

**SECOND AMENDMENT TO
AGREEMENT FOR AUDIT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
MACIAS GINI & O'CONNELL LLP**

This SECOND AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2012, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and MACIAS GINI & O'CONNELL LLP, a California limited liability partnership ("AUDITOR").

RECITALS

WHEREAS, on June 9, 2010, CITY and AUDITOR entered into an agreement entitled "AGREEMENT FOR AUDIT SERVICES BETWEEN THE CITY OF SAN JOSE AND MACIAS GINI & O'CONNELL LLP" ("AGREEMENT"), which was subsequently amended on March 15, 2011; and

WHEREAS, on March 8, 2011, CITY entered into a Joint Powers Agreement ("JPA") with the San Jose Redevelopment Agency for the San Jose Diridon Development Authority. Pursuant to Section 5.3 of the JPA, CITY's Director of Finance was designated as the Authority's auditor. Pursuant to Section 6.1 of the JPA, the Authority's auditor shall, "within one hundred twenty (120) days after the close of each fiscal year, cause an independent audit of all financial activities for such fiscal year to be prepared in accordance with Government Code Section 6505"; and

WHEREAS, CITY and CONSULTANT desire to further amend the AGREEMENT to include the audit of the San Jose Diridon Development Authority's financial activities for

Fiscal Year 2011-2012, with no increase to the total amount of compensation allowed under the AGREEMENT;

NOW, THEREFORE, the parties agree to amend the amended AGREEMENT as follows:

SECTION 1. SECTION 1, "SCOPE OF SERVICES" is amended to read as follows:

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

SECTION 2. SECTION 3, "SCHEDULE OF PERFORMANCE" is amended to read as follows:

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

SECTION 2. SECTION 4, "COMPENSATION" is amended to read as follows:

"The maximum amount of compensation payable under this AGREEMENT for the Initial Term and, if exercised, both option periods, shall not exceed Two Million Seven Hundred Twenty-Five Thousand Five Hundred Eleven Dollars (\$2,725,511.00). The rate and schedule of payment is set out in SECOND REVISED EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein."

SECTION 2. EXHIBIT B, "SCOPE OF SERVICE" is amended to read as shown in REVISED EXHIBIT B, attached and incorporated into this First Amendment.

SECTION 3. EXHIBIT C, "SCHEDULE OF PERFORMANCE" is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

SECTION 4. EXHIBIT D, "COMPENSATION" is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this First Amendment.

SECTION 5. All of the terms and conditions of the amended AGREEMENT not modified by this Second Amendment shall remain in full force and effect.

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

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

PATRICIA DEIGNAN
Chief Deputy General Counsel

By _____

"AUDITOR"

MACIAS GINI & O'CONNELL LLP, a California limited liability partnership

By _____

Name:
Title:

SECOND REVISED EXHIBIT B

SCOPE OF SERVICE

A. Overview of Services.

1. AUDITOR shall perform the services ("Audit Services"), as described in this REVISED EXHIBIT B, to the satisfaction of the CITY's Auditor.
2. AUDITOR shall provide all services in accordance with all applicable federal, state and local codes, rules, regulations and generally accepted auditing and accounting professional standards for certified public accountants. All of the services to be furnished by AUDITOR under this AGREEMENT shall be of the highest professional standard and quality which prevail among certified public accountants of superior knowledge and skill engaged in related work throughout California under the same or similar circumstances.
3. Subject to the provisions of SECTION 2 of this AGREEMENT, AUDITOR shall perform the Audit Services for the fiscal years ending June 30, 2010, 2011 and 2012, and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending June 30, 2013 and 2014. The Audit Services, as more particularly described below, include the audit of the CITY's Basic Financial Statements; compliance audit procedures as required by the Single Audit Act; the audit of the financial statements of the Norman Y. Mineta San José International Airport; the San José-Santa Clara Clean Water Financing Authority compliance audit; the audit of the financial statements of the Dolce Hayes Mansion and Agreed-Upon Procedures Report; the audit of CITY's expenditures of Bicycle/Pedestrian Facilities Grant funds per State law requirements; and the Gann Agreed Upon Procedures Report; the audit of the financial statements of the San José Convention Center and Cultural Facilities as prepared by Team San José, Inc. ("TSJ").
4. The audit of the financial statements of the Park Bond Projects Capital Project Fund and Branch Libraries Bond Projects Capital Project Fund ("Parks and Libraries Bond Funds") for the fiscal years ending June 30, 2010, 2011 and 2012, and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending June 30, 2013 and 2014; the audit of the financial statements of the Library Parcel Tax Special Revenue Fund ("Library Parcel Tax Fund") for the fiscal years ending June 30, 2010, 2011 and 2012, and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending June 30, 2013 and 2014; and perform semi-annual agreed upon

procedures on the CITY's Investment Program for fiscal years ending June 30, 2010, 2011 and 2012, and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending June 30, 2013 and 2014.

