

**MASTER AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE**

**AND
DENISE DUFFY & ASSOCIATES, 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 DENISE DUFFY & ASSOCIATES, INC., a California corporation (hereinafter "CONSULTANT").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, is 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 to December 31, 2014, inclusive, subject to the provisions of SECTION 12 of this AGREEMENT. The Director of Public Works or the Director's designee ("Director") has the authority to

extend the term of this AGREEMENT in writing, for a period of up to six months, so long as no other provision of the AGREEMENT is modified.

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 payment for both professional services and reimbursable expenses, shall not exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000). 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 work 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, Department of Public Works
Attention: T&HS Division - *Project Manager*
200 E. Santa Clara St., 6th Floor Tower
San José, CA 95113

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; and 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, and 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.

- 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.
- 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 Director.

SECTION 9. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by 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 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.

- A. 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 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.
- C. CITY's Director is empowered to terminate this AGREEMENT on behalf of CITY.
- D. 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 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.

- A. All reports, documents, electronic equivalents, or other materials developed or discovered by 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.
- B. Notwithstanding the foregoing, the following shall apply to all plans, drawings, specifications, and related reports and documents, and electronic equivalents (collectively "PLANS") developed pursuant to this AGREEMENT:
1. The CITY shall have the right to reproduce and use the PLANS for purposes of the project that is the subject of this AGREEMENT, including, but not limited to, any use associated with construction, reconstruction, modification, management, maintenance, and renovation of the project.
 2. The CITY shall have the right to reproduce, use and modify the PLANS, or portions thereof, in the design and construction of any other future City project. The City acknowledges that Consultant does not warrant the suitability of the PLANS for reuse other than, as needed for the project that is the subject of this AGREEMENT.
 3. The right of the CITY to modify and reuse the PLANS pursuant to this Subsection 16.B. is subject to the provisions of either California Business or Professions Code Sections 5536.25, 6735, 6735.3 or 6735.4, whichever is applicable.

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. CONSULTANT'S BOOKS AND RECORDS.

A. 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.

B. 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 CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, 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.

D. 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 19. CONFLICT OF INTEREST.

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

SECTION 20. GIFTS.

A. CONSULTANT is familiar with 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 Jose Municipal Code.

B. 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 CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of 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. 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:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; tricolsan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 23. 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 24. NOTICES.

All notices and other communications required or permitted to be given 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 CITY: Department of Public Works
Transportation and Hydraulic Services Division
200 East Santa Clara Street, 6th Floor Tower
San Jose, CA 95113-1905
Attention: *Public Works, Project Manager*

To CONSULTANT: Denise Duffy & Associates, Inc.
947 Cass St., Suite 5
Monterey, CA 93940

Attention: Corporate officer, or designee

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 Jose
Office of the Clerk
200 East Santa Clara Street, 2nd Floor Wing
San Jose, CA 95113-1905

Notice shall be deemed effective on the date personally delivered 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 Jose, 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

GLENN SCHWARZBACH
Senior Deputy City Attorney

By _____
DENNIS D. HAWKINS, CMC
City Clerk
200 E. Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

“CONSULTANT”
DENISE DUFFY & ASSOCIATES, INC., a
California corporation

By *Denise Duffy*
Denise Duffy, President

Denise Duffy & Associates, Inc.
947 Cass St., Suite 5
Monterey, CA 93940

EXHIBIT A

RECITALS

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to provide environmental consulting services for various CITY projects as outlined in **Exhibit B**;
and

WHEREAS, DENISE DUFFY & ASSOCIATES, INC. has the necessary professional expertise and skills to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain DENISE DUFFY & ASSOCIATES, 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's Department of Public Works environmental consulting services for various CITY projects.

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 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 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. 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 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 the CONSULTANT, including, but not limited to, the following:
- I. Input regarding environmental/land use compatibility issues during the initial evaluation of potential sites for the various CITY projects; and
 - II. 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.
 - III. Perform environmental engineering review in compliance with CEQA/NEPA requirements, and provide permitting assistance and coordination with various regulatory agencies including, but not limited to, the Santa Clara Valley Water District, San Francisco Regional Water Quality Control Board, California Department of Fish & Games, US Fish & Wildlife Service, US Environmental Protection Agency, and US Corps of Engineers. Prepare special studies and provide post-project monitoring and reporting services.
 - IV. Conduct public outreach efforts including public notification, community meeting facilitation, and responding to public comments.

