

**MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
CH2M HILL, INC.
FOR
ENGINEERING SERVICES
FOR VARIOUS CITY TRAIL PROJECTS**

This AGREEMENT is made and entered into this ____ day of _____ 2008, by and between the City of San José, a municipal corporation (hereinafter "CITY"), and CH2M HILL, Inc., a Florida corporation (hereinafter "CONSULTANT"), authorized to conduct business in the State of California.

RECITALS

The purpose for which this AGREEMENT is made and all pertinent recitals are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

The CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from date of execution of this AGREEMENT and continue through January 31, 2014, inclusive, subject to the provisions of Section 12 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The CONSULTANT's services shall be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to the CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed TWO MILLION DOLLARS (\$2,000,000). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the services formed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures. Such statement shall be sent to the following address:

The City of San José, Department of Public Works
Attention: Public Works (*Project Manager*)
200 East Santa Clara Street, 6th Floor Tower
San José, CA 95113-1905

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that the CONSULTANT, in the performance of the work and services agreed to be performed by the CONSULTANT, shall act as and be an independent contractor and not an agent or employee of the CITY; and as an independent contractor, the CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to the CITY's employees, and the CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of the CONSULTANT are material considerations for this AGREEMENT. The CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of the CONSULTANT's obligations hereunder, without the prior written consent of the CITY. Any attempt by the CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. SUBCONSULTANTS.

- A. Notwithstanding Section 7 above, the CONSULTANT may use subconsultants in performing the services under this AGREEMENT upon prior written approval by the CITY's Director of Public Works ("Director") or the Director's authorized designee.
- B. The CONSULTANT shall be responsible for directing the services of the approved subconsultants and for payment of any compensation due. The CITY assumes no responsibility whatsoever concerning subconsultant compensation.
- C. The CONSULTANT shall change or add subconsultants only with the prior written approval of the CITY's Public Works Director or the Director's authorized designee.

SECTION 9 INDEMNIFICATION.

The CONSULTANT shall defend, indemnify and hold harmless the CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from services performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by the CONSULTANT's officers, employees or agents. The acceptance of said services and duties by the CITY shall not operate as a waiver of such right of indemnification.

SECTION 10. INSURANCE REQUIREMENTS.

The CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Human Resources or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The CONSULTANT agrees to provide the CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 11. NONDISCRIMINATION.

The CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 12. TERMINATION.

- A. The CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.
- B. If the CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, the CITY may terminate this AGREEMENT immediately upon written notice.
- C. The CITY's Director of Public Works is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. In the event of termination, the CONSULTANT shall deliver to the CITY copies of all reports, documents, and other work performed by the CONSULTANT under this AGREEMENT, and upon receipt thereof, The CITY shall pay the CONSULTANT for services performed and other reimbursable expenses incurred to the date of termination.

SECTION 13. GOVERNING LAW.

The CITY and the CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 14. COMPLIANCE WITH LAWS.

The CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for the CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the CITY or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

All reports, documents, electronic equivalents or other materials developed or discovered by the CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of the CITY without restriction or limitation upon their use.

SECTION 17. WAIVER.

The CONSULTANT agrees that waiver by the CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the CITY of the performance of any work or services by the CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. THE CONSULTANT'S BOOKS AND RECORDS.

- A. The CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to the CONSULTANT pursuant to this AGREEMENT.
- B. The CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to the CITY, at any time during regular business hours, upon written request by the City Attorney, the City Auditor, the City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the CITY for inspection at the City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of the CONSULTANT's business, the CITY may, by written request by any of the above-named officers, require that custody of the records be given to the CITY and that the records and documents be maintained in the City Hall. Access to such records and documents shall be granted to any party authorized by the CONSULTANT, the CONSULTANT's representatives, or the CONSULTANT's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

The CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

SECTION 20. GIFTS.

- A. The CONSULTANT is familiar with the CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. The CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by the CONSULTANT. In addition to any other remedies the CITY may have in law or equity, the CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

The CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of the CITY in matters that are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). The CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of the CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To The CITY:	City of San José - Department of Public Works City Facilities Architectural Services 200 East Santa Clara Street, 6 th Floor Tower San José, CA 95113 - 1905
To The CONSULTANT:	CH2M HILL, Inc. 1737 North First Street, Suite 300 San Jose, CA 95112 Attn: David Von Rueden, Senior Project Mgr.

All notices of a legal nature including any claims against the CITY, its officers, or employees shall also be served in the manner specified above to the following address:

The City of San José
Richard Doyle, City Attorney
200 E. Santa Clara St., 16th Floor Tower
San José, CA 95113-1905

A notice shall be deemed effective on the date of personal delivery by or, if mailed, three (3) days after deposit in the mail.

