

**MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE AND
KLEINFELDER WEST, INC.
FOR ENVIRONMENTAL SERVICES FOR VARIOUS CITY PROJECTS**

This AGREEMENT is made and entered into this ____ day of _____ 2011, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and KLEINFELDER WEST, INC., a California corporation (hereinafter "CONSULTANT").

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.

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 the date of execution through December 31, 2013, inclusive, subject to the provisions of Section 12 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to 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 CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). 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 performed 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
Environmental Services Department
Attention: (Project Manager)
200 East Santa Clara Street, 10th Floor Tower
San José, CA 95113-1905

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY. As an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and 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 CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of CITY. Any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder, shall be void and of no effect.

SECTION 8. SUBCONSULTANTS.

Notwithstanding Section 7 above, CONSULTANT may use the following subconsultants in performing the services under this AGREEMENT:

Hew Drilling Company

Torrent Laboratory, Inc.
Cruz Brothers Locators, Inc.
BKF Engineers

CONSULTANT shall be responsible for directing the services of the approved subconsultants and for payment of any compensation due. CITY assumes no responsibility whatsoever concerning subconsultant compensation.

CONSULTANT shall change or add subconsultants only with the prior written approval of CITY's Environmental Services Director or the Director's authorized designee.

SECTION 9. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY against all claims, losses or liability that arise out of, pertain to, or relate to the negligence (active or passive), recklessness or willful misconduct of CONSULTANT. 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.

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. 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.

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.

CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.

If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

CITY's Director of Environmental Services ("Director") is empowered to terminate this AGREEMENT on behalf of CITY.

In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and other reimbursable expenses incurred to the date of termination.

SECTION 13. GOVERNING LAW.

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

SECTION 14. COMPLIANCE WITH LAWS.

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 CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by 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, provided that, subject to the confidentiality provisions set forth in Section 15, (1) CONSULTANT may

retain a copy of such materials for archival purposes and (2) CITY agrees that CONSULTANT shall have no liability for reuse of the materials by third parties.

SECTION 17. WAIVER.

CONSULTANT agrees that waiver by 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 CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

CONSULTANT agrees that, in the performance of this AGREEMENT, CONSULTANT shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

1. 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.).
2. Use of Energy Star Compliance equipment.
3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.).
4. Internal waste reduction and reuse protocol(s).
5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 19. THE CONSULTANT'S BOOKS AND RECORDS.

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 CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.

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.

Any records or documents required to be maintained, pursuant to this AGREEMENT, shall be made available for inspection or audit at no cost to 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 CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 20. CONFLICT OF INTEREST.

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

RD:MD1:RPH
2/3/2011

To CONSULTANT: Kleinfelder West, Inc.
2011 N. Capitol Avenue
San José, CA 95132
Attn: Terence McManus

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 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 AGREEMENT, 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.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

MOLLIE DENT
Senior Deputy City Attorney

By _____
DEANNA SANTANA
Deputy City Manager
200 E. Santa Clara St., 17th Floor
San José, CA 95113-1905

“CONSULTANT”

KLEINFELDER WEST, INC., a California corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Company address: 2011 N. Capitol Ave.
San José, CA 95132

Employer I.D.: _____

EXHIBIT A

RECITALS

WHEREAS, the CITY of SAN JOSE desires to obtain consultant services to provide environmental consulting for City projects.

WHEREAS, KLEINFELDER WEST, INC. has the necessary professional expertise and skill to perform the services required.

NOW, THEREFORE, the purpose of this AGREEMENT is to retain KLEINFELDER WEST, INC. as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B

SCOPE OF SERVICES

CONSULTANT shall provide to the CITY's Department of Environmental Services, environmental consulting services for various CITY projects.

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 environmental consultant services for Environmental Services as determined by the Director.

SECTION 1. GENERAL PROVISIONS.

- A. CONSULTANT shall perform all services to the satisfaction of the CITY's Director.
- B. All of the services furnished by CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental 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 (see Exhibit G for form of Service Order). Each Service Order given by CITY shall detail the nature of the specific services to be performed by 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.