B. 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.

C. 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:

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.

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.

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.

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

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.

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.

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.

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 – CEQA Documentation and Clearance

CONSULTANT shall prepare an Initial Study (“IS”) and Mitigated Negative Declaration (“MND”) for the Project to the satisfaction of the Director of Public Works and the Director of Planning, Building and Code Enforcement. For purposes of this task, the CITY is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the CONSULTANT to conclude that some other level of environmental review is needed, then CONSULTANT shall stop all work under this Service Order and consult with the CITY on how to proceed.

CONSULTANT shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration (“ADIS/MND”) for the Project, in accordance with California Environmental Quality Act (CEQA) and CITY requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The CONSULTANT will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description/Purpose & Need; 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

CONSULTANT will prepare the ADIS/MND in accordance with CEQA and the CITY template and requirements.

CITY shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project so such property owners.

CONSULTANT shall revise the ADIS/MND based on comments received from the CITY and prepare the Initial Study/Mitigated Negative Declaration (“IS/MND”). Upon approval of the document by the CITY, CONSULTANT shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the CITY for local agency distribution. CITY will provide the Notice of Completion to accompany the copies. CONSULTANT shall submit one PDF copy of the IS and each technical report formatted to the CITY's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, CONSULTANT shall prepare written responses to any comments received on the IS/MND, in coordination with the CITY.

After the 30 day review period and as directed by the CITY, CONSULTANT shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the City. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 – NEPA Documentation and Clearance

CONSULTANT shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. CONSULTANT shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need
- Section 106 and 4f Evaluation for Cultural Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11990 and 11988
- Environmental Justice Evaluation per Executive Order 12898
- NEPA noticing, e.g. Notice of Intent (same as Notice of Preparation for an Environmental Impact Report)
- Natural Environment Studies as required for biology for FHWA/Caltrans

projects

Task 3 – Archaeological Survey

CONSULTANT shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) – short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the CONSULTANT to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

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 4 – Indoor Air Quality Evaluation

CONSULTANT shall prepare an Indoor Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). CONSULTANT shall perform the health risk evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The CONSULTANT shall identify mitigations as necessary.

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 5 – Traffic Study/Impact Report

CONSULTANT shall prepare a traffic study/impact report for the Project. CONSULTANT shall conduct a transportation impact analysis (TIA) as required by the CITY to evaluate traffic and/or parking impacts of the Project. CONSULTANT will evaluate the traffic impacts of the Project following the guidelines of the CITY as specified in the CITY's most current version of the *Interim Guidelines for Traffic Impact Analysis of Land Developments*. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the CONSULTANT shall prepare a Congestion Management Program (CMP) analysis in accordance with CITY guidelines.

CONSULTANT shall submit two draft copies 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 6 – Noise Report

CONSULTANT shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and CITY noise standards.

CONSULTANT shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the CITY and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the CITY's or those applicable noise standards of another regulatory agency, whichever is lower, CONSULTANT shall develop noise mitigation measures to achieve compliance with the standards. CONSULTANT shall prepare and submit a report of the Noise Studies to the CITY.

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 7 – Biological Assessment Report

CONSULTANT shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the CITY. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Board, U.S. Army Corps of Engineers, and California Department of Fish & Game. The report will address the potentially significant impacts of the Project on biological resources.

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 8 – Wetlands Delineation

CONSULTANT shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the CITY.

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 9 – Health Risk Assessment

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. CONSULTANT shall prepare the HRA in accordance with the most current Cal/EPA

Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning Building, and Code Enforcement, Environmental Services Division. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

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 10 – 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 site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current American Society for Testing Materials (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 11 – Phase II Environmental Site Assessment

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 12 – Habitat Mitigation and Monitoring Plan (HMMP) Report

CONSULTANT shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the CEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the CITY. The CONSULTANT shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the CITY. The CONSULTANT shall attend a total of two (2) meetings with the CITY in this task to review

changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the CITY and in coordination with the CITY Planning, Building, and Code Enforcement Department.

