Master City of San José Consultant Agreement

(Capital Projects)

(CPMS Contract No. 10212)

This Master Agreement is between the City of San José, a municipal corporation ("City"), and RRM Design Group, a California corporation ("Consultant").

This Master Agreement is made and entered into this ___ day of _____ 2023 ("Contract Date").

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 **General:** The Consultant will provide professional consulting services to the City on an as-needed basis pursuant to individual service orders issued in accordance with the terms and conditions of this Master Agreement. The type of professional consulting services the Consultant will provide can be described generally as: Landscape architectural services for various City facility projects.

1.2 **Exhibits:** This Master Agreement consists of this agreement form, all Approved Service Orders (defined in Subsection 3.2 below), and the following exhibits, which are incorporated herein by reference:

Exhibit A: Approved Service Order Form

Exhibit B: Schedule of Rates and Charges

Exhibit C: Insurance Requirements

1.3 **Director:** "Director" means the Director of Public Works or the Director's designee.

1.4 **Business Days:** "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct regular business with the public.

1.5 **Entire Agreement:** This Master Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.

1.6 **Amendments:** This Master Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

The term of this Master Agreement is from the Contract Date to June 30, 2028, inclusive, unless terminated earlier pursuant to Section 19 below.

3. SERVICE ORDERS

3.1 **General:** The Consultant will provide professional services to the City pursuant to individual service orders. Each service order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.

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3.2 **Approved Service Order:** The City will not compensate the Consultant for any Work until the Director has executed the service order for such Work ("Approved Service Order").

3.3 **Obligation to Issue:** The City has no obligation to issue any Approved Service Orders under this Master Agreement. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation (defined in Subsection 10.1 below).

3.4 **Preparation:** Each Approved Service Order will be in substantially the form specified in **Exhibit A**. Subject to the terms and conditions of this Master Agreement, the Consultant and the City will negotiate the specific requirements of each Approved Service Order.

3.4.1 **Director's Request to Prepare Proposal:** The Director will request the Consultant prepare a written service order proposal. The Director will either request the Consultant to include a draft scope of Work in its proposal, or provide the Consultant with a draft scope of Work upon which the Consultant must base its proposal.

3.4.2 **Meeting/Site Inspection:** As part of the Director's request for the Consultant to prepare a service order proposal, the Director may require the Consultant to meet to discuss the scope and location of the Work, the schedule of performance, and any other relevant details. The Director may also require the Consultant to conduct a site inspection for the purpose of identifying any issues that may need to be included in the scope of Work.

3.4.3 **Consultant Proposal:** The Consultant will prepare a written service order proposal in accordance with the Director's request. The Consultant will provide the proposal in both paper and electronic form. The proposal must include, but is not limited to, the following:

- The proposed scope of Work;
- The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
- The names of any subconsultants the Consultant would use and the portion of Work they would perform;
- A time schedule and cost for providing the Work; and
- Any other information requested by the Director.

3.4.4 **Final Service Order:** Once the Consultant and the Director agree on the terms and conditions of the proposed service order, the City will prepare the final service order.

3.5 **Incorporation of Terms and Conditions:** Each Approved Service Order incorporates the terms and conditions of this Master Agreement, and becomes a part of this Master Agreement.

3.5.1 **No Conflicts:** An Approved Service Order must be consistent with – and can not alter - the terms and conditions of this Master Agreement.

3.5.2 **Agreement Controls:** The terms and conditions of this Master Agreement control over the terms and conditions contained in an Approved Service Order – even if the Approved Service Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Service Order are invalid and unenforceable.

3.6 **Performance:** Subject to Subsection 3.5 above, the Consultant must perform the Work in accordance with the specific requirements of the Approved Service Order. The Consultant must

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coordinate and cooperate with City staff, consultants and contractors in performing the Work, and must perform the Work to the Director's satisfaction.

4. DESIGN SERVICE REQUIREMENTS

4.1 **General:** This Section applies to any design services the Consultant performs as part of an Approved Service Order.

4.2 **Standard Documents:** The Consultant is, or will become, familiar with the City of San José, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San José, Department of Public Works, Standard Details, dated July 1992 (and any amendments thereto), and any other standard documents the City uses to design and implement its capital projects (collectively "Standard Project Documents").

4.3 **Use of Standard Documents:** Unless the Director provides prior written approval to the contrary, the final design documents prepared by the Consultant must be based on, and must incorporate, the Standard Project Documents.