- A. CONSULTANT shall provide environmental consulting services for various CITY projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by CONSULTANT, including, but not limited to, the following:
 - 1. Input regarding environmental/land use compatibility issues during the initial evaluation of potential sites for the various CITY projects; and
 - 2. Preparation of the appropriate project-level analysis and documents for each improvement as necessary to comply with the CITY's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or the requirements of the National Environmental Policy Act and its implementing guidelines.
- B. In addition to any specific services (described below in Section 3) that CONSULTANT must provide as part of each authorized Service Order, CONSULTANT shall perform any other general environmental services specified in the authorized Service Order. The following shall apply to such general services:
 - 1. CONSULTANT shall be responsible for providing thorough environmental consulting services in compliance with all applicable federal, state, and local regulations. All environmental work shall be conducted in conformance with applicable California state law.
 - 2. CONSULTANT shall meet with the Project Manager at the CITY offices to discuss the project details. CONSULTANT shall be made aware of the project description, location, schedule of deliverables, and requirements.

- CONSULTANT and CITY shall agree on the terms of the Service Order, including the specific tasks to be performed, the schedule for deliverables, and compensation.
3. After approval of Service Order and upon receipt of an authorized Service Order, CONSULTANT shall visit project site to note existing conditions, collect data, locate utilities, and familiarize himself/herself with the surrounding area. CONSULTANT shall make note of any issues that may need to be addressed in fulfilling the service request.
 4. CONSULTANT shall cooperate and communicate with CITY staff, project design firms, utility and regulatory agencies, and others who are involved with the CITY project, on an as-needed basis, to perform a comprehensive service. CONSULTANT shall perform their work in their offices.
 5. CONSULTANT shall perform service in accordance with the specific requirements and tasks stated in the Service Order.
 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 each 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.
 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, electronic files of all drawings and specifications, reports and studies, calculations, utility applications and permits, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.

- B. Tasks: Listed below are the Tasks which may be included in the Service Order.

Task 1 – Phase I Environmental Site Assessment

CONSULTANT shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the Project site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current ASTM (American Society for Testing Materials) guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 2 – Phase II Environmental Site Assessments

CONSULTANT shall perform a Phase II Environmental Site Assessment on the Project site. CONSULTANT shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 3 – Leaking Underground Fuel Leak Investigations

CONSULTANT shall assist the CITY in performing leaking underground storage tank (LUST) investigations at Project Site. The work performed will typically consist of, but may not be limited to: soil and groundwater investigations and remediation, regulatory interaction, routine groundwater monitoring, well closures, tank removals and other associated work to maintain the Project site in compliance with local and state regulators.

When a written deliverable is part of the work, CONSULTANT shall submit one draft of the deliverable to the CITY and then a final deliverable (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY.

Task 4 – Health Risk Assessments

CONSULTANT shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment (“HRA”) will be prepared by a toxicologist. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA may involve the following steps:

- The selection of chemicals of concern/Hazard Identification
- Does Response assessment
- Exposure assessment
- Risk characterization

When a written deliverable is part of the work, CONSULTANT shall submit one draft of the deliverable to the CITY and then a final deliverable (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY.

Task 5 – Asbestos and Lead-Based Paint Surveys

CONSULTANT shall perform asbestos and lead-based paint surveys following the standard environmental practices and regulations of local, state and federal environmental regulatory agencies (e.g. NESHAPs). The interaction may consist of preparing letters, reports and work plans, phone calls and/or attending meetings.

When a written deliverable is part of the work, CONSULTANT shall submit one draft of the deliverable to the CITY and then a final deliverable (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY.

Task 6 – Remedial Design and Feasibility Studies for Contaminated Properties

CONSULTANT shall prepare remedial design and feasibility studies for contaminated properties. The Project site may contain soil, soil gas and/or groundwater contamination. The work shall be performed following standard environmental practices.

When a written deliverable is part of the work, CONSULTANT shall submit one draft of the deliverable to CITY and then a final deliverable (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY.

Task 7 – Air Quality Studies

CONSULTANT shall perform air quality studies at Project site following standard environmental practices and meeting the requirements of local, state and federal regulatory as directed by the CITY.

When a written deliverable is part of the work, CONSULTANT shall submit one draft of the deliverable to the CITY and then a final deliverable (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY.