The CONSULTANT shall review the content of the Mitigation and Monitoring Plan with the CITY and identify features that are expected to be required by the CITY and regulatory agencies (e.g. riparian vegetation for CDFG 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

CONSULTANT shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the CITY, and shall include tables, plans, graphics and other pertinent related information. The CONSULTANT shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the CITY for review comments and approval.

CONSULTANT shall revise the draft goals and draft Plan outline as per CITY and other regulatory agencies review and comments. Based on the draft Plan outline and project goals, the CONSULTANT shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the CITY for review, comments and approval. CONSULTANT shall submit four (4) copies to the CITY. All plans and graphics shall be clear and concise. Base source maps shall be based on sources approved by the CITY. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

CONSULTANT shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The CONSULTANT shall submit the preliminary plant list to the CITY for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The CONSULTANT shall prepare and submit to the CITY a pre-final "screen-check" of the Final Habitat Mitigation and Monitoring Plan based on comments from the CITY. The CONSULTANT shall submit two (2) copies to the CITY for review and approval. Upon review and approval by the CITY, the CONSULTANT shall prepare and submit to the CITY the Final Habitat Mitigation and Monitoring Plan. The CONSULTANT shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the CITY) copy, and one electronic copy to the CITY. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design

between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 – Pre-Construction Burrowing Owl Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for Burrowing Owls in accordance with the most current California Department of Fish and Game (CDFG) survey protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY. The CONSULTANT shall submit the results of the pre-construction survey to the CDFG for review and approval prior to site construction.

If, as a result of the survey, the CONSULTANT finds one or more active nests within the project area, the CONSULTANT shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 feet buffer around each active nest with plastic fencing (“Buffer Area”). Prior to commencement of construction activities, the CONSULTANT shall have a qualified wildlife biologist inform the CITY’s contractor and the contractor’s workers of the presence of Burrowing Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until he/she so directs.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the CONSULTANT shall consult with CDFG on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFG and the CITY.

Task 14 – Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFG

protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the CITY a suitable buffer area between the nest site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 15 – Pre-Construction Bats Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for roosting bats in accordance with the most recent California Department of Fish and Games (CDFG) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the CONSULTANT shall consult with CDFG regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the CITY. Such measures may include maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the CONSULTANT finds roosting bats within structures or trees that will be physically disturbed by the Project, the CONSULTANT shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFG protocols. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFG and the CITY.

Task 16 – Pre-Construction California Tiger Salamander (CTS) Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for California tiger salamanders in accordance with the most recent CDFG protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the

CONSULTANT shall consult with CDFG and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds California tiger salamanders on the Project site, the CONSULTANT shall have a qualified wildlife biologist implement any measures that have been approved by the CDFG and USFWS for that particular Project, such as relocation of individuals. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFG, USFWS, and the CITY.

Task 17 – Pre-Construction Nesting Pond Turtle Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct a pre-construction survey for nesting pond turtles in accordance with the most recent CDFG protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the CONSULTANT identifies a suitable nesting habitat, the CONSULTANT will direct the CITY on where and how to install an exclusionary fence so as to exclude turtles from entering the construction work area. The CITY will be responsible for installing the fence prior to pond-turtle breeding season. The CITY will be responsible for removing the fencing when directed by the biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 18 – Pre-Construction Nesting Woodrat Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for nesting woodrats in accordance with the most recent CDFG protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the CONSULTANT shall consult with CDFG regarding the best method for relocation of the nest(s) and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds one or more nests within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the nests in accordance with CDFG protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFG and the CITY.

Task 19 – Pre-Construction Red-legged Frog Survey

CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the CONSULTANT shall conduct pre-construction surveys for red-legged frogs in accordance with the most recent CDFG protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If CONSULTANT observes any red-legged frogs, the CONSULTANT shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the CITY. If, as a result of the survey, the CONSULTANT finds red-legged frogs within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFG protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFG and the CITY.