5. CITY'S CONTRACT MANAGER

Attachment B of each Approved Service Order will identify the City's contract manager. The City can change its contract manager by providing the Consultant with written notice.

6. CONSULTANT'S STAFFING

6.1 **Consultant's Contract Manager and Other Staffing:** Attachment B of each Approved Service Order will identify the following:

- The Consultant's contract manager, and
- The Consultant(s) and/or employee(s) of the Consultant ***principally responsible*** for providing the Work.

Attachment B will also indicate whether any of the identified persons are required to file a Statement of Economic Interests, Form 700 ("Form 700"), provided that the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City. Anyone required to file a Form 700 must do so in accordance with the requirements of Subsection 17.2 below.

6.2 **Contract Manager's Authority:** The Consultant's contract manager must be authorized to act on behalf of the Consultant for purposes of decisions regarding the Approved Service Order.

6.3 **Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in Attachment B of an Approved Service Order.

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7. USE OF SUBCONSULTANTS

7.1 **Authority to Use:** Attachment B of each Approved Service Order will state whether or not the Consultant can use subconsultants to provide any part of the Work. If Attachment B does not authorize the Consultant to use subconsultants, then the Director's prior written approval is required for the Consultant to use a subconsultant to perform any part of the Work.

7.2 **Use of Subconsultants:** If Attachment B of an Approved Service Order authorizes the use of one or more subconsultants, then it will identify the name of each such subconsultant and the portion of Work each such subconsultant will perform. The Director's prior written consent is required for the Consultant to remove, replace or add to the subconsultants identified in Attachment B.

7.3 **Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultant it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the Work.

8. INDEPENDENT CONTRACTOR

8.1 **General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and does not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

8.2 **Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Master Agreement and/or any Approved Service Order (collectively "Subcontractors"). Subject to the requirements of Section 7 above, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Master Agreement.

8.3 **Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Consultant represents that it will only perform Work for which it possesses all necessary training, licenses and permits. The Consultant represents that its performance of all such Work will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

10. COMPENSATION

10.1 **Maximum Compensation:** There is a maximum compensation for this Agreement and a separate maximum compensation for each Approved Service Order.

10.1.1 **Maximum Total Compensation – Agreement:** The maximum *total, aggregate* compensation the City will pay the Consultant for all professional fees, costs and expenses for all Approved Service Orders issued under this Master Agreement shall not exceed **$1,500,000** ("Maximum Total Compensation").

10.1.2 **Maximum Compensation – Service Order:** The cover page of each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work ("Maximum

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Service Order Compensation"). The Consultant shall complete all Work required by the Approved Service Order for no more than the Maximum Service Order Compensation.

10.2 **Exhibit B – Schedule of Rates and Charges:** **Exhibit B** sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges") that applies to any services provided in an Approved Task Order on a time and materials basis. The Schedule of Rates and Charges is subject to the following requirements:

10.2.1 **Premium Pay:** "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay the Consultant Premium Pay.

10.2.2 **No Increases:** The City will not increase the Schedule of Rates and Charges during the Master Agreement term.

10.2.3 **Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

10.3 **Compensation Table:** Attachment C of each Approved Service Order is a compensation table setting forth the manner in which the City will pay the Maximum Service Order Compensation ("Compensation Table"). Each Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.4 **Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks performed in accordance with the Approved Service Order. The following terms and conditions apply to Part 1 of the Compensation Table.

10.4.1 **Task Numbers (Column 1):** Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in Attachment A of the Approved Service Order. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

10.4.2 **Basis of Compensation (Column 2):** Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (or lump-sum) basis.

10.4.3 **Invoice Period (Column 3):** Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all Work to the Director's satisfaction.

10.4.3.1 **Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

10.4.3.2 **Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the Work completed

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during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the Work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges attached to this Master Agreement as **Exhibit B**.

10.4.3.3 **Monthly Invoices Based on Fixed Fee:** If the Consultant invoices monthly for a "fixed fee," then the Consultant will base its monthly invoice on the percentage of Work completed during the previous month. If the task(s) completed the previous month involve the Consultant performing construction administration services, the percentage of work completed during the previous month will be measured based on the percentage of construction completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

10.4.4 **Compensation (Column 4):** Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

10.4.4.1 **Time & Materials:** If time and materials is the basis of compensation, then the amount in Column 4 is a "not-to-exceed" or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director's sole discretion) ***may*** use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

10.4.4.2 **Fixed Fee:** If "fixed fee" is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

10.5 **Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

10.5.1 **Subconsultants:** The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 below addresses payment for the cost of subconsultants.