Task 8 – Miscellaneous Environmental Consulting Support

CONSULTANT shall perform various environmental tasks on an as-needed basis as directed by the CITY. The work is expected to be routine environmental consulting tasks that may include, but not be limited to: reviewing other consultants' work, preparing engineering cost estimates, assisting CITY in characterization and off-site disposal of hazardous and non-hazardous soil and groundwater, locating underground structures and other general environmental tasks

EXHIBIT C

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before December 31, 2013. 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 of this AGREEMENT may be extended up to six (6) months in order to complete specific project work that is authorized by Service Order prior to December 1, 2013. Extension of the term of the AGREEMENT shall be accomplished only by written authorization by the Director of Environmental Services Department or the Director's designee, and only in the event that no other provision of this AGREEMENT is modified.

EXHIBIT D
COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

Maximum Amount: The maximum amount of compensation CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed TWO HUNDRED FIFTY THOUSAND Dollars (\$250,000.00). 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 CONSULTANT for work performed under such Service Order on a lump sum basis or on a "time and materials" basis. Section 2 of this Exhibit applies to each Service Order where CITY will pay CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where 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 CONSULTANT for performing the required work. The lump sum amount compensates 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 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 CITY for the appropriate progress payment. CITY will make the appropriate progress payment to 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 CITY to make progress payments, then 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, CONSULTANT shall invoice CITY for the lump-sum amount. CITY shall pay the lump-sum amount within thirty-(30) days of the Director's approval of CONSULTANT's invoice.

Section 3. Payment on an Hourly Basis.

- 3.1 **Maximum Compensation:** The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional services and reimbursable expenses. 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.
- 3.2 **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. 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.
- 3.3 **Hourly Rates:** CITY will compensate CONSULTANT at the hourly rates in Exhibit D.1 of this Master Agreement. Notwithstanding anything to the contrary, these hourly rates are valid for the term of this Master Agreement unless changed by written amendment.
- 3.4 **Reimbursable Expenses:** CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which CITY will reimburse CONSULTANT. CITY will reimburse expenses at actual cost plus fifteen (15%) percent. Any expense CONSULTANT incurs beyond the specified amount is at no cost to CITY.

The following expenses are reimbursable to the extent CONSULTANT documents to 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 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.
 - (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.
- 3.5 **Invoice:** Every month the CONSULTANT shall invoice CITY for work performed during the immediately previous month. The monthly invoice shall set forth 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 D1

**KLEINFELDER FEE SCHEDULE FOR CITY OF SAN JOSE ESD
ENVIRONMENTAL, CONSTRUCTION MANAGEMENT AND
GEOTECHNICAL/MATERIALS TESTING SERVICES**

PROFESSIONAL STAFF RATES*

Construction Inspector I	\$ 125 / hour
Construction Inspector II	\$ 140 / hour
Construction Inspector III	\$ 150 / hour
Professional	\$ 145 / hour
Assistant Project Manager	\$ 170 / hour
Construction Engineer	\$ 170 / hour
Staff Professional I	\$ 175 / hour
Staff Professional II / Project Manager I	\$ 185 / hour
Construction Manager	\$ 185 / hour
Senior Construction Manager	\$ 195 / hour
Project Professional / Project Manager II	\$ 200 / hour
Senior Professional / Senior Project Manager	\$ 225 / hour
Project Manager III.....	\$ 255 / hour
Principal / Principal Professional	\$ 255 / hour
Program/Client Manager	\$ 255 / hour
Senior Principal / Senior Principal Professional	\$ 270 / hour
Senior Program / Senior Client Manager	\$ 285 / hour
VP, Project Management	\$ 295 / hour
Expert Witness.....	\$ 340 / hour

ADMINISTRATIVE/TECHNICAL STAFF RATES

Administrative I	\$ 105 / hour
Project Administrator	\$ 115 / hour
Technician I	\$ 105 / hour
Technician II	\$ 115 / hour
Technician III	\$ 125 / hour
Technician IV	\$ 130 / hour
Senior Technician	\$ 140 / hour
Supervisory Technician	\$ 150 / hour
Draftsperson	\$ 115 / hour
CADD Operator.....	\$ 140 / hour
Designer	\$ 150 / hour

Minimum Charges for Office Time Per Day One Hour at
Applicable Rate

* Applies to all professional rates including but not limited to civil, mechanical, chemical, electrical, geotechnical and environmental engineers; industrial hygienists; geologists; hydrogeologists; hydrologists; and computer specialists.