Task 20 – Habitat Mitigation Planting Monitoring

The CITY and regulatory agencies with jurisdiction over the Habitat Mitigation Planting Site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Habitat Mitigation Planting Site. The CITY has performed mitigation planting in conformance with the Habitat Mitigation and Monitoring Plan. CONSULTANT shall perform the following habitat mitigation planting monitoring services.

Once a quarter, the CONSULTANT shall conduct a Habitat Mitigation Planting Site visit to inspect plant performance and site maintenance for the mitigation plantings per the Habitat Mitigation and Monitoring Plan, regulatory permitting agency and CITY requirements. The inspections shall be performed by a qualified biologist. The CONSULTANT shall perform each inspection approximately three (3) months after the previous inspection. The inspections will identify any remedial actions relating to plant maintenance, including the need for plant replacement. Within 48 hours of having completed the inspection, the CONSULTANT shall document the results of the inspections in a memo to the CITY. The memo will describe the results of the inspection and identify any remedial measures that are required for compliance with the Habitat Mitigation and Monitoring Plan.

In addition to the quarterly inspections, the CONSULTANT shall conduct one visit of the Habitat Mitigation Planting Site during the first year of monitoring as described in the Habitat Mitigation and Monitoring Plan. The inspections shall be performed by a qualified biologist. During the visit, CONSULTANT shall

evaluate the maintenance practices within the Mitigation Planting Site and identify any remedial actions necessary to maintain the Site. CONSULTANT shall collect data for each plant species on plant survival, height, plant health, and plant vigor. CONSULTANT will record any natural recruitment of native and non-native woody species and take photos to document the progress of the revegetation.

CONSULTANT shall prepare an annual report describing the monitoring results and data analysis ("Monitoring Report"). CONSULTANT shall submit three copies of the draft Monitoring Report to the CITY for review and comment. CONSULTANT shall incorporate the CITY's comments into the draft Monitoring Report and provide the CITY with five hard copies and one electronic copy of the final Monitoring Report. The final Monitoring Report prepared by the CONSULTANT shall be suitable for CITY submittal to regulatory agencies.

Task 21 – Growing Native Plants

The CITY and regulatory agencies with jurisdiction over the Habitat Mitigation Planting Site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Habitat Mitigation Planting Site. As long as the lump sum for the nursery services in this task does not exceed \$5,000, CONSULTANT shall perform the following native plant growing services.

The CONSULTANT shall work with a nursery that specializes in growing native plant material in order to identify the needed plant materials in a quantity and at a price to be approved by the CITY. The selection of a native plant nursery is subject to approval by the CITY. The CONSULTANT shall collect plant propagation materials, based on the existing preliminary plant list, at site specific sites that are selected in conjunction with, and approved by, the CITY and deliver them to the nursery.

The CONSULTANT shall provide plants for installation by City's contractor and shall have them delivered to the Project site as directed by the CITY. The CONSULTANT shall coordinate with the nursery and the CITY on the appropriate delivery date. The CONSULTANT shall be responsible to pay the holding fee to the nursery to reserve the plant material and the CITY will reimburse the CONSULTANT. The CONSULTANT shall be responsible for paying the final fees to the nursery upon delivery of the plants to the work site and the CITY will reimburse the CONSULTANT.

The CONSULTANT shall conduct one (1) site visit to the plant nursery to review the health of the plant materials and to assure that the appropriate amount of plants are being grown and that they are on schedule for delivery. The nursery inspection shall be at an unspecified time, during normal nursery operating hours, at approximately midway through the growing period. If the plant material is not in a condition that is acceptable, the CONSULTANT shall notify the CITY and

discuss any recommended remedial actions, such as plant species substitution. All plant material related remedial actions are subject to approval by the CITY.

Task 22 – Archaeological Field Monitoring

The CITY shall provide the CONSULTANT with the grading and excavation plans for the Project. CONSULTANT shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the CITY will issue a separate service order for additional archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the CITY. One copy shall be provided to Director of Planning, Building and Code Enforcement.

Task 23 – Evaluation of Potential Mitigation Areas

The CITY and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. CONSULTANT shall perform the following services with regard to evaluating potential mitigation sites.