10.5.2 **Maximum Amount of Reimbursable Expenses:** The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

10.5.3 **Expenses That Are Reimbursable:** Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup

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2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

10.6 **Compensation Table – Part 3:** Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

10.6.1 **Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5%.

10.6.2 **Schedule of Rates and Charges:** Any subconsultant rates and charges set forth in the Schedule of Rates and Charges must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

10.6.3 **Maximum Amount:** For each Approved Service Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

10.7 **Prevailing Wage - General:** In accordance with Chapter 14.09 of Title 14 of the San José Municipal Code, entitled "Prevailing Wage Requirements for City Contracts Involving Public Works," certain work performed by the Consultant may be subject to the payment of prevailing wages under Chapter 1 of Part 7 of the California Labor Code, starting with Labor Code Section 1720. which requires the payment of prevailing wages to all workers performing "construction." For purposes of this Master Agreement, "construction" has the meaning set forth in California Labor Code Section 1720(a) and includes construction-oriented work performed during the design and preconstruction phases, such as inspection, surveying, drilling, trenching, and excavation ("Construction").

10.7.1 **Prevailing Wage Requirement:** Notwithstanding anything to the contrary in this Master Agreement, the Consultant shall pay, or cause to be paid, the applicable prevailing wage to all workers performing work pursuant to an Approved Service Order if the work is

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prevailing wage work under the California Labor Code. The applicable prevailing wage shall be the wage rate established by the State Department of Industrial Relations for the applicable job classification.

10.7.2 **Records:** The Consultant shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages, including, but not limited to, certified payroll records conforming to California Labor Code Section 1776. The Consultant shall maintain these records in accordance with the requirements of Subsection 16.1 of this Master Agreement. The Consultant shall provide to the City, at no cost to the City, a copy of all such records within 10 Business Days of a request for such records by the division of the City responsible for labor compliance.

10.7.3 **Subcontractors:** The Consultant shall include these provisions in all Subcontractor agreements involving Construction.

10.8 **Tax Forms Required:** The following are conditions on the City's obligation to process any payment under the Master Agreement or any Approved Service Order:

10.8.1 **U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

10.8.2 **Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION

11.1 **Indemnification:** The Consultant will defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities (collectively "Indemnifiable Event") to the extent such Indemnifiable Event arises out of, pertains to, or relates to any of the following: **(a)** the Consultant's negligent performance of any Services, **(b)** any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its subcontractors, anyone directly or indirectly employed by either the Consultant or any of its subcontractors, or anyone that they control, **(c)** any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any Services, deliverables or other items provided by the Consultant pursuant to the requirements of this Master Agreement, or **(d)** any breach of this Master Agreement.

11.2 Omitted.

11.3 **Applicable Law/Duty to Defend:** The Consultant's indemnity obligations apply to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, must defend any suit or action that is subject to the Consultant's indemnity obligations.

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11.4 **Insurance:** The City's acceptance of any insurance in accordance with Section 12 of this Master Agreement does not relieve the Consultant from its indemnity obligations. The Consultant's indemnity obligations apply whether or not the insurance required by this Master Agreement covers any damages or claims for damages.

11.5 **Survival:** The Consultant's indemnity obligations survive the expiration or earlier termination of the Master Agreement.

12. INSURANCE REQUIREMENTS

12.1 **General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Master Agreement term.

12.2 **Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.

12.3 **Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

13.1 **Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use immediately when and as created by the Consultant or any other person engaged directly or indirectly by the Consultant to perform the Consultant's services pursuant to an Approved Service Order: reports, drawings, plans, data, software, models, elevations, sections, details, schedules, diagrams, specifications, studies, surveys, information, sketches, and documents or other materials developed or discovered (collectively "Work Product").

13.2 **Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.

13.3 **City's Reuse:** Notwithstanding Subsection 13.1, the City's reuse of any Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.

13.4 **Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. DISCLOSURE OF WORK PRODUCT

14.1 **Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing any Work.

14.2 **Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.

14.3 **Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures by

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and between the Consultant and its Subcontractors that are needed to perform any Work.

14.4 **Survival:** This Section 14 survives the expiration or earlier termination of this Master Agreement.

15. AUDIT/INSPECTION OF RECORDS

15.1 **Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Master Agreement or for any longer period required by law:

- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and

- All Work Product and other records evidencing Consultant's performance.

15.2 **Producing Records:** At any time during the Master Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.

15.3 **State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Master Agreement if the compensation if the Maximum Total Compensation exceeds $10,000.

