

☒ **First**

Amendment to Master Consultant Agreement – RWF Capital Projects

☐ **Second**

Consultants Name: CDM Smith, Inc.

☐ **Third**

(CPMS Contract No. 9438-3)
(Master Agreement AC No. 31413)

This Amendment to the Master Agreement is made and entered into this _____ day of _____, 2022. The City and the Consultant amend the above-referenced agreement as set forth herein.

1. Capitalized words in this Amendment have the same meaning as in the Master Agreement.
2. The provisions of this Master Agreement (including any previous amendments) not modified by this Amendment remain in full force and effect.
3. The provisions of this Amendment are effective upon execution of the Amendment by both parties.

4. ☐ **Agreement Term:** Section 2 is amended to extend the expiration date from _____ to _____

5. ☐ **Maximum Total Compensation:** Subsection 10.1 is amended to ☐ Increase ☐ Decrease the Maximum Total Compensation from \$_____ to \$_____.

6. ☐ **Agreement Section(s):** Section(s) _____ is/are amended to read as set forth in Attachment A of the Amendment.

7. ☒ **Basis of Compensation – Exhibit B:** The ☒ original ☐ First Revised ☐ Second Revised Exhibit B is amended to read as set forth in the attached ☒ First ☐ Second ☐ Third Revised Exhibit B, which is incorporated by reference into this Amendment.

This Amendment is executed by the authorized representatives of the City and Consultant as follows:

City of San José

Consultant

By _____

By _____

Name: Toni Taber
Title: City Clerk

Date

Name: Hala Titus
Title: Senior Vice President

Date

Approval as to Form (City Attorney):

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

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

☒ **Approved as to Form:**

Kevin Fisher
Assistant City Attorney

Date

☒ **First**

☐ **Second**

Revised Exhibit B: Basis of Compensation

☐ **Third**

This revised Exhibit B is an attachment to the ☒ First ☐ Second ☐ Third amendment to Master Agreement.

The basis of compensation set forth in the original Exhibit B, or in any previous amendment to the original Exhibit B, is amended as follows:

The Consultant's compensation for services provided pursuant to an Approved Service Order shall be in accordance with Section 10 of the Agreement and this **Exhibit B**. Consultant shall be compensated for Work performed pursuant to an Approved Service Order based on the following categories only: (1) multiplier compensation; (2) reimbursable expenses; (3) Contract Personnel costs; and (4) subconsultant costs.

The Consultant's compensation depends on the classification of employees as either Onsite Staff or Offsite Staff. For purposes of determining an employee's classification, the Program Management Office ("PMO") shall be the San José Santa Clara Regional Wastewater Facility ("RWF") located at 700 Los Esteros Road, San Jose, CA 95134. An employee shall be classified as "Onsite Staff" for an Approved Service Order if that employee is assigned to the RWF CIP and based full-time at the PMO during the term of the Approved Service Order. All other employees shall be classified as "Offsite Staff" during the term of the Approved Service Order.

1. Multiplier Compensation. As compensation for all of Consultant's employee labor costs and expenses, overhead and profit for performing Work required by an Approved Service Order ("Multiplier Compensation"), the City will pay Consultant an amount equal to the Consultant's Direct Labor Rate (as defined below) multiplied by **2.45** for Onsite Staff (as defined below) or **3.08** for Offsite Staff (as defined below) ("Multiplier"). Except for other costs and expenses expressly set forth in this Master Agreement as being compensable, the Multiplier Compensation shall be the Consultant's only compensation for all Work performed pursuant to an Approved Service Order.

1.1 Direct Labor Rate. For purposes of calculating the Multiplier Compensation, the direct labor rate shall be the sum of the number of hours worked by each of Consultant's employees pursuant to an Approved Service Order multiplied by the respective hourly rates paid by Consultant to such employees ("Direct Labor Rate"). The Direct Labor Rate shall be based on a normal 8-hour day, 40-hour week (e.g., no overtime, holidays or weekend rates) and shall exclude any other form of compensation (e.g., no bonuses, stock options, profit-sharing or equity arrangements). The Direct Labor Rate shall not include any labor other than Consultant's employees, including, without limitation, Consultant's Contract Personnel. Each Approved Service Order will specify the maximum allowable actual hourly rate by employee or classification. For Consultant staff identified in Attachment B of each Approved Service Order, the actual hourly rates may be increased by no more than 3% annually, unless otherwise pre-authorized in writing by the Director. For proposed increases greater than 3%, the Consultant shall provide sufficient justification, which may include merit/performance or cost of living. In the case of position changes and promotions, written approval will be in substantially the form specified in Exhibit D.