SECTION 25. **VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 26. **PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 27. **SEVERABILITY.**

If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

EXHIBIT A

RECITALS

WHEREAS, the CITY of SAN JOSÉ desires to obtain consultant services to provide Engineering consulting services for various CITY trail projects,

WHEREAS, CH2M HILL, Inc. has the necessary professional expertise and skill to perform the services required;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain CH2M HILL, Inc. as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

END OF EXHIBIT A

EXHIBIT B

SCOPE OF SERVICES

The CONSULTANT shall provide to the CITY comprehensive project design and management engineering services for VARIOUS CITY TRAIL PROJECTS.

Such services shall include, but are not limited to providing project management, preparing site inventory and site analysis, preparing feasibility study, preparing environmental analysis and documents, providing project coordination with regulatory agencies for processing plan review, providing the necessary reports and documents to obtain approval per agency requirements and permitting, providing community outreach, preparing program development and developing project phasing, preparing schematic design and design development plans, preparing cost estimates and schedules, preparing construction contract documents, and preparing bid/award support and construction administration support.

The CONSULTANT'S services shall be provided as requested by the DIRECTOR on an as needed basis, as set forth in a specific project service order. CONSULTANT shall provide general assistance on issues pertaining to City projects and shall prepare other construction scheduling consultant services for Public Works as determined by the DIRECTOR.

SECTION 1. GENERAL PROVISIONS

- A. The CONSULTANT shall perform all services to the satisfaction of the CITY'S DIRECTOR.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among Civil Engineering consultant professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the DIRECTOR or the DIRECTOR'S designee and the signature of the City Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.

- E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with the designated Project Manager on the performance of each Service Order.
- F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.

SECTION 2. BASIC SERVICES.

The CONSULTANT services shall be performed for the Various City Trail Projects for the CITY of San José. Services shall be performed or furnished to the satisfaction of the CITY and shall include, but not be limited to, the following:

- A. Provide or update topographical survey and utility maps, as directed by the CITY, that include recent revisions to the trail site and utilities, trees, existing structures, street right-of-way, easements, joint easements, and other pertinent data. CONSULTANT shall review and verify the existing conditions of the topographical survey.
- B. Provide project management controls to insure budget and schedule performance to the satisfaction of the CITY.
- C. Prepare a project Work Plan acceptable to the CITY that provides for continuing financial, cost, schedule and budget control, modifications and reporting for the project.
- D. Conduct project coordination meetings with project stakeholders to establish a strategic plan program for design development.
- E. Review existing data, Master Plan and environmental documents, conduct field investigations, assess compliance to current regulatory requirements, CITY policies and guidelines.
- F. Conduct studies, surveys and provide assessments including, but not limited to: topographical surveys, property boundary studies, infrastructure, utilities, preliminary land use, environmental studies, storm water management, geotechnical, hydrology, flood control and traffic studies.
- G. Prepare schematic and preliminary design alternatives and plan studies for a trail alignment, including but not limited to, the following: paved trail, access connection to existing trails, pedestrian/bike bridge over roadways or creeks, trail underpasses to existing bridges/roadways and/or rail roads, on-street trail alignments, retaining walls, signage, parking lot modifications, security lighting, landscape and irrigation, mitigation planting, fencing and public art support.
- H. Prepare preliminary design alternatives and preliminary probable cost estimates.
- I. Facilitate and/or perform community outreach when necessary and as directed by the CITY.
- J. Prepare conceptual plans including illustrative plans and graphic illustrations, sketches, and renderings, and prepare written reports.

- K. Prepare standards and guidelines for design and/or development of the site.
- L. Prepare design development plans, and construction contract documents that include plans, specifications and cost estimates.
- M. Coordinate with appropriate local, state, and federal agencies and private organizations, and various CITY departments for regulations, permit requirements, and design review approval.
- N. Attend cost estimating and Value engineering meetings.
- O. Conduct specialized inspection and testing, and provide related analysis reports.
- P. Prepare environmental clearance documents in compliance with CEQA and or NEPA and the CITY's requirements, such as initial studies and mitigation/monitoring plans and obtain required permits. Environmental clearance shall also include: geotechnical overview, traffic study, hydrology, archaeological resource inventory, tree survey and biological assessment.
- Q. Address pre-bid questions, clarifications and prepare addenda for construction contract documents.
- R. Respond to requests for clarification of documents and prepare change order documents during construction administration phase.

SECTION 3. SPECIFIC SERVICES.