5. An audit of the CITY's 911, Fire, Police, Paramedic and Neighborhood Security Act (Public Safety Bonds Fund) for fiscal years ending June 30, 2010, 2011 and 2012, and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending June 30, 2013 and 2014.
6. An examination of the Norman Y. Mineta San José International Airport's compliance with the California Civil Code Section 1936, as amended by SB1192, Paragraph B of the Customer Facility Charges for the period from the inception of collection of CFC through June 30, 2011, the fiscal year ending June 30, 2012, and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending June 30, 2013 and 2014.

B. Audit Services.

1. General CITY Audit: Basic Financial Statements

AUDITOR shall conduct an audit of the Basic Financial Statements (financial statements of the governmental activities, business-type activities, each major fund and the aggregate remaining fund information) of the CITY for the fiscal year July 1 to June 30 to the extent required for the AUDITOR to issue an Opinion on the fair presentation, in accordance with generally accepted accounting principles (GAAP), of such Basic Financial Statements (BFS), prepared by CITY, pertaining to the opinion units established by CITY, and maintained by CITY's Director of Finance during said fiscal year. This Opinion shall include organizations other than the CITY which are required to be included in the CITY's annual financial statements by the Governmental Accounting Standards Board (GASB) Statement 14, "The Financial Reporting Entity" and as amended in Statement 39 "Determining Whether Certain Organizations Are Component Units", as well as comply with subsequently issued amendments. The Opinion will be used both for inclusion in the City's Comprehensive Annual Financial Report (CAFR) that encompasses all funds and the BFS report which is distributed to users requiring less detailed information about the City's finances than the information which is contained in the CAFR.

Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as the

management's discussion and analysis (MDA), Budget Comparison Schedule – General Fund and other Major Special Revenue Funds, and the Schedules of Funding Progress, to accompany the CITY's BFS. As part of the engagement, AUDITOR shall apply certain limited procedures consisting principally of inquiries of management regarding the methods of measurement and presentation, which the CITY shall affirm to the AUDITORS in the CITY's management letter.

Supplementary information other than the RSI shall accompany the CITY's BFS. AUDITOR shall subject the following supplementary information the auditing procedures applied in the audit of the BFS and shall provide an opinion on it in relation to the BFS: (1) Schedule of Expenditures of Federal Awards and (2) Combining and individual fund financial statements and schedules.

2. Single Audit

- a. AUDITOR shall conduct, for the fiscal years from July 1 to June 30, compliance audit procedures as required by the Single Audit Act of 1984 (P.L. 98-502), as amended, and the Office of Management and Budget (OMB) Circular A-133, or subsequent circular. AUDITOR shall prepare written reports on such audit (hereinafter Reports).
- b. AUDITOR shall conduct the compliance audit procedures in accordance with governmental auditing standards adopted by the Government Accountability Office in Standards for Audit of Governmental Organization, Programs, Activities and Functions and in accordance with the guidelines detailed in the American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of State and Local Governmental Units (Revised).
- c. AUDITOR shall evaluate the adequacy of the system of internal accounting and administrative controls as they relate to the Federal Major Programs and design compliance tests, where appropriate, to determine that the controls are in operation. As a result of the single audit procedures, the AUDITOR shall issue reports which include the following:
 - i. A report on internal controls related to the financial statements and compliance with the provisions of applicable laws, regulations, contracts and grants, noncompliance with which could have material effect on the financial statements in accordance with *Government Auditing Standards*.

- ii. A report on internal controls related to the major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- iii. A report on a schedule of the Expenditures of Federal Awards, showing total expenditures for each federal program and State Grant, if any such grants are received by CITY.

3. Norman Y. Mineta San José International Airport Audit

AUDITOR shall conduct an audit of the financial statements of the CITY pertaining to the Norman Y. Mineta San José International Airport for the fiscal years from July 1 to June 30, as required by the Master Trust Agreement as approved by Resolution No. 70532 of the CITY, and as subsequently amended and supplemented, authorizing the issuance by CITY of City of San José Airport Revenue Bonds, which amended and restated Resolution No. 57794 and the supplemental resolutions thereto.

4. San José -Santa Clara Clean Water Financing Authority Related Funds Compliance Audit

AUDITOR shall conduct an audit of the CITY's funds for the City of San José Sewer System and the San José -Santa Clara Water Pollution Control Plant Funds for the fiscal years from July 1 to June 30, as required in Section 5.2(b) of the Improvement Agreement entered into by the San José-Santa Clara Clean Water Financing Authority.

