly scheduled meeting following the executive director's approval.

Section 7.4. Claims: All claims against CPS including, but not limited to, claims by officers and employees for fees, salaries, wages, mileage, or other expenses shall be filed within the time and within the manner specified in Chapter 2 commencing with Section 910 of Part 3, Division 3.6 of the Government Code or in accordance with procedures set out in regulations adopted by the CPS Board pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with section 935) of Part 3 of the Government Code.

Section 7.5. Allowance of Claims by the Auditor-Controller:

- A. The Treasurer/Auditor shall audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the Board of Directors in any of the following cases: (1) expenditures which have been authorized by purchase orders issued by an officer of CPS authorized by said governing board to make purchases; (2) expenditures which have been authorized by contract, resolution or order of the Board of Directors acting within the scope of its authority; (3) expenditures within the dollar amounts set by the appropriations of the Board of Directors.
- B. For any purchase of supplies or services in excess of \$500.00, the Treasurer/Auditor shall require an acknowledgement from the requisitioning or receiving employee that the supplies or services have been received or contracted for.

Section 8. Property: The Chief Executive Officer of CPS is hereby designated as the person who shall have charge of, handle and have access to any property of CPS and shall be required to file an official bond in the amount established by the Board but not less than \$50,000. The Board of Directors by resolution entered in its minutes may prescribe other CPS officers and employees to be bonded and may specify the amount of said bonds.

Section 9. Financing: CPS shall be self-supporting, deriving its revenue from grants and from payments for services rendered to public and non-profit agencies.

Section 10. Miscellaneous: The Section headings herein are for convenience only and not to be construed as modifying or governing the language therein. This Agreement is made in the State of California under the Constitution and laws of said State and it is to be so construed.

Section 10.1. Employees: All of the privileges and immunities from liability, exceptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents, or employees of any party to this Agreement when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any other functions and duties extraterritorially for CPS under the provisions of this Agreement

Section 11. Severability: Should any part, term, portion, or provision of this Agreement be decided by the Courts to be illegal or in conflict of any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms,

portions, or provisions shall be deemed severable and shall not be affected thereby provided such remaining portions or provisions can be construed in substance to continue to constitute the Agreement the parties intended to enter in the first instance.

Section 11.1. Effective Date: The original Agreement became effective, and CPS was rendered fully operative, on March 15, 1985. This amended Agreement is operative when fully executed by each agency or the agency's designated representative.

Section 12. Termination and Withdrawal: Any party may withdraw from this Agreement upon 90 days written notice of such action filed with the Board of Directors. A copy of such notice to withdraw shall be filed with each other party to this Agreement. This Agreement shall terminate, except for the purposes of winding up the affairs of CPS, at the end of any fiscal year in which the parties remaining as members at the beginning of the next fiscal year will not exceed one.

Section 13. Successors: This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties.

Section 14. Notice to Parties: All parties to this Agreement shall forthwith file with the Board's Secretary an address to which all matters may be sent. Any notice to the parties hereof shall be sufficient if delivered to the address on file with the Board's Secretary as provided herein.

Section 15. Copies of the Agreement: This Agreement shall be executed in sufficient original counterparts so that one original executed copy thereof shall be delivered to and become a part of the official records of each party to this Agreement, and the Board of Directors of CPS.

Section 16. Amendment to this Agreement: This Agreement may be amended by an affirmative vote of two-thirds of the members to this Agreement. A party has the option to designate a representative to vote on the amendments on behalf of the member agency. The amendment shall be executed and filed in the manner provided in Section 15.

Section 17. New Party to Agreement: If a government agency currently not a party to this Agreement wishes to join into this Agreement, therefore entitling it to Board membership, it may do so upon concurrence of a majority of the parties to this Agreement.

Section 18. Insurance: CPS shall maintain in force at all times during the performance of this Agreement, insurance covering its operations. Types of insurance shall be subject to the conditions and specifications set forth below:

- A. Comprehensive General Liability: Coverage provides protection against liability claims, arising out of CPS's use of leased, owned, and off-premises operations. Comprehensive General Liability includes Products Liability Insurance which is protection arising out of the use, handling, and consumption of a product. Also included shall be Contractual Liability covering subcontracted services. CPS must carry Comprehensive General

Liability in the amount recommended by CPS' insurance agent, but not less than \$1,000,000. The parties in this Agreement must be named as additional insureds.

- B. Comprehensive Automobile Insurance: Loss against damage or destruction of automobiles, or due to claims for damages arising from the ownership, maintenance, or use of automobiles; also loss to persons injured in certain specific ways due to cost of medical, surgical or hospital care incurred as a result of automobile accidents. CPS must carry Bodily Injury and Property Damage, combined single limits per occurrence in an amount recommended by CPS' insurance agent, but not less than \$1,000,000. The parties to this Agreement must be named as additional insureds.

This amended CPS Joint Exercise of Powers Agreement was approved by the parties whose signatures appear below, on the dates indicated.

CITY OF ANAHEIM

By: [Signature]

Date: 5/26/09

Title: HR Director

EAST BAY MUNICIPAL UTILITY DISTRICT

By: [Signature]

Date: 5/21/09

Title: General Manager
~~for office of General Counsel~~

HAYWARD UNIFIED SCHOOL DISTRICT

By: [Signature]

Date: 3/20/2009

Title: Director, Human Resources

COUNTY OF SACRAMENTO

By: [Signature]

Date: 5/12/09

Title: Administrator, Internal Services Agency

THE CITY UNIVERSITY OF NEW YORK

By: [Signature]

Date: 8/06/09

Title: Vice Chancellor

CALIFORNIA STATE PERSONNEL BOARD

By: [Signature]

Date: 4/18/09

CITY AND COUNTY OF SAN FRANCISCO

By: *Jim Yan*
Title: *Managing Deputy Director*

Date: *05-26-09*

CITY OF LAS VEGAS

By: *H. Claudette Emms*
Title: *HR DIRECTOR*

Date: *09-01-09*

This amended CPS Joint Exercise of Powers Agreement was approved by the parties whose signatures appear below, on the dates indicated.

CITY OF PLANO, TEXAS

By: Lashon Ross

Date: 3-9-12

Title: Deputy City Manager

COUNTY OF PINELLAS, FLORIDA

By: Reus & Lopez

Date: 02-29-12

Title: County Administrator

COUNTY OF MECKLENBURG, NORTH CAROLINA

By: C. J. Do

Date: 3/21/14

Title: Deputy County Manager/Chief of Staff

ATTACHMENT "1"
CURRENT ROSTER OF MEMBER AGENCIES
March 21, 2014
COOPERATIVE PERSONNEL SERVICES
JOINT EXERCISE OF POWERS AGREEMENT

City of Anaheim, CA
East Bay Municipal Utility District, CA
Hayward Unified School District, CA
County of Sacramento, CA
City of Las Vegas, NV
City of Plano, TX
County of Pinellas, FL
County of Mecklenburg, NC