16. NONDISCRIMINATION/NON-PREFERENCE

16.1 **Prohibition:** 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 prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

16.2 **Conditions of Prohibition**: The prohibition in Subsection 16.1 is subject to the following conditions:

16.2.1 **Reasonable Accommodation:** The prohibition is not intended to preclude the Consultant from providing a reasonable accommodation to a person with a disability.

16.2.2 **Compliance Reports:** The City's "Compliance Officer", as defined in Section 4.08.020 of the San José Municipal Code, is responsible for administering this Section 16. The Compliance Officer may require the Consultant to file, and cause any Subcontractor to file, reports demonstrating compliance with this Section 16. Any such reports shall be filed in the form and at such times as the Compliance Officer designates. They shall contain such information, data and/or records as the Compliance Officer determines is needed to show compliance with this provision.

16.2.3 **Waiver:** The Compliance Officer may waive any of the requirements of this Section if the Compliance Officer determines that the Consultant has its own nondiscrimination/nonpreference requirements or is bound in the performance of this Master Agreement by the nondiscrimination/nonpreference requirements of another

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governmental agency, and the nondiscrimination/nonpreference provisions of the Consultant or other governmental agency are substantially the same as those imposed by the City.

16.2.4 **Violation:** A violation of the prohibition or any part of this Section 16 constitutes the following: (a) a material breach of this Master Agreement; (b) a misdemeanor violation of Chapter 4.08 of the San José Municipal Code; and (c) a ground for debarment in accordance with Chapter 4.10 of the San José Municipal Code.

16.3 **Subcontracts:** The Consultant shall include the requirements of this Section in each subcontract that it enters into in furtherance of this Master Agreement.

17. CONFLICT OF INTEREST

17.1 **General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Master Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Master Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Master Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

17.2 **Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section81000 et seq.), the Consultant shall cause each person performing services under this Master Agreement, and identified in Attachment B of an Approved Service Order as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Director;
- Complete and file the Form 700 no later than 30 calendar days after the date the person begins performing services under the Approved Service Order and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

17.3 **Future Services:** The Consultant acknowledges each of the following with regard to performing future services for the City:

- The Consultant's performance of Work in an Approved Service Order may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related ***future*** services, particularly when the Work in an Approved Service Order comprises one element or aspect of a multi-phase process or project;
- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing Work in an Approved Service Order might have on its ability to obtain contracts to perform future services.

17.4 **Violations:** The Consultant's violation of Subsections 17.1 or 17.2 above is a material breach.

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18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 **General:** The Consultant shall perform its obligations under this Master Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 **Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

18.3 **Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement. Environmental procurement policies and activities related to the completion of any Work will include, whenever practicable, but are not limited to:

- The 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.);
- The use of energy-star compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

19.1 **For Convenience:** The Director may terminate this Master Agreement and/or any Approved Service Order(s) at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.

19.2 **For Cause:** The Director may terminate this Master Agreement and/or any Approved Service Order(s) immediately upon written notice for any material breach by the Consultant. If the Director terminates the Master Agreement and/or any Approved Service Order(s) for cause and obtains the same services from another consultant at a greater cost, the Consultant is

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responsible for such excess cost in addition to any other remedies available to the City.

19.3 **Delivery of Work:** If the Director terminates the Master Agreement and/or any Approved Service Order(s) – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.

19.4 **Compensation:** The City will pay the Consultant the reasonable value of Work satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For Work to be "satisfactorily rendered," the Director must determine that the Consultant provided the Work in accordance with the terms and conditions of this Master Agreement and/or any applicable Approved Service Order. The Director will determine the reasonable value of satisfactorily rendered Work based on the Schedule of Rates and Charges and the Compensation Table attached to the appropriate Approved Service Order.

19.5 **Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

20.1 **Manner of Giving Notice:** All notices and other communications required by this Master Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.

20.2 **When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 Business Days after deposit in the United States mail.

20.3 **To Whom Given:** All notices and other communications between the parties regarding a specific Approved Service Order must be given to the contract managers identified in the Approved Service Order. All notices and other communications between the parties regarding the Master Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City:
City of San José
Department of Public Works
Attn: Stacey Palomar
200 East Santa Clara Street, 6th Floor
San Jose, CA 95113
(408) 535-8409
stacey.kwok-palomar@sanjoseca.gov

To the Consultant:
RRM Design Group
Attn: Gina Chavez
325 Davis St.
San Leandro, CA 94577
(510) 751-4910
gmchavez@rrmdesign.com

20.4 **Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Master Agreement by providing notice of such change to the other party pursuant to this Section 20.