5. Audit of Dolce Hayes Mansion Financial Statements

AUDITOR shall conduct an audit of the Dolce Hayes Mansion Financial Statements for the fiscal years from July 1 to June 30 ("Dolce Audit"). In connection with the Dolce Audit, the AUDITOR shall prepare a written audit report ("Audit Report") in accordance with applicable professional auditing standards and reproduce the Dolce Hayes Mansion Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Dolce Hayes Mansion Financial Statements audited together with the final, typed financial statements and related notes. AUDITOR shall, with respect to the audit and Audit Report, comply with the applicable provisions of this EXHIBIT. The AUDITOR shall also perform agreed-upon procedures related to compliance by the operator of the Dolce Hayes Mansion with the management agreement between the operator and the City. AUDITOR shall evaluate the

adequacy of the system of internal control at the Dolce Hayes Mansion and design compliance tests, where appropriate, to determine that the controls are in operation. This evaluation will be performed to the extent required by generally accepted auditing standards, and will be for the purpose of determining the nature, timing, and extent of the selected firm's substantive audit procedures. The resulting recommendations and any other audit findings or comments shall be included in a separate letter ("Management Letter") addressed to the City Council and to be issued as specified in REVISED EXHIBIT C.

6. Bicycle/Pedestrian Facilities Grant

AUDITOR shall conduct an audit of the financial statements of CITY with regard to grant funds received by the CITY from the Metropolitan Transportation Commission ("MTC") related to pedestrian bicycle projects in conformance with the requirements of California Public Utilities Code including, but not limited to, Sections 99245, 99245.2, 99233.3, Title 21, California Code of Regulations Sections 6664, 6664.1, 6666, and MTC allocation instructions and as such provisions and instructions may be amended. The audit shall include a review of compliance with prescribed operating procedures as promulgated by the MTC, the State of California Department of Transportation, and the State of California Controller's Office. AUDITOR shall issue its audit report in conformance with the requirements set forth above.

7. Audit of the Financial Statements prepared by TSJ for the San José Convention Center and the Cultural Facilities ("Facilities").

1. AUDITOR shall conduct an audit of the Facilities Financial Statements maintained by TSJ for the fiscal years from July 1 to June 30 ("TSJ Audit"), as required in Section 31.7 of the Agreement for the Management of the San José Convention Center and Cultural Facilities between CITY and TSJ.

2. Written Reports.

In connection with the audit mentioned above, the AUDITOR shall prepare a written audit report (hereinafter "Audit Report"), which shall include a statement of net assets; statement of revenues, expenses and changes in net assets and a statement of cash flows, prepare in accordance with generally accepted accounting principles and applicable professional auditing standards. The Audit Report shall consist of the AUDITOR's written opinion on the Financial Statements audited together with the final, typed financial statements and related notes. Resulting recommendations and any other audit findings or comments shall be included in a separate

letter ("Management Letter") addressed to the City Council and to be issued as soon as possible after conclusion of the audit, but no later than March 15th of each year. AUDITOR agrees that such Audit Report and the Management Letter shall be submitted to CITY in draft form for its review and input at least thirty (30) days prior to issuing the final Audit Report and Management Letter.

8. Parks and Libraries Bond Funds (FY 2009 – 10 through FY 2011 – 2012).

a. Audit of the Financial Statements. AUDITOR shall conduct an audit of the Parks and Libraries Bond Funds Financial Statements for the fiscal years from July 1 to June 30 ("Parks and Libraries"). In connection with the Parks and Libraries, the AUDITOR shall prepare a written audit report ("Audit Report") in accordance with applicable professional auditing standards and reproduce the Parks and Libraries Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Parks and Libraries Financial Statements audited together with the final, typed financial statements and related notes. AUDITOR shall, with respect to the audit and Audit Report, comply with the applicable provisions of this EXHIBIT.

b. Compliance Audits. The AUDITOR shall also perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine certain provisions of the City's Measure O and P as follows:

1. Measure O: Bond proceeds are used for expanding and improving aging branch libraries to reduce noise, add parking, and add space for more books and computers; and building new libraries in neighborhoods throughout the City. Bond proceeds are not used for library administrators' salaries. Annual audits are performed and a citizen's oversight committee is established.
2. Measure P: Bond proceeds are used for installing lighting, reconstructing deteriorating playgrounds and restrooms; preserving open space; constructing trails; constructing new recreational sports facilities; improving Community and Senior Centers; and constructing improvements to regional parks, like Happy Hollow. Bond proceeds are not used for park administrators' salaries. Annual audits are performed and a citizen's oversight committee is established.

The AUDITOR's examination will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and will include tests of the CITY's records and other

procedures necessary to express an opinion on whether the CITY complied with Measures O and P in all material respects.