A. Service Initiation

Prepare Service Order - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of service order (attached hereto as Exhibit "G"). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in both paper and electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

B. Service Implementation

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

Trail Master Agreement
 Engineering Services
 CH2M HILL, Inc.
 January 2009

Task 0.1 - Initial Meeting - Prior to beginning substantive work on a project, CONSULTANT shall meet with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project. The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

Task 0.2 - Project Coordination Meetings - CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

Task 0.3 - Project Schedule - CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project Manager for review and approval. CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY'S Project Manager.

Task 0.4 - Project Progress Report - CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

Task 0.5 - Request for Payment / Invoice - CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in EXHIBIT D. The updated Project schedule and progress report may be submitted as attachments to the invoice.

Task 0.6 - Project Record - CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Task 0.7 - Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

END OF EXHIBIT

EXHIBIT C

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before January 31, 2014. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT B of this AGREEMENT.

At the discretion of CITY, the term and of this AGREEMENT may be extended up to six months in order to complete specific project work that is authorized by Service Order prior to January 31, 2014. Extension of the term and of the AGREEMENT shall be accomplished only by written authorization of the Director of Public Works or the Director's designee, and only in the event that no other provision of this AGREEMENT is modified.

END OF EXHIBIT

EXHIBIT D

COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed TWO MILLION DOLLARS (\$2,000,000). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on an hourly basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on an hourly basis for the work performed.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

Section 3. Payment on an Hourly Basis.

Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional services and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or

categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.2 Hourly Rates: The CITY will compensate the CONSULTANT at the hourly rates in Exhibit D-1 of this Master Agreement. The CONSULTANT is entitled to increases in the hourly rates as follows:

3.2.1 Implementing Increase: A rate increase must be implemented by a written amendment to the Master Agreement. The Director of the Department of Public Works is authorized to execute such an amendment. The amendment must contain the revised hourly rates and the date upon which the new rates are effective ("Effective Date"). The Effective Date can not be earlier than the date upon which the Director executes the amendment. The new rates shall apply only to Service Orders executed after the Effective Date.

3.2.2 Written Request: To obtain an increase, the CONSULTANT must make a written request to the Project Manager. The Consultant must make the written request no sooner than thirty (30) calendar days before the desired Effective Date. The written request must include the proposed new rates and the basis for requesting the adjustment.

3.2.3 Frequency: The CONSULTANT is entitled to the first increase any time after December 31, 2009 ("Initial Increase"). The CONSULTANT is entitled to subsequent increases no more frequently than every twelve (12) months following the Effective Date of the immediately preceding increase ("Subsequent Increase").

3.2.4 Maximum Increase: No increase can exceed the lesser of the following: (1) the general rate of increase applied by the CONSULTANT to its other public sector clients, or, if it has no other public entity clients, its private sector clients, (2) the Consumer Price Index ("CPI") adjustment set forth below in Section 3.2.5, or (3) five percent (5%).

3.2.5 CPI Adjustment: The CPI adjustment shall be calculated as follows:

3.2.5.1 For purposes of this Section 3.2.5, "Index" means the United States Department of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose Area with a base year of 1982-1984=100.

3.2.5.2 For purposes of this Section 3.2.5, "Beginning Index" means the Index published immediately preceding: (1) the date upon which the Master Agreement is made and entered into for an Initial Increase and (2) the Effective Date of the then current rates for any Subsequent Increase.

3.2.5.3 For purposes of this Section 3.2.5, "Extension Index" means the Index published immediately preceding the date of the CONSULTANT's written request for a rate increase.

3.2.5.4 The hourly rates shall be increased by a fraction the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

For purposes of illustration only, assume that the current hourly rate for the principal consultant is \$125.00, the Beginning Index is 115 and the Extension Index is 120. The new hourly rate for the consultant would be calculated using the following formula: $\$125.00 (120/115)$.

3.2.6 Index Change: If the Index is changed, 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 Master 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.

3.3 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. Except as otherwise provided in the following paragraph, the CITY will reimburse expenses at actual cost plus fifteen percent (15%). Any expenses the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the subconsultant, provided the Director has preapproved, in writing, the use and cost of the subconsultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.4 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

EXHIBIT D-1

SCHEDULE OF CHARGES

*STANDARD HOURLY RATES**

Principle-in-Charge	\$260
Principle Professional	\$235
Senior Professional	\$190
Project Professional	\$140
Staff Professional	\$110
Sr. Technician	\$140
Technician	\$100
Office/Clerical	\$ 85

END OF EXHIBIT

EXHIBIT E

INSURANCE

The CONSULTANT, at the 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 the CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Commercial General Liability coverage ("occurrence") Form Number CG 0001 including products and completed operations; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025, if applicable. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions.