CONSULTANT shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project. CONSULTANT shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the mitigation site, and as directed by the CITY. One field meeting with CITY staff shall be included in this task in order to review the potential mitigation site.

CONSULTANT shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 24 – Location Hydraulic Study

CONSULTANT shall prepare a Location Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the CITY. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

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

Task 25 – Tree Survey

CONSULTANT shall prepare a tree survey for the Project as directed by the CITY. The tree survey will consist of the CONSULTANT visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with CITY's Arborist and CITY's tree survey form, which will be provided by the CITY.

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

Task 26 – Green House Gas Emission

CONSULTANT shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator. The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

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

Task 27 – CEQA Plus

City of San José Public Works projects applying for Clean Water State Revolving Funds (SRF) from the State Water Resources Control Board (SWRCB) would be subject to federal environmental statutes and regulations, since this program includes funding from the U.S. Environmental Protection Agency (EPA). The EPA has chosen to use the California Environmental Quality Act (CEQA) as the compliance base for California's SRF Loan Program, in addition to compliance with the federal Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), and the General Conformity Rule for the Clean Air Act (CAA), among other federal statutes and regulations. Collectively, the SWRCB calls these requirements CEQA-Plus.

As outlined in the SWRCB guidelines for SRF projects, it is recommended that the federal agencies be notified as early as possible in the CEQA-Plus documentation process to avoid any funding delays. CONSULTANT will facilitate coordination between the technical subconsultants, the CITY, SWRCB and the federal agencies to identify any documentation requirements and project-specific issues to be addressed during development of the CEQA-Plus

documentation. Coordination will take place in the form of phone calls, e-mail correspondence, and meetings as necessary. As the technical studies are completed and reviewed by CONSULTANT, CONSULTANT will submit the reports to the SWRCB for review and to initiate consultation with the appropriate federal agencies.

END OF EXHIBIT B

EXHIBIT C

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before December 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/or schedule of performance 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 December 31, 2014. Extension of the term and/or schedule of performance 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 C

EXHIBIT D

COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

1.1 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 FIVE HUNDRED THOUSAND Dollars (\$500,000). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

1.2 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. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payment: 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 will make the appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the 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 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. 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.

3.3 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:

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

3.4.2 The following expenses are reimbursable to the extent 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 CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the subconsultant, provided the DIRECTOR has pre-approved, 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 pre-approved, in writing, the cost of such rental, and (f) mileage at current mileage rate established by the Internal Revenue Service for tax purposes and (g) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the DIRECTOR has pre-approved, in writing, such expense.

3.5 Invoice: Every month CONSULTANT shall invoice 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.

END OF EXHIBIT D

EXHIBIT D-1

SCHEDULE OF RATES

HOURLY PERSONNEL RATES

Principal	\$205.00
Technical Director	\$190.00
Senior Engineering Environmental Specialist	\$180.00
Senior Environmental/Regulatory Planner	\$170.00
Senior Field Biologist/Botanist	\$140.00
Senior Environmental Specialist	\$135.00
Senior Project Manager	\$135.00
Project Manager	\$125.00
Senior Planner	\$110.00
Assistant Project Manager	\$105.00
Environmental Biologist	\$100.00
Associate Planner/Scientist	\$ 92.00
Researcher	\$ 85.00
Database/Designer/Graphics	\$ 85.00
Assistant Planner/Scientist	\$ 82.00
GIS/Computer Specialist	\$ 75.00
Administrative Manager	\$ 75.00
Field Technician	\$ 60.00
Administrative Assistant	\$ 55.00

END OF EXHIBIT D-1

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; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also include 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.

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

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

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, 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 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. Duration

1. Commercial General Liability, Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of work under this AGREEMENT.
2. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date work commenced under this AGREEMENT.
 - b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, CONSULTANT must purchase an extended reporting period equal to or greater than five (5) years after completion of work under this AGREEMENT.