9. Library Parcel Tax Fund (FY 2009 – 10 through FY 2011 – 2012)

a. Audit of Financial Statements. AUDITOR shall conduct an audit of the Library Parcel Tax Fund Financial Statements for the fiscal years from July 1 to June 30 (“Parcel Tax”). In connection with the Parcel Tax, the AUDITOR shall prepare a written audit report (“Audit Report”) in accordance with applicable professional auditing standards and reproduce the Parcel Tax Financial Statements and related notes. The Audit Report shall consist of the AUDITOR’s written opinion on the Parcel Tax Financial Statements audited together with the final, typed financial statements and related notes. AUDITOR shall, with respect to the audit and Audit Report, comply with the applicable provisions of this EXHIBIT.

b. Compliance Audit. The AUDITOR shall also perform tests of the CITY’s compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine certain provisions of the CITY’s Measure S as follows:

1. Parcel tax is used for buying books and materials; preventing severe reduction in hours; and preventing deep cuts in children’s reading programs.
2. The CITY’s annual parcel tax will be adjusted for inflation capped at 3% annually and will be limited to ten years.
3. Independent audits will be performed.
4. A citizen’s oversight committee is established.

The AUDITOR’s examination will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and will include tests of the CITY’s records and other procedures in order to express an opinion on whether the CITY complied with Measure S in all material respects.

10. CITY’s Investment Program Compliance Audit (FY 2009 – 10 through 2011 – 12).

AUDITOR shall assist CITY in determining whether the CITY’s investments within the CITY’s pooled portfolio are in compliance with the CITY’s Investment Policy, internal controls, and department procedure. The CITY’s Investment Policy refers to California Government Code

Sections 53600 et. seq. as standards to which the City has determined it should conform, although not legally required to.

On a semi-annual basis, AUDITOR shall apply the agreed-upon procedures CITY's Finance Department and the CITY's Auditor has specified below.

1. Obtain a copy of the Treasurer's Report as of June 30 and/ or December 31 ("Treasurer's Report"), agree individual investments and deposits to supporting documentation (which may include items such as custodian statements, bank statements, and broker confirmations obtained from CITY), and reconcile such to the Treasurer's Report.
2. Trace total investments listed on the Treasurer's Report to CITY's general ledger.
3. Compare the investments listed in the Treasurer's Report to the types of investments authorized for the CITY by the CITY's Investment Policy.
4. Compare the value of the investments listed in the Treasurer's Report to supporting documentation such as custodian statements, bank statements, and broker confirmations.
5. Read the Treasurer's Report to determine whether it contains the information/data and meets the timing requirements of the Policy, as well as Government Code Sections 53464 as described in Section 15.0 and 15.1 of the CITY's Investment Policy.
6. Compare the investments listed in the Treasurer's report to the prohibited investments listed in Government Code Section 53601.6.
7. Calculate the totals (cost basis) for the investment types listed in the Treasurer's Report and compare those totals to the limitations imposed by CITY's Investment Policy and Government Code Section 53601 for specified investment types.
8. Agree individual investment maturity dates listed in the Treasurer's Report to CITY's copies of investment statements to determine if they conform to the maturity requirements of CITY's Investment Policy and Government Code Section 53601.
9. Obtain and read the third party custodial agreements and broker/dealer agreements in effect at the date of the Treasurer's Report to determine if the agreements contained a clause

addressing delivery of securities and that the delivery method conformed to the Policy and Code Section 53601.

10. Recompute and review supporting documentation relevant to the repurchase agreements and if applicable reverse repurchase agreements held by CITY as of June 30 or December 31, to ascertain if these investments conform to the requirements of the Policy and to the following provisions of Code Section 53601(i) and 53635(i):
 - a. The delivery of the securities and the underlying collateral was in accordance with Section 53601.
 - b. The market value of the securities underlying the repurchase agreement was 102 percent or greater than the value of the funds borrowed.
 - c. If applicable, CITY owned and fully paid for the underlying securities to be sold for reverse repurchase agreements for a minimum of 30 days prior to sale.
 - d. If applicable, the maximum amount of funds used in the reverse repurchase agreement did not exceed 20 percent of the base value of the portfolio of CITY.
 - e. The maximum term of reverse repurchase agreements did not exceed 92 days (unless a written agreement was in place guaranteeing the minimum earnings spread for the entire period between the sale and the maturity of the security).
11. Determine through inquiry and observation whether the responsibilities for initiating, evaluating and approving transactions are separate from detail accounting and general ledger functions.
12. Determine through inquiry and observation whether custodial responsibility for investments is restricted to authorized personnel and separate from personnel with accounting duties.
13. Determine through inquiry and observation whether responsibilities for detail accounting records are separate from general ledger functions.
14. Determine through inquiry and document inspection whether CITY maintains authorized lists of signatures security dealers and counter parties and those lists are updated periodically.
15. Determine through inquiry and document inspection whether CITY periodically counts and/or confirms its investments.