B. Minimum Limits of Insurance

The CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit 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 Aggregate Limit. The CONSULTANT shall cause its sub-consultant(s) to maintain Professional Liability/Errors and Omissions insurance.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to, and approved by the CITY's Risk Manager. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the CITY, its officers, employees, agents and contractors; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the 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 Coverage
 - a. Insured. The City of San José, its officers, employees, agents and contractors are to be covered as additional insured as respects: Liability arising out of activities performed by or on behalf of, the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, employees, agents and contractors.
 - b. Contribution Not Required. The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the CITY, its officers, employees, agents or contractors shall be in excess of the CONSULTANT's insurance and shall not contribute with it.
 - c. Provisions Regarding the Insured's Duties after Accident or Loss. Any failure to comply with reporting provisions of the policies by the CONSULTANT shall not affect coverage provided the CITY, its officers, employees, agents, or contractors.
 - d. Coverage. Coverage shall state that the 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.

2. All Coverage

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 the CITY's Risk Manager, ten (10) days' prior written notice for non-payment of premium.

E. Acceptability of Insurers

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

F. Verification of Coverage

The CONSULTANT shall furnish the CITY with certificates of insurance and with original 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 mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE-HUMAN RESOURCES
RISK MANAGEMENT
200 E. Santa Clara Street, 2nd Floor Wing
San Jose, CA 95113-1905

G. Subconsultants

The CONSULTANT shall include all subconsultants as insured under its policies or shall obtain separate certificates and endorsements for each sub-consultant.

END OF EXHIBIT

EXHIBIT F

SPECIAL PROVISIONS

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

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 provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the CITY, the CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether the CONSULTANT or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this AGREEMENT and Chapter 4.08 of the Municipal Code.

3. Failure to Comply with Nondiscrimination Provisions.

If the Compliance Officer determines that the CONSULTANT has not complied with the nondiscrimination or nonpreference provisions of this AGREEMENT, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject the CONSULTANT and/or subcontractor to debarment proceedings pursuant to provisions of the San José Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San José Municipal Code and is a misdemeanor.

4. Subconsultants Agreements.

The CONSULTANT shall include provisions 1 through 3, inclusive, in each Subconsultant agreement entered into in furtherance of this AGREEMENT so that such provisions are binding upon each of its Subconsultants.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this AGREEMENT may be waived by the Compliance Officer, if the Compliance Officer determines that the CONSULTANT has its own nondiscrimination requirements or is bound in the performance of this AGREEMENT by the nondiscrimination requirements of another

governmental agency, and the nondiscrimination provisions of the CONSULTANT or other governmental agency are substantially the same as those imposed by the CITY.

6. Prevailing Wages.

CONSULTANT acknowledges that portions of the services required by this AGREEMENT are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 *et. seq.*, for all labor performed to facilitate the professional services provided under this AGREEMENT, including, but not limited to, inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT under this AGREEMENT. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by the CITY's Office of Equality Assurance.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT's failure to pay, or cause to be paid, prevailing wages.

END OF EXHIBIT

EXHIBIT G

City of San José – Dept of Public Works
SERVICE ORDER # _____ - Consultant Services Master Agreement

CONSULTANT MASTER AGREEMENT

AC# _____

Approval: City Manager City Council Term: Start _____
 Date _____ Date _____ Item No. _____ End _____

Max. Master Agrmt. Comp. \$ _____ Previously Encumbered on AC: SO # _____ for \$ _____

Consultant: Firm Name: _____
 Address: _____
 Contact: _____ Phone: _____

PROJECT DESCRIPTION

Project Name: _____
 Description: _____
 Attachment A: Includes Description of Project, Scope of Services, Schedule of Performance and Compensation

CITY PROJECT MANAGEMENT

Managing Division: City Facilities Architectural Services Project Manager: _____
 > Division Manager: Katherine Jensen Date: _____

FISCAL/BUDGET

ENCUMBER: Fund: _____ Appn: _____ RC: _____ Current unencumbered amount in Master Agreement: \$ _____
 Consultant Comp. for S.O. # _____: \$ _____
 > Division Analyst: _____ New balance in Master Agreement: \$ _____
 Date: _____

APPROVALS

> Consultant: _____ Date: _____
 > Deputy City Attorney: _____ Date: _____
 > Director of Public Works: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

> Authorized Signature: _____ Date: _____

Progress Payments for Service Order # _____ with consultant

Payment # _____ Total: \$ _____
 Previous Payments: \$ _____ Current Payment: \$ _____ Bal. Remaining: \$ _____