CRUZ BROTHERS LOCATORS, INC.

*PO Box 66768, Scotts Valley, CA 95067
877-728-2789, 831-461-1470 Fax*

SERVICES & PRICE SCHEDULE

UTILITY SURVEY: **\$145.00 Per Hr**
Includes: Electrical Lines
 Communication Cables
 Drain Lines
 Gas Pipes
 Water Pipes
 Sewer Pipes
 Underground Storage Tanks
 Free scope of areas for steel or hot electrical obstructions

AUTOCAD: Computer Generated Maps **At Cost**

GPR: Ground Penetrating Radar **\$175.00 Per Hr**
Includes, survey of area, utilities and anomalies located and marked. Report per clients criteria.
*Purchasing Upgrade Equipment.

UTILITY EXPOSURE/POTHOLING: (Very popular) **Per Agreed \$\$**

DETAILED REPORTS/MAPS ARE AVAILABLE UPON REQUEST FOR ALL SERVICES PROVIDED. COST DETERMINED BY PROJECT. CALL FOR FURTHER INFORMATION.

ALL SERVICES HAVE A ONE HR MINIMUM & ARE CHARGED FROM PORT-TO-PORT.



PROFESSIONAL PERSONNEL SERVICE FEES

PERSONNEL

HOURLY RATES

ENGINEERING

Associate	\$167.00
Project Manager	\$158.00 - \$163.00
Engineer IV	\$146.00
Engineer I, II, III	\$104.00 - \$119.00 - \$136.00

PLANNING

Planner I, II, III	\$104.00 - \$119.00 - \$135.00
--------------------	--------------------------------

SURVEYING

Associate	\$167.00
Project Manager	\$158.00-\$163.00
Surveyor I, II, III, IV	\$104.00 - \$119.00 - \$ 136.00 - \$146.00
Survey Party Chief	\$131.00
Survey Chainman	\$103.00
Apprentice I, II, III, IV	\$54.00 - \$75.00 - \$85.00 - \$96.00
Instrumentman	\$115.00

DESIGN AND DRAFTING

Technician I, II, III	\$99.00 - \$107.00 - \$116.00
Drafter I, II, III, IV	\$77.00 - \$85.00 - \$94.00 - \$103.00
Student Engineer/Surveyor	\$55.00

CONSTRUCTION ADMINISTRATION

Senior Construction Administrator	\$155.00
Resident Engineer	\$113.00
Field Engineer I, II, III	\$104.00 - \$119.00 - \$136.00

SERVICES AND EXPENSES

Project Assistant	\$67.00
Clerical/Administrative Assistant	\$57.00

Principals' time on projects is chargeable at \$193.00- \$215.00 per hour.

HEW DRILLING COMPANY, INC.
ESTABLISHED 1972
Soil • Geological Exploration • Contamination Investigations • Monitor Wells

Street Address:	Mailing Address:
1045 Woods Street	P.O. Box 51182
El Palo Alto, CA 94303	Palo Alto, CA 94303
State License 604997	
(650) 322-2851 FAX (650) 322-0339	

All rigs come equipped with at least three types of samplers. Other sampler types are available and will be supplied upon request. Drill bit heads are combination rock finger cutting teeth and fishtail types on augers. Typical helical flight augers range in size from 3½ to 12¼ inches in diameter.

Also available are hollow stem augers in the following diameters:

3¼ inch I.D.	6¼ inch I.D.
3¾ inch I.D.	8¼ inch I.D.
4¼ inch I.D.	12¼ inch I.D.

Most drill rigs have mud pumps to grout bore holes. Each drill rig comes with a two-man crew with the exception of the CME 95 (details below).

AVAILABLE SAMPLERS:

Standard penetration	2" O.D.
California sampler	2½" O.D.
Modified California	3" O.D.
D&M Underwater	3¼" O.D.
Corps of Engineers Shelby tube	3", 5" & 6"
Piston tube sampler	2½" O.D.
CME continuous core sampling system	3" O.D.

All samplers are split barrel types except for the piston sampler.