16. Determine through inquiry and document inspection whether reconciliations between physical counts and/or investment confirmations and detailed subsidiary records are prepared and reviewed by appropriate persons.
 17. Determine through inquiry and document inspection whether investment income is periodically reviewed for accuracy by appropriate persons.
 18. Determine through inquiry and document inspection whether reconciliations between detailed subsidiary records and general ledger control accounts are prepared and reviewed by appropriate persons.
 19. Determine through inquiry and document inspection whether an appropriate person assesses the classification and valuation of its investments at acquisition and at the end of the quarter.
11. CITY's 911, Fire, Police, Paramedic and Neighborhood Security Act (Public Safety Bonds) Audit (FY 2009 -10 through 2011 – 12).
- a. Audit of the Financial Statements. AUDITOR shall conduct an audit of the Public Safety Bond Funds Financial Statements for the fiscal years from July 1 to June 30 ("Public Safety"). In connection with the Public Safety Bond Fund, the AUDITOR shall prepare a written audit report ("Audit Report") in accordance with applicable professional auditing standards and reproduce the Public Safety Bond Fund Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Public Safety Bond Fund Financial Statements audited together with the final, typed financial statements and related notes. AUDITOR shall, with respect to the audit and Audit Report, comply with the applicable provisions of this EXHIBIT.
 - b. Compliance Audit. The AUDITOR shall also perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine certain provisions of the Bond measure as follows:

Bond proceeds can be used for the construction of fire and police stations, training facilities and 911 communications facilities and the cost of land acquisition for these improvements. Bond proceeds will be deposited in a special account. A citizen's oversight committee is established and will review annual reports of the expenditure of the bond proceeds.

The AUDITOR's examination will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and will include tests of the CITY's records and other procedures necessary to express an opinion on whether the CITY complied with the Public Safety Bond measure in all material respects.

12. Norman Y. Mineta San José International Airport Audit – Customer Facility Charges (FY 2009 – 2010 through FY 2011 – 2012)

AUDITOR shall conduct an audit of the Customer Facility Charges (“CFC”) in compliance with the California Civil Code Section 1936, as amended by SB 1192, Paragraph B (“Civil Code”).

a. CONRAC Facility Project Expenditures. AUDITOR shall examine the CITY's compliance with the Civil Code for the period from the inception of the Airport's construction of the Consolidated Rental Car (“CONRAC”) Facility funded with its CFC through June 30, 2010.

b. CFC Program Expenditures. AUDITOR shall examine the CITY's compliance with the Civil Code for the period from the inception of the collection of the CFC through June 30, 2011.

c. CFC Projected Revenues and Costs. AUDITOR shall examine the Projected Revenues and Costs associated with the CONRAC Facility financed with CFC in accordance with the Civil Code Prepared by the Airport during the year ending June 30, 2011.

13. San Jose Diridon Development Authority Audit – Financial Statements (FY 2011-2012)

AUDITOR shall conduct an audit of the financial statements in compliance with the California Government Code Section 6505.

AUDITOR shall also examine the Required Supplementary Information (RSI), such as the Authority management's discussion and analysis (“MD&A”), in accordance with auditing standards generally accepted in the United States. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge AUDITOR obtains during its audit of the basic financial statements.

C. **Audit Work Plan.**

Each year during the term of this AGREEMENT, AUDITOR shall prepare and submit an audit work plan for the CITY personnel to whom the Audit Reports (as

defined in Paragraph D below) and Opinions are to be delivered (see Paragraph I of this EXHIBIT) scheduling the required work for the efficient and prompt completion of the Audits, Reports and Opinions described herein. This audit work plan will be published by the AUDITOR and delivered to CITY personnel listed in Paragraph I and to the coordinators designated in EXHIBIT F of this AGREEMENT not later than due date specified in REVISED EXHIBIT C. The work plan is to contain discussion on the following items: (1) the organizational structure of the City, Finance Department, and the audit firm; (2) an overview on the basis of accounting utilized, any significant accounting areas, data processing, and the budgetary process; (3) financial and operating information as considered necessary; (4) any areas of potential concern to AUDITOR; (5) description of CITY assistance required, including a listing of reports and workpapers and when those would be required; (6) engagement staffing; (7) other issues AUDITOR believes should be included; and (8) methods of communication will be used to keep CITY personnel informed during audit fieldwork. Each audit work plan also includes the communications required under *Government Auditing Standards* and includes an affirmation that the CITY's Auditor is responsible for the basic financial statements and all accompanying information as well as compliance with all laws and regulations, contracts and grant agreements along with all representations contained therein. The annual work plan is subject to the review and approval of CITY's Auditor.

D. **Audit Reports.**

In connection with each of the financial audits described in Paragraph B, above, the AUDITOR shall prepare a written audit report (hereinafter Report) in accordance with Generally Accepted Auditing Standards as promulgated by the AICPA and the applicable audit standards contained in Government Auditing Standards, 2007 revision, issued by the Comptroller General of the United States, as well as comply with subsequent issued revisions, with the objectives of expressing an opinion on the financial statements, as a whole.

