

**MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE AND
ERM - WEST, INC.
FOR ENVIRONMENTAL HEALTH AND SAFETY CONSULTING SERVICES**

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 ERM - 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 June 30, 2014, 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 subconsultants in performing the services under this AGREEMENT, only with the prior written approval of CITY's Environmental Services Director or the Director's authorized designee.

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.

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.

SECTION 21. GIFTS.

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 José Municipal Code.

CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by the CONSULTANT. In addition to any other remedies CITY may have in law or equity, the CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

SECTION 22. DISQUALIFICATION OF FORMER EMPLOYEES.

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

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8/5/2011

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 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: City of San José
Environmental Services Department
200 East Santa Clara Street, 10th Floor
San José, CA 95113 – 1905
Attn: Environmental Compliance Program Manager

To CONSULTANT: ERM - WEST, Inc.
1277 Treat Boulevard, Suite 500
Walnut Creek, CA 94597
Attn:

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.

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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 _____
DENNIS HAWKINS,
City Clerk

“CONSULTANT”

ERM - WEST, INC., a California corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Company address:
1277 Treat Boulevard, Suite 500
Walnut Creek, CA 94597

Employer I.D.: _____

RD:MD1
8/5/2011

EXHIBIT A

RECITALS

WHEREAS, the CITY of SAN JOSE desires to obtain consultant services to provide environmental health and safety consulting services to City.

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

NOW, THEREFORE, the purpose of this AGREEMENT is to retain ERM - 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 environmental health and safety consulting services for various CITY projects to the CITY's Department of Environmental Services.

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.

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. 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 health and safety services specified in the authorized service order. The following shall apply to such general services:
1. CONSULTANT shall be responsible for providing thorough environmental health and safety consulting services in compliance with all applicable federal, state, and local regulations. All environmental health and safety work shall be conducted in conformance with applicable California state law.
 2. CONSULTANT shall meet with the Project Manager at CITY offices to discuss the project details, if required. 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, and familiarize himself with the project implementation 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 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 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.

Listed below are examples of the Tasks which may be included in the Service Orders.

Task 1: Interpret and determine compliance of operations, projects, and/or facility conditions to Federal, State and local laws, codes, regulations and other standards and develop corrective action plans or recommendations.

CONSULTANT shall evaluate existing and pending regulations applicable to groups or divisions within ESD for compliance to Federal, State, and local laws, codes, and regulations (e.g.: Title 22 CCR, 40 CFR part 112, 40 CFR part 261, California Health and Safety Code, Title 8 CCR, etc.), standards (NFPA, ATSM, ANSI, etc.) and provide a summary report identifying next steps and Best Management Practices that ESD can take to achieve and/or maintain compliance.

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

Task 2: Develop and expand internal inspection checklists

CONSULTANT shall evaluate the use of internal inspection checklists and provide recommendations for increased use and effectiveness of checklists and provide assistance in determining appropriate fixes for issues found during internally-led environmental and safety inspections.

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

Task 3: Conduct internal EH&S audits

CONSULTANT shall assist City in conducting internal EH&S compliance audits which may be limited to specific topics and/or locations within the WPC and/or other ESD locations. The audits will identify potential exposures, hazardous conditions, or unsafe work environments that could result in possible exposure issues or violations. The audit report will identify areas for improvement and develop clear action plans that guide the CITY through the improvement process.

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 CITY.

Task 4: Conduct hazardous waste determinations for new or existing chemicals

CONSULTANT shall provide assistance conducting hazardous waste determinations for new or existing chemicals, as well as assistance in determining regulatory requirements such as record keeping and reporting, storage, PPE, training, etc. for chemicals used onsite at WPC and/or other ESD locations.

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 CITY.

Task 5: Develop emergency preparedness programs

CONSULTANT shall provide assistance in the development of emergency preparedness programs at WPC and/or other ESD locations. CONSULTANT will develop emergency escape procedures following an emergency, procedures to account for employees after an evacuation, procedures to shut down critical equipment, procedures for emergency reporting, and procedures for post incident damage. 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 CITY.

Task 6: Develop and Conduct EH&S Training

CONSULTANT shall provide training in a variety of EH&S areas, including, but not limited to: lockout/tagout, confined space entry, hazard communication, site specific health and safety plans, and personal protective equipment (PPE), fall protection, and machine guarding. Training will be provided in a classroom setting on predetermined dates agreed to by CITY and CONSULTANT.

CONSULTANT shall provide a copy of each training's curriculum and any handouts to CITY for approval prior to each training.

Task 7: Air Compliance Program Support

CONSULTANT shall provide assistance to the WPCP in developing and implementing Title V and Greenhouse Gas Compliance programs on an as-needed basis as directed by CITY.

Task 8: Miscellaneous Environmental Health & Safety Compliance Support

CONSULTANT shall perform various environmental tasks on an as-needed basis as directed by CITY. The work is expected to consist of environmental health and safety consulting tasks that may include, but not be limited to: performing design safety review of other consultants' plans and specifications at WPCP, preparing engineering cost estimates, analysis of permitting requirements for new projects, providing onsite technical support during agency inspections, and assisting CITY in characterization and off-site disposal of hazardous and non-hazardous soil and groundwater.

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EXHIBIT C

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before June 30, 2014. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be performed 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 issued prior to June 30, 2014. 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 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 D.1

SCHEDULE OF CHARGES

Labor Category	Hourly Rate
Principal Engineer, Geologist, & Scientist	\$220
Program Director	\$209
Senior Engineer, Geologist, & Scientist III	\$198
Senior Engineer, Geologist, & Scientist II	\$187
Senior Engineer, Geologist, & Scientist I	\$165
Project Engineer, Geologist & Scientist III	\$143
Project Engineer, Geologist & Scientist II	\$132
Project Engineer, Geologist & Scientist I	\$126
Staff Engineer, Geologist & Scientist III	\$110
Staff Engineer, Geologist & Scientist II	\$101
Staff Engineer, Geologist & Scientist I	\$92
Senior Technician	\$90
Technician	\$80
Project Coordinator	\$80
Technical Directors/Technical Specialists will be charged as required for the project.	\$240 – \$300

Payment for personnel not itemized above shall be made only as approved in writing in advance by CITY Director or Director's designee.

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 a 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.

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: _____

> Director of ESD: _____ Date: _____

VI. PROGRESS PAYMENTS FOR THIS SERVICE ORDER

Payment # _____

Total: \$ _____ Previous Payments: \$ _____

Current Payment: \$ _____

Bal. Remaining: \$ _____