G. 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 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 JOSE-HUMAN RESOURCES
RISK MANAGEMENT
200 E. Santa Clara Street, 3rd Floor Wing
San Jose, CA 95113-1905

H. 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 E

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 F

**ATTACHMENT A
TO
SERVICE ORDER #**

CONSULTANT: Name of Consultant
AC#: AC No. from cover page
Project Name: Project name from cover page

ITEM A PROJECT COORDINATION

For CONSULTANT: Contact person: Name of person Phone No.: Contact phone number	For CITY: The Department of Public Works (DPW), Transportation and Hydraulic Services Division Contact person: Name of person Phone No.: Contact phone number
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ITEM B SCOPE OF SERVICES AND RESPONSIBILITIES

B-1 SERVICES INCORPORATED FROM AGREEMENT:

Section 3 of Exhibit B of the AGREEMENT sets forth a menu of Tasks, including a description of Task services and deliverables. The Tasks specified below are specified as stated in Section 3 of Exhibit B of the AGREEMENT, and will be performed under this SO.

By including any Task below, the CITY incorporates into this SO by reference that Task, including the description of Task services and deliverables, from Section 3 of Exhibit B of the AGREEMENT. For each Task included below, the CONSULTANT shall perform and complete the services, and provide the deliverables, as set forth in the AGREEMENT, subject to any modifications identified below.

Task No.	Task Heading	Task Modifications (if any)
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Attachment A to Service Order No.

Consultant:

AC#:

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B-2 OTHER SERVICES

There are no other services.

OR

In addition to the Tasks set forth in Section B-1 of this SO, CONSULTANT shall perform the following services:

[Project Manager to specify any other services and deliverables.]

B-3 DELIVERABLES

The CONSULTANT shall deliver to the CITY the following documents: (1) for those Tasks listed in Section B-1 above, those documents identified in the Task description contained in Section 3B of EXHIBIT B of the AGREEMENT, entitled "SCOPE OF SERVICES," (2) any other documents identified Section B-1, and any documents identified in Section B-2 above.

B-4 CITY: RESPONSIBILITIES

Attachment A to Service Order No.

Consultant:

AC#:

The CITY shall review the deliverables and provide review comments for CONSULTANT's use for the Project.

ITEM C SCHEDULE OF PERFORMANCE

CONSULTANT shall perform services and deliver documents in accordance with the schedule below:

Task No.		Time For Completion

ITEM D COMPENSATION

The CITY will pay the CONSULTANT a lump sum as follows:

The CONSULTANT agrees to provide and complete all services and documents required by this SO for the lump sum amount of \$ (‘‘Lump Sum’’). The CITY will pay the CONSULTANT the Lump Sum in accordance with the provisions of Section 2 of Exhibit D of the AGREEMENT, entitled ‘‘Lump Sum Payment,’’ and in accordance with the budget for each Task as specified below in the Schedule of Compensation. CONSULTANT’s invoices for progress payments for each Task shall be based on the percentage completion of each Task per the Schedule of Compensation.

SCHEDULE OF COMPENSATION

Task No.	Compensation
	\$
	\$
Maximum Compensation	\$

OR

The CITY will pay the CONSULTANT on an hourly basis as follows:

The CONSULTANT agrees to provide and complete all services and documents required by this SO for no more than the maximum amount of \$ (‘‘Maximum Amount’’). Any

Attachment A to Service Order No.

Consultant:

AC#:

hours worked for which payment would result in a total exceeding the Maximum Amount shall be at no cost to the CITY. The CONSULTANT shall invoice the CITY as set forth in Section 3 of Exhibit D of the AGREEMENT, entitled "Payment on an Hourly Basis." The CITY will pay the CONSULTANT in accordance with the per Task budget as set forth below in the Schedule of Compensation.

SCHEDULE OF COMPENSATION

Task No.	Compensation
	\$
	\$
Reimbursable Expenses	
Maximum Compensation	\$

HOURLY RATES: The CITY will compensate the CONSULTANT at the hourly rates set forth in Exhibit D-1 of the AGREEMENT, entitled "CONSULTANT Hourly Rates."

REIMBURSABLE EXPENSES: The maximum amount of reimbursable expenses for this SO is \$, which amount is included in the Maximum Amount. The CITY will reimburse the CONSULTANT for only those expenses set forth in Section 3 of Exhibit B of the AGREEMENT and at the rate set forth therein.