E. **Management Letter—City Audit.**

AUDITOR shall evaluate the adequacy of the system of internal control and design compliance tests, where appropriate, to determine that the controls are in operation. This evaluation will be performed to the extent required by generally accepted auditing standards, and will be for the purpose of determining the nature, timing, and extent of the AUDITOR's substantive audit procedures. The resulting recommendations and any other audit findings or comments shall be included in a separate letter (Management Letter) addressed to the City Council to be issued as soon as possible after conclusion of the audits, but not later than the date specified in REVISED EXHIBIT C.

F. **AUDITOR's Review.**

The AUDITOR shall review sections of the CITY's Comprehensive Annual Financial Report (CAFR) - transmittal letter, combining schedules, and statistical section - all of which will be prepared by CITY personnel. The review of the transmittal letter and the statistical section will be designed to enable the AUDITOR to comply with the requirements of Statement on Auditing Standards No. 8, "Other Information in Documents Containing Audited Financial Statements." The review of the combining schedules will be designed to enable the AUDITOR to report on such supplementary data as being fairly stated in all material respects in relation to the Basic Financial Statements taken as a whole.

G. Gann Agreed Upon Procedures Report.

AUDITOR shall perform certain agreed upon procedures relating to the CITY's calculation of its appropriation limit in accordance with Article XIII B of the California Constitution. AUDITOR will provide a report addressed to CITY documenting the results of the agreed upon procedures.

H. Use of Work Product.

AUDITOR shall perform the procedures necessary to ensure that CITY and its reporting entities may use AUDITOR's Reports in connection with any official purpose including without limitation publication of AUDITOR's Reports in offering documents for the issuance of debt. AUDITOR agrees that such Reports may be reproduced and published by CITY without restriction or limitation upon their use. The CITY understands that under auditing standards generally accepted in the United States of America, the independent auditor is presumed not to be associated with financial statements included in an offering statement.

I. Delivery of Work Product.

No later than the due dates specified in REVISED EXHIBIT C, AUDITOR shall deliver the Reports and other documents specified below. For purposes of this Paragraph I, "delivered" shall mean physical receipt by the persons designated below as recipients of delivery. Two (2) copies of each of the documents listed below are to be delivered directly to the City Auditor, except for the Reports produced by the CITY.

<u>Report</u>	<u>Copies</u>	<u>Delivered To</u>
Comprehensive Annual Financial Report Opinion	1 pdf and 1 hard copy for reproduction	Director of Finance
Basic Financial Statements	1 pdf and 1 hard copy for	Director of Finance

<u>Report</u>	<u>Copies</u>	<u>Delivered To</u>
Opinion	reproduction	
Management Letter- City	50	Director of Finance
Gann Agreed Upon Procedures Report	45	Director of Finance
General City Audit workplan	20 Bound	Director of Finance
Single Audit Report	85 and 1 (Camera ready)	Director of Finance
Airport Audit Report (CAFR)	1 Electronic Version	Deputy Director – Airport
Opinion	1 pdf and 1 hard copy for reproduction	Director of Finance
San Jose-Santa Clara Clean Water Financing Authority Related Funds Compliance Audit	50	Director of Finance
Dolce Hayes Audit Report including Financial Statements and Opinion	45	Director of Finance
Dolce Hayes Management Letter	45	Director of Finance
Dolce Hayes Agreed-upon Procedures Report	45	Director of Finance
Bicycle/Pedestrian Facilities Grant	10 2	Director of Transportation Director of Finance
Team San José Audit Report including Financial Statements and Opinion	15, 1 Electronic Version	Director of Finance
Team San José Management Letter	15, 1 Electronic Version	Director of Finance
Parks and Libraries Bond Fund Audit Report (FY 2009 – 10 through FY 2011 – 2012)	75 75	Director of Finance Director of Finance
Library Parcel Tax Fund Audit	75	Director of Finance

<u>Report</u>	<u>Copies</u>	<u>Delivered To</u>
Report (FY 2009 – 10 through FY 2011 – 2012)		
CITY’s Investment Program Compliance Audit Report (FY 2009 – 10 through FY 2011 – 2012)	50	Director of Finance
CITY’s Public Safety Bonds Audit (FY 2009 – 10 through FY 2011 – 2012).	75	Director of Finance
Airport Customer Facility Charges Compliance (CFC) Audit Report	1 Electronic Version and 1 hard copy for reproduction	Deputy Director – Airport
San Jose Diridon Development Authority Audit Report and Opinion	1 Electronic Version and 15 bound hard copies	Director of Finance

J. **Reportable Conditions.**

AUDITOR shall inform the City Council, Director of Finance, the CITY Auditor, and the CITY Manager promptly of any discrepancy or irregularity, including fraud and defalcations, material to the financial statements which the AUDITOR may discover in the course of the audits; and AUDITOR shall submit to the Public Safety, Finance & Strategic Support Committee of the City Council (or to such other Council committee or other body as directed by CITY’s Auditor) those recommendations resulting from their audits as to methods of investigation considered necessary or appropriate to determine the cause and extent of any such discrepancy or irregularity.