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21. MISCELLANEOUS

21.1 **Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.

21.2 **Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.

21.3 **Waiver of a Violation:** The City's waiver of any violation of this Master Agreement by the Consultant is not a waiver of any other violation by the Consultant.

21.4 **Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Master Agreement.

21.5 **Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Master Agreement.

21.6 **Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Master Agreement term.

21.7 **Assignability:** Except to the extent this Master Agreement authorizes the Consultant to use Subcontractors, the Consultant shall not assign any part of this Master Agreement without the Director's prior written consent. The Director, at the Director's discretion, may terminate this Master Agreement if a violation of this provision occurs.

21.8 **Governing Law:** California law governs the construction and enforcement of this Master Agreement.

21.9 **Disputes:** Any litigation resulting from this Master Agreement will be filed in and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.

21.10 **Survival of Provisions:** If a court finds any part of this Master Agreement unenforceable, all other parts shall remain enforceable.

21.11 **Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

21.12 **Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

21.13 **Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the

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same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

IN WITNESS WHEREOF, the City and Consultant have caused this Master Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Consultant must sign one of the following representations by. **The City will not process the Master Agreement unless the Consultant has signed one of the provisions**.

[{{__signer#}}] The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Master Agreement.

Or

[{{__signer#}}] If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.9 of this Master Agreement.

City of San José

By [{{__signer#}}]

Name: Toni J. Taber, CMC
Title: City Clerk

Consultant

By [{{__signer#}}]

Name: Gina Chavez
Title: Principal

Approval as to Form (City Attorney):

☐ **Form Approved by the Office of the City Attorney**

(Maximum Total Compensation is $100,000 or less, and standard provisions of the form are not altered.)

By [{{__signer#}}]

Name: [Insert Name.]
Title: [Insert Title of Signature.]

☒ **Approved as to Form:**

[{{__signer#}}]

Name: Kevin Fisher
Title: Assistant City Attorney

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Exhibit A
Master City of San José Consultant Agreement
Approved Service Order Form
(Capital Projects)

Cover Page

1a. CPMS Contract No.: 10212 **1B.** AC Contract No.: [Insert AC No.]

2. Approved Service Order No. [Insert Number]

3. Consultant's Name: RRM Design Group ("Consultant")

4. Project Name: [Insert Name of Project for which Consultant will provide services] ("Project")

5. Project Location: [Insert the location of the Project, if applicable]

6. The Consultant and the City will implement this Approved Service Order in accordance with the Master Agreement, this cover page and Attachments "A" (Tasks), "B" (Terms and Conditions), "C" (Compensation Table), and "D" (Schedule of Specific Services) which are incorporated herein by references.

7. Budget/Fiscal:

a. Current **unencumbered** amount in Master Agreement: $ _____

b. **Maximum Service Order Compensation for this Approved Service Order:** $ _____

c. New unencumbered balance in Master Agreement (7.a – 7.b): $ _____

d. **Appropriation Certification**: I certify that an unexpended appropriation in the amount of the Maximum Service Order Compensation is available in the following fund(s) and that such fund(s) will be encumbered to pay for this Approved Service Order.

Fund: _____ Appn: _____ RC: _____ Amount: $_____

Fund: _____ Appn: _____ RC: _____ Amount: $_____

Fund: _____ Appn: _____ RC: _____ Amount: $_____

Authorized Signature: _____

8. Division Analyst Approval: _____

9. Consultant Approval: _____

10. Approval as to Form (City Attorney):

☐ Service Order Form Approved by the Office of the City Attorney

(Maximum Service Order Compensation is $100,000 or less, and the provisions of the service order form are not altered.)

☐ Approved as to Form: _____
(Sr.) Deputy City Attorney

11. City Director Approval: _____

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Attachment A: Tasks

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract manager.

General Description of Project for which Consultant will Provide Services: [Insert a general project description to provide context for the tasks.]

Task No. 1: [Insert title of deliverable.]

A. Services: [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]

B. Deliverable: The Consultant will provide the following to the City's Contract Manager: [Insert a description of the deliverable.]

C. Completion Time: The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

☐ On or before the following date: _____.

☐ On or before ____ Business Days from _____.

Task No. 2: [Insert title of deliverable.]

A. Services: [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]

B. Deliverable: The Consultant will provide the following to the City's Contract Manager: [Insert a description of the deliverable.]

C. Completion Time: The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

☐ On or before the following date: _____.

☐ On or before ____ Business Days from _____.