Overtime Pay. Overtime Pay is an amount in addition to the Direct Labor Rate added to Consultant's labor charges for a nonexempt employee for Work performed under an

Approved Service Order outside of the employee's regularly scheduled, forty-hour work week or on recognized holidays. Overtime Pay shall be in accordance with the general prevailing wage determination made by the Director of Industrial Relations for Northern California for Building/Construction Inspector and Field Soils and Material Tester, journey person classifications, as attached hereto as Exhibit B-1.

The Multiplier shall not be applied to Overtime Pay. For those employees who work hours subject to Overtime Pay, Overtime Pay shall be calculated in accordance with Exhibit B-1.

The Consultant may invoice the City for Overtime Pay only if the Consultant has obtained the Director's prior written consent to perform specific work in a manner that would require Overtime Pay. In addition to other required information, invoices shall set forth the date(s), start and end times and number and type of overtime hours worked for each employee for whom the Consultant is requesting Overtime Pay.

1.2 Overhead Costs. Consultant acknowledges and agrees that, except with respect to Onsite Staff as specifically described in Section 1.3 below, the Multiplier Compensation includes all of Consultant's overhead costs and expenses Incurred in performing Work pursuant to this Master Agreement. The Multiplier is in lieu of Itemized payments for fringe benefits, overhead expenses and associated project costs, including, without limitation:

- Fringe benefits, such as payroll taxes, holidays, vacation and sick time, health, life and accidental insurance, retirement plans, etc.
- Overhead or Indirect Costs, such as outside accounting and legal services, occupancy costs, depreciation costs, professional and general liability Insurance, general management and administration, business taxes, etc.
- Associated project costs, such as costs to cover customary office costs, network Infrastructure and information systems, CAD and computer usage, in-house reproducing services, including graphics and photocopying, printing, postage, overnight delivery, courier services, cell phone and data plan charges, etc.

1.3 Onsite Staff Hourly Multiplier. The multiplier set forth in this Exhibit B for Onsite Staff has been adjusted based on the City providing the following office support infrastructure for Consultant staff housed at the PMO:

- Work space and office furniture
- Computers and associated equipment
- Printing, postage, and photocopying
- Utilities and landline phones
- Network access and City computer support
- Parking at City facilities

1.4 Offsite Staff Hourly Multiplier. All Offsite Staff shall have their office support infrastructure provided by their employer which is included in the multiplier for Offsite Staff.

1.5 Profit. Consultant acknowledges and agrees that the Multiplier Compensation includes all of Consultant's profit for performing Work pursuant to an Approved Service Order. City shall pay Consultant a profit equal to nine and six tenths percent (9.6%) of direct labor and overhead cost approved by the City ("Profit Percentage"). The Profit Percentage shall

not include any other markups, including markups on subconsultants, Contract Personnel or reimbursable expenses. In no event shall City be responsible for paying any amount pursuant to an Approved Service Order for which Consultant's profit would exceed the foregoing percentage.

1.6 Rate and Cost Information. The Direct Labor Rate shall be based on the most current audit of the Consultant's payroll and financial records. The Consultant's overhead costs shall be based on the Consultant's latest audited Federal Acquisition Regulation (FAR) Overhead Statement. If a current audit is not available for the Direct Labor Rate or FAR Overhead Statement, the Direct Labor Rate and/or overhead costs shall be based on information acceptable to the City. The City retains the right to conduct an audit of the Consultant's payroll at any time during the term of this Master Agreement. Unless otherwise required under applicable law, including, but not limited to, the California Public Records Act, the City shall not disclose Consultant's payroll Information to third parties without Consultant's prior written consent.

2. Overlapping Compensation Exclusion. Consultant acknowledges and agrees that all compensation paid by the City under this Agreement shall only cover actual costs and expenses incurred in performing work pursuant to an Approved Service Order and the allowable profit thereon. The Consultant agrees not to invoice the City for, and the City shall have no obligation to pay, any duplicative costs or expenses or amounts that are not based on actual costs or expenses incurred. Specifically, in submitting an invoice to the City, the Consultant will be deemed to have represented that no portion of amounts requested for any markups for subconsultants, Contract Personnel or reimbursable expenses cover the same categories of costs or expenses requested pursuant to the Consultant's other labor or overhead costs or are not based on actual costs incurred.