K. **Audit Inquiries.**

AUDITOR will assist CITY in responding to inquiries from federal, state and/or regional agencies on issues related to AUDITOR’s audit services, as described in this EXHIBIT.

L. **AUDITOR’s Staffing.**

AUDITOR shall utilize only staff members who are experienced in public sector auditing or who have, within the past two years, received an appropriate level of education and training directly related to the government environment and government auditing.

M. **Quality Control.**

In order to maintain audit quality control and assurance, AUDITOR shall have an appropriate internal quality control system in place and shall undergo external peer review in accordance with AICPA guidelines and Government Auditing Standards, 2007 revision. AUDITOR promptly shall provide CITY's Auditor with documentation of each external peer review which occurs during the term of this AGREEMENT.

N. **Internet Publication of Work Product.**

AUDITOR shall provide all written work product in an electronic format or publication on the internet such as an html document or Adobe PDF document or other electronic format as approved by the CITY. With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on the CITY's website, CITY understands that electronic sites are a means to distribute information and therefore, AUDITOR is not required to read the information contained on these sites or to consider the consistency of other information on the electronic site with the original document.

O. **Additional Services.**

As required by, and upon receipt of authorization from CITY's Auditor, AUDITOR will perform any other work required by the CITY Auditor. Additional audit services shall be billed on an hourly basis in accordance with, and at the hourly rates set forth in REVISED EXHIBIT D.

SECOND REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

- A. AUDITOR shall complete the following phases and/or provide the following documents to CITY according to the following time schedule for the audit of the fiscal years noted in the body of this document:

<u>TASK</u>	<u>SCHEDULE</u>
<u>PLANNING</u>	
Entrance conference	The fourth week of May
Client service planning meeting	The last week of May
Present audit plan to Finance Department	The last business day of June
<u>INTERIM FIELDWORK</u>	
On-site interim fieldwork	Eight weeks commencing the first week of June
Reporting of interim findings and to-date management letter listing	The third week of August
<u>YEAR-END FIELDWORK</u>	
Coordination of year end fieldwork status with the Finance Department	Five weeks commencing the first business day of August
On-site year-end financial statement fieldwork	Three to five weeks commencing the first business day of August
Exit conference with CITY representatives	The first Friday of the first full week of September
<u>REPORTING</u>	
AUDITOR's receipt of draft financial statements, notes and required supplementary information from CITY	The first business day of August
AUDITOR's receipt of draft financial statements for the Airport, Clean-Water Financing Authority and Hayes Mansion	The first business day of the fourth week in August

<u>TASK</u>	<u>SCHEDULE</u>
from CITY	
Issue Airport, Clean-Water Financing Authority and Hayes Mansion Reports	First business day of the first full week of September
Professional standards review of draft CAFR	The first business day of the second full week of September
Review of draft Comprehensive Annual Financial Report with CITY representatives	The second Friday of the first full week of September
Issue Comprehensive Annual Financial Report and the Basic Financials Report	The last business day in September
Issuance of Single Audit, Management Letters related to Dolce Hayes Mansion Audit and CITY's Audit, and MTC Pedestrian Bicycle Facilities Reports	The last business day in September
Issue Gann Agreed-upon Procedures Report	The last business day of January
Issue Team San José Audit Report and Management Letter	No later than September 30
Parks and Libraries Bond Fund Audit Report (FY 2009 – 10 through FY 2011 – 2012)	No later than September 30
Library Parcel Tax Fund Audit Report (FY 2009 – 10 through FY 2011 – 2012)	No later than September 30
CITY's Investment Program Compliance Audit Report (Two semi-annual audits) (FY 2009 – 10 through FY 2011 – 2012)	No later than March 31 for the report as of December 31, and no later than September 30 for the report as of June 30 (except that in the first year of the AGREEMENT both reports for FY 2009-10 shall be due no later than September 30)
CITY's Public Safety Bond Measure Audit Report (FY 2009 – 10 through FY 2011 – 2012).	No later than September 30

<u>TASK</u>	<u>SCHEDULE</u>
Airport Customer Facility Charges ("CFC") Compliance Reports:	
CONRAC Facility Project Expenditures and the CFC Projected Revenues and Costs	No later than May 1
CFC Program Expenditures for FY 2010 – 11 and subsequent years	No later than October 15
San Jose Diridon Development Authority Audit Report and Opinion	No later than October 31

- B. Either CITY’s Auditor or CITY’s Director of Finance may, upon notice and showing of good cause therefore given and made by the AUDITOR at least fifteen (15) days before the above-scheduled dates, grant an extension of time for completion of such audit and completion and delivery of such Reports and Management Letter for a reasonable period of time after the specified delivery dates.
- C. AUDITOR shall make its presentations to a City Council Committee (currently the Public Safety, Finance & Strategic Support Committee) and/or the City Council as required by the CITY.
- D. AUDITOR will perform all services associated with the audits for fiscal years ended June 30, 2010, 2011 and 2012 and with the audits for the option years 2013 and 2014 in accordance with the schedule specified in Paragraph A above.