Task No. 3: [Insert title of deliverable.]

A. Services: [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]

B. Deliverable: The Consultant will provide the following to the City's Contract Manager: [Insert a description of the deliverable.]

C. Completion Time: The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

☐ On or before the following date: _____.

☐ On or before ____ Business Days from _____.

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Attachment B: Terms and Conditions

1. **City's Contract Manager:** The City's contract manager for this Approved Service Order is:

Name:	Phone No.:
Department:	Email:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Service Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must comply with the requirements of Subsection 17.2 of the Master Agreement, entitled "Filing Form 700."***

			Required to File Form 700?		
Consultant's Contract Manager			**Yes** **Already Filed (Date Filed)**	**Yes** **Need to File**	**No**
Name:	Phone No.:				
Address:	Email:				
Other Staffing					
Name:	Assignment:	Email:			
1.					
2.					
3.					

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3. **Subconsultants:** Whichever of the following is marked applies to this Approved Service Order:

☐ The Consultant can ***not*** use any subconsultants.

☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

Subconsultant's Name	Area of Work
1.	
2.	
3.	

4. **Reimbursable Expenses:** If the Compensation Table set forth in **Attachment C** of this Approved Service Order states that the City will reimburse the Consultant for expenses, then only the expenses identified in Subsection 10.5.3 of the Master Agreement are Reimbursable Expenses unless the following box is marked and additional reimbursable expenses are set forth:

☐ In addition to the expenses identified in Subsection 10.5.3 of the Master Agreement, the following expenses are Reimbursable Expenses:

Additional Reimbursable Expense(s)	Mark-up
1. _____	_____
2. _____	_____
3. _____	_____

Notwithstanding the foregoing, any additional reimbursable expense(s) set forth in the above table will be disregarded if the Compensation Table states that the City will *not* reimburse the Consultant for any expenses.

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Attachment C: Compensation Table

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table. This Compensation Table is subject to the terms and conditions set forth in the Master Agreement, including without limitation Section 10 of the Master Agreement.

Part 1 – Compensation for Services and Deliverables			
Column 1	**Column 2**	**Column 3**	**Column 4**
Task Nos. from Attachment A	**Basis of Compensation**	**Invoice Period**	**Compensation**
	☐ Time & Materials ☐ Fixed Fee	☐ Monthly ☐ Completion of Task(s) ☐ Completion of Work	$
	☐ Time & Materials ☐ Fixed Fee	☐ Monthly ☐ Completion of Task(s) ☐ Completion of Work	$
	☐ Time & Materials ☐ Fixed Fee	☐ Monthly ☐ Completion of Task(s) ☐ Completion of Work	$
	☐ Time & Materials ☐ Fixed Fee	☐ Monthly ☐ Completion of Task(s) ☐ Completion of Work	$
Part 2 – Reimbursable Expenses			
☐ No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		☐ Expenses are separately reimbursable in the maximum amount of:	$
Part 3 – Subconsultant Costs			
☐ Subconsultant costs are ***not*** separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.		☐ Subconsultant costs are separately compensable in the maximum amount of:	$
		Maximum Service Order Compensation (sum of Parts 1 through 3):	$

Exhibit B: Schedule of Rates and Charges

(Capital Projects)

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RRM Design Group

Bill Rate Ranges

LANDSCAPE ARCHITECTURE					
Assistant Designer	$	98	-	$	115
Associate Designer	$	120	-	$	140
Design Director	$	165	-	$	180
Landscape Architect	$	135	-	$	150
Principal	$	195	-	$	260
Principal Landscape Architect	$	160	-	$	190
Principal Park Planner	$	185	-	$	195
Senior Landscape Architect	$	145	-	$	175
ENGINEERING					
Associate Engineer	$	160	-	$	200
Engineer I	$	115	-	$	130
Engineer II	$	150	-	$	180
Manager of Engineering Services	$	200	-	$	240
Manager of Structural Engineering Services	$	200	-	$	240
Principal	$	230	-	$	300
Project Engineer	$	155	-	$	190
Project Manager	$	190	-	$	250
Senior Associate Engineer	$	170	-	$	205

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Exhibit C: Insurance Requirements

(Capital Projects)

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EXHIBIT C

INSURANCE REQUIREMENTS

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 and Omissions insurance for all professional services rendered.

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 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

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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 per claim and $1,000,000 aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by 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 Coverages

   a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, 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, and agents.

   b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be 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, or agents.

   d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit

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is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

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

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

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 nonpayment 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 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 emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

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