3. Reimbursable Expenses. The City will pay for the following reimbursable expenses under this Master Agreement:

Reimbursable Expense		Markup
1.	Specialty printing specifically requested by the City and printing associated with major deliverables that cannot be completed by Consultant in-house.	5%
2.	In accordance with Section 3.1 below, with the written pre-authorization of the City's project manager, travel-related expenses in accordance with the CIP Consultant Travel Policy. The Consultant acknowledges that it has received a copy of the CIP Consultant Travel Policy and is familiar with its terms.	No Markup

The following expenses are not reimbursable and shall not be incorporated into any invoice amounts submitted to the City:

- Alcoholic Beverages;
- Meals and incidentals for Consultant and subconsultant staff working from their home office location, not the San José-Santa Clara Regional Wastewater Facility; and
- Entertainment.

- 3.1 Travel Expenses.** All travel expenses must be consistent with the CIP Consultant Travel Policy. Consultant, subconsultant, or Contract Personnel staff who are required to travel to and from a non-City location for a direct Project-related purpose ("Direct Project-Related Travel") (e.g., workshop at third-party consultant office, site tour of another wastewater facility, witness testing of equipment) shall be eligible for reimbursement of travel expenses consistent with the CIP Consultant Travel Policy.

The CIP Consultant Travel Policy does not authorize the City to reimburse the Consultant for the costs Onsite Staff incur to commute to the PMO. Commuting expenses shall be subject to reimbursement in accordance with the following:

- **Allowable Commuting Expenses:** For Onsite Staff whose home office location is more than 60 miles from the PMO, the following shall apply:
 - **Airfare:** The City will reimburse up to two (2) round-trip flights per month between San José and the home city of the Consultant's onsite Deputy Principal Construction Manager, Matthew R. Smith. Other than Matthew R. Smith, the City will not reimburse airfare for any other Onsite staff except for Direct Project-Related Travel.
 - **Transportation:** Ground transportation costs shall be subject to reimbursement for travel between an employee's home office location and the PMO. Private vehicle mileage shall be subject to reimbursement for travel between an employee's home office location and the PMO. No other transportation expenses are eligible for reimbursement, except for Direct Project-Related Travel.
 - **Lodging:** Lodging expenses shall be subject to reimbursement up to the GSA rate for the Sunnyvale / Palo Alto / San Jose area (excluding lodging taxes).
 - **Leased Apartments:** With the Director's written pre-approval, the City will reimburse the Consultant for the cost of monthly leased apartments in lieu of hotel lodging for Onsite Staff assignments lasting longer than one (1) month; provided, however, that the cost of the leased apartments, including utilities and services, is less than the maximum allowable GSA lodging rate set forth above. The allowable utilities and services are limited to the following: electricity, furniture rental, gas, internet, insurance, sewer, trash, and water. The monthly maximum allowable reimbursement for rent and allowable utilities shall be specified in each approved service order.

For the first applicable invoice, Consultant shall provide a copy of the lease agreement showing the monthly rent amount. Consultant shall provide sufficient backup documentation, including bills/invoices, for allowable utility and service expenses on a monthly basis.
 - **Meals and incidentals:** Meals and incidentals shall not be reimbursable for Onsite Staff except for Direct Project-Related Travel.
 - **Parking:** Parking expenses for ground transportation shall be subject to reimbursement for travel between an employee's home office location and the PMO. No other parking expenses are eligible for Onsite Staff except for Direct Project-Related Travel.
 - Commuting expenses are subject to the limitations and requirements contained in the CIP Consultant Travel Policy, as applicable.

- **Unallowable Commuting Expenses:** For (1) Onsite Staff whose home office location is less than 60 miles from the PMO, and (2) all Offsite Staff, no travel reimbursement shall be allowed except for Direct Project-Related Travel.
4. **Contract Personnel.** Consultant shall be compensated for Contract Personnel costs in accordance with Subsection 10.4.4 of the Agreement.
 5. **Subconsultant Costs.** Consultant shall be compensated for subconsultant costs in accordance with Subsection 10.4.6 of the Agreement.
 6. **Accuracy of Information.** Consultant certifies that cost and pricing information used to calculate its compensation pursuant to this Exhibit B will be complete, current and accurate at the time of submission to the City.