REVISED EXHIBIT D

COMPENSATION

- A. The amount of compensation to be paid to AUDITOR under this AGREEMENT for all professional services and reimbursable expenses related to this AGREEMENT for the Initial Term and, if exercised, both option periods shall not exceed Two Million Seven Hundred Twenty-Five Thousand Five Hundred Eleven Dollars (\$2,725,511.00). Any hours worked and reimbursable expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.
- B. Such compensation for services related to the fiscal years ending June 30, 2010, 2011 and 2012 of the Initial Term shall not exceed the following amounts for the following services:

<u>Services</u>	<u>Compensation</u>
General City Audit (including Report, Management Letter and Gann Agreed Upon Procedures Report)	\$203,215
Single Audit Report	71,927
Norman Y. Mineta San José International Airport Audit	55,393
San José - Santa Clara Clean Water Financing Authority Related Funds Compliance Audit	21,049
Dolce Hayes Mansion Financial Statements Audit, Procedures Report	30,401
Pedestrian Bicycle Facilities Audit and Reports	7,878
San José Convention Center & Cultural Facilities Audit	43,415

Parks and Libraries Bond Fund Audit (FY 2009 – 10 through FY 2011 – 2012)	26,122
Library Parcel Tax Fund Audit (FY 2009 – 10 through FY 2011 – 2012)	11,395
CITY’s Investment Program Compliance Audit (FY 2009 – 10 through FY 2011 – 2012)	11,698
CITY’s Public Safety Bond Measure Audit Report (FY 2009 – 10 through FY 2011 – 2012).	13,061
Norman Y. Mineta San José International Airport CFC Compliance Audit (from inception through June 30, 2011)	69,230
Norman Y. Mineta San José International Airport CFC Compliance Audit (for fiscal year end June 30, 2012)	7,500
San Jose Diridon Development Authority Audit (for fiscal year end June 30, 2012)	14,250
TOTAL	\$586,534.00

C. Annual Adjustment to Compensation Rates

Except as specified in the paragraph B above, any proposed fee increases for services related to the fiscal years ending June 30, 2012 and option years 2013 and 2014 shall be limited to future annual cost increases to the Consumer Price Index but shall not exceed 5% from year to year. Compensation Rates shall be adjusted annually after fiscal years ending June 30, 2010 and 2011 of the AGREEMENT (except for compensation rates for any additional work the CITY may request during the course of the engagement, which shall be adjusted beginning in the second year of the AGREEMENT), with the effective date for all such adjustments the first day of May as follows:

1. The base for computing the adjustment shall be the Consumer Price Index (CPI) for All Urban Consumers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San José area, published by the United States Department of Labor Bureau of Labor Statistics (“Index”), the annual average which is published most immediately preceding the adjustment period. For

example, the compensation adjustment effective May 1, 2006, will be based on a beginning CPI index of 2004 and an ending index of 2005, using the annual CPI average as described above.

2. If the Index is changed so that the base year differs from that used, as of November 1996, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the AGREEMENT such other government index or computation with which it has been replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
 3. The preceding provisions notwithstanding, the adjustment of any Base Rates for any Anniversary Year shall not exceed 5% of the previous Anniversary Year's Base Rates.
 4. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the Base Rate to be paid during the extension term shall be \$ X (the then expiring terms Base Rate compensation rate) multiplied by 124/115.
- F. CITY will pay the AUDITOR on a monthly basis for its accumulated time spent in accordance with the hourly rates set forth below, up to 90% of the amount set forth in Paragraph B, above, designated for each component of the services to be provided by AUDITOR under this AGREEMENT. For billing purposes, each monthly statement shall include an itemization of staff, hours worked, hourly rates and reimbursable expenses.

<u>Staff Classification</u>	<u>Hourly Rate</u>
Partner/Consulting Directors	\$285.00
Professional Services Reviewers	\$285.00
Directors	\$225.00
Senior Managers/IT Senior Consultants	\$199.00
Actuarial Consultant	\$250.00
Managers/IT Consultants	\$180.00
Engagement Supervisors/Supervising Seniors	\$158.00

<u>Staff Classification</u>	<u>Hourly Rate</u>
Senior/In-Charge Associates	\$131.00
Experienced Associates	\$109.00
Staff Associates	\$98.00
Administrative Assistants	\$68.00

The balance of the amount due to AUDITOR will be paid within thirty (30) days after the delivery of the Audit and Procedures Report(s) and the filing of the final draft of the Management Letter(s), provided that the CITY'S Auditor has determined that all conditions and terms of this AGREEMENT have been met by the AUDITOR.