RATES: Minimum drill time is four (4) hours, exclusive of travel time.

CME 45B, 1979 Ford F600	\$ 210/hour
CME 55 and CME 75, with helical flight augers or 3¼" and 3¾" hollow stem augers	\$ 222/hour
CME 95, with 4¼" I.D.	\$ 294/hour
CME 95-6¼", 8¼", and 12¼" I.D. (3 to 4 Man Crew)	\$ 330/hour

HEW DRILLING COMPANY, INC.

D25, trailer mounted rig (low overhead rig)	\$	210/hour
Drill Rig utilizing 6¼" and 8¼" hollow stems	\$	228/hour
Continuous sampling system, with 5 foot cores (with CME 55 or CME 75)	\$	234/hour
Core Drilling, NV2 Barrel, 2.98", 2" Core	\$3.30	inch and \$258/hour
Job Preparation (load, unload supplies, etc.): daily charge	\$	125/hour

Travel rates will be the same as drill rates, portal to portal. On projects exceeding eight hours in one day, a rate of 1.5 times the standard hourly rate will be charged for all over time hours.

OTHER COSTS:

Delivery Charges-if client requests additional supplies to job site	\$	85/hour
Overnight per diem/ per man	\$	150/day
Standby Delays	\$	120/hour
Additional manpower/per man	\$	55/hour
Office/Field Consultation	\$	125/hour
Service/ Support Vehicle with water	\$ 85/day + \$1.25/mile*	
Steam Cleaner	\$	130/day
Self-powered Centrifugal Pump	\$	55/day
Power Generator	\$	50/day
Torch Set or Portable Welding Machine	\$	85/day/ea.
Electric Jack Hammer	\$	85/day
Drum Dolly	\$	15/day
Safety Gear, Level D / per 2 man crew	\$	60/day
Safety Gear, Level C / per 2 man crew	\$	110/day
Hydropunch	\$	250/day
Points	\$	48/each
Screens	\$	32/each
Concrete Cores-8", 10", 14" Barrels	cost dependent on depth-call for cost information.	

We are a complete service company for geotechnical and environmental concerns. We maintain a large stock of monitor well construction materials. Please call for prices.

*Fuel surcharge will be applied.

EXHIBIT E
INSURANCE

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

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General 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.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or 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. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, the 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, agents and contractors.
- b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
- d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.

2. Workers' Compensation and Employer's Liability

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

3. 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 CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment 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 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 either emailed in pdf format to Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the Risk Manager:

City of San José-Human Resources
Risk Management
200 E. Santa Clara Street, 2nd Floor Wing
San José, CA 95113-1905

G. Subconsultants

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

EXHIBIT F
SPECIAL PROVISIONS

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

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, 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 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 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.

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.

7. Retroactive Services.

It is understood and agreed that CONSULTANT has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by CONSULTANT prior to the date of this AGREEMENT, CITY agrees to compensate CONSULTANT for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONSULTANT be compensated for work performed for CITY prior to October 4, 2010.

EXHIBIT G
EXEMPLAR SERVICE ORDER FORM

City of San José – Environmental Services Department
SERVICE ORDER – Environmental Consultant Services Master Agreement

Initiation Date: _____

I. CONSULTANT MASTER AGREEMENT

Service Order No.: _____

Max. Master Agrmt. Compensation: \$ _____ Previously Encumbered, SOs # _____

Consultant: Firm Name: _____

Address: _____

Contact: _____ Phone: _____

II. PROJECT DESCRIPTION

Project Name: _____

Description: _____

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

III. CITY PROJECT MANAGEMENT

Managing Division: _____

Project Manager: _____

Contract Manager: _____

Date: _____

IV. FISCAL/BUDGET

Current amount in Master Agreement: \$ _____

Consultant Comp. for S.O. #__ : \$ _____

New balance in Master Agreement: \$ _____

V. APPROVALS

> Consultant: _____ Date: _____

> Deputy City Attorney: _____ Date: _____

> Director of ESD: _____ Date: _____

VI. PROGRESS PAYMENTS FOR THIS SERVICE ORDER

Payment # _____

Total: \$ _____ Previous Payments: \$ _____

Current Payment: \$ _____

Bal. Remaining: \$ _____