**Exhibit B-1: General Prevailing Wage Determination Made by The
Director of Industrial Relations for Northern California for
Building/Construction Inspector and Field Soils and Material Tester
(journeyperson classifications)**

(next page)

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: #BUILDING/CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER

DETERMINATION: NC-63-3-9-2020-2

ISSUE DATE: August 22, 2020

EXPIRATION DATE OF DETERMINATION: June 30, 2021* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after ten days after the expiration date if no subsequent determination is issued.

LOCALITY: All localities within Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba counties.

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Health and Welfare ^a	Employer Payments				Straight-Time Hours	Total Hourly Rate	Overtime Hourly Rate		
			Pension	Vacation and Holiday	Training	Other Payment			Daily ^b 1 1/2X	Saturday ^b 1 1/2X	Sunday/ Holiday 2X
Group 1	\$52.05	13.88	10.82	6.62	1.13	0.24	8	84.74	110.765	110.765	136.79
Group 2	50.05	13.88	10.82	6.62	1.13	0.24	8	82.74	107.765	107.765	132.79
Group 3	42.84	13.88	10.82	6.62	1.13	0.24	8	75.53	96.95	96.95	118.37
Group 4	36.87	13.88	10.82	6.62	1.13	0.24	8	69.56	87.995	87.995	106.43

Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

^a Amount shall be paid for all hours worked up to 173 hours per month.

^b Rate applies to the first 4 daily overtime hours, Monday through Friday, and the first 8 hours on Saturday. All other overtime is paid at the Sunday/Holiday overtime rate.

CLASSIFICATIONS:

Group 1	Group 2	Group 3	Group 4
ASNT Level II-III	AWS-CWI	Geotechnical Driller	ACI
DSA Masonry	ICC Certified Structural Inspector	Soils/Asphalt	Drillers Helper
DSA Shotcrete	NICET Level III	Earthwork Grading	ICC Fireproofing
Lead Inspector	Shear Wall/Floor System Inspector	Excavation and Backfill	NICET Level I
NICET Level IV	Building/Construction Inspector	NICET Level II	Proofload Testing
NDT Level Two			Torque Testing
			NACE
			NDT Level One

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: #BUILDING/CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER (SECOND SHIFT)

DETERMINATION: NC-63-3-9-2020-2

ISSUE DATE: August 22, 2020

EXPIRATION DATE OF DETERMINATION: June 30, 2021* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after ten days after the expiration date if no subsequent determination is issued.

LOCALITY: All localities within Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba counties.

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Health and Welfare ^a	Employer Payments				Straight-Time		Overtime Hourly Rate		
			Pension	Vacation and Holiday	Training	Other Payment	Hours	Total Hourly Rate	Daily ^b 1 1/2X	Saturday ^b 1 1/2X	Sunday/ Holiday 2X
Group 1	\$58.56	13.88	10.82	6.62	1.13	0.24	8	91.25	120.53	120.53	149.81
Group 2	56.31	13.88	10.82	6.62	1.13	0.24	8	89.00	117.155	117.155	145.31
Group 3	48.20	13.88	10.82	6.62	1.13	0.24	8	80.89	104.99	104.99	129.09
Group 4	41.48	13.88	10.82	6.62	1.13	0.24	8	74.17	94.91	94.91	115.65

Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @

<http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

^a Amount shall be paid for all hours worked up to 173 hours per month.

^b Rate applies to the first 4 daily overtime hours, Monday through Friday, and the first 8 hours on Saturday. All other overtime is paid at the Sunday/Holiday overtime rate.

CLASSIFICATIONS:

Group 1	Group 2	Group 3	Group 4
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DSA Masonry	ICC Certified Structural Inspector	Soils/Asphalt	Drillers Helper
DSA Shotcrete	NICET Level III	Earthwork Grading	ICC Fireproofing
Lead Inspector	Shear Wall/Floor System Inspector	Excavation and Backfill	NICET Level I
NICET Level IV	Building/Construction Inspector	NICET Level II	Proofload Testing
NDT Level Two			Torque Testing
			NACE
			NDT Level One

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

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