

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

THIS AGREEMENT is made and entered into this _____ day of _____, 2018 ("Contract Date"), by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and MACIAS GINI & O'CONNELL LLP, a California limited liability partnership (hereinafter "AUDITOR").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

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

SECTION 2. TERM OF AGREEMENT.

- A. The term of this AGREEMENT shall be from the Contract Date and shall extend through December 31, 2020, inclusive ("Initial Term"), subject to the provisions of SECTION 11 of this AGREEMENT, and subject to appropriation of adequate funding in the sole discretion of the San José City Council to pay the expense of this AGREEMENT for each year of the Initial Term.
- B. CITY, in CITY's sole discretion, may extend the term of this AGREEMENT for up to three (3) additional one-year option periods ("Option Period(s)"), subject to all of the terms and provisions of this AGREEMENT. The City Auditor is authorized

to exercise these Option Periods upon written notice to AUDITOR, subject to the appropriation of adequate funding in the sole discretion of the City Council to pay the expense of this AGREEMENT for each year of the Option Periods. In the event the first Option Period is exercised by the City Auditor, the first Option Period will commence on January 1, 2021 and expire on December 31, 2021. In the event the second Option Period is exercised by the City Auditor, the second Option Period will commence on January 1, 2022 and expire on December 31, 2022. In the event the third Option Period is exercised by the City Auditor, the third Option Period will commence on January 1, 2023 and expire on December 31, 2023.

SECTION 3. SCHEDULE OF PERFORMANCE.

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

SECTION 4. COMPENSATION.

- A. The maximum amount of compensation payable under this AGREEMENT for the Initial Term and, if exercised, the Option Periods, shall not exceed Three Million Nine Hundred Fifty-Two Thousand Seven Hundred Eighty-Nine Dollars (\$3,952,789). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- B. AUDITOR agrees that in the performance of this AGREEMENT, AUDITOR shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this AGREEMENT:
 - 1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.

2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
3. AUDITOR acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this AGREEMENT.

SECTION 5. METHOD OF PAYMENT.

Each month, AUDITOR shall furnish to the CITY a statement of the work performed for compensation during the preceding month, in accordance with the provisions of EXHIBIT D.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that AUDITOR, in the performance of the work and services agreed to be performed by AUDITOR, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, AUDITOR shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and AUDITOR hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of AUDITOR are material considerations for this AGREEMENT. AUDITOR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of AUDITOR's obligations hereunder, without the prior written consent of CITY, and any attempt by AUDITOR to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

AUDITOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by AUDITOR's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

AUDITOR agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the CITY's Director of Finance or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. AUDITOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

AUDITOR shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity,

disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.

- B. If AUDITOR fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

- C. The City Auditor is empowered to terminate this AGREEMENT on behalf of CITY.

- D. In the event of termination, AUDITOR shall deliver to CITY copies of all reports, documents, and other work performed by AUDITOR under this AGREEMENT, except for audit documentation and/or working papers as these are property of the AUDITOR, and upon receipt thereof, CITY shall pay AUDITOR for services performed to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and AUDITOR agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

AUDITOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, AUDITOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 14. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

AUDITOR agrees that, in the performance of this AGREEMENT, AUDITOR shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY's website at the following link: <http://www.sanjoseca.gov/?nid=1774>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

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

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for AUDITOR in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

All programs, working papers, files and other materials of the AUDITOR made pursuant to this AGREEMENT shall remain the property of the AUDITOR. The reports issued by the AUDITOR shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 17. WAIVER.

AUDITOR agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by AUDITOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. AUDITOR'S BOOKS AND RECORDS.

- A. AUDITOR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to AUDITOR pursuant to this AGREEMENT.
- B. AUDITOR shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of seven (7) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City

Attorney, City Auditor, City Manager, or CITY's Director of Finance, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at AUDITOR's address indicated for receipt of notices in this AGREEMENT. AUDITOR acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of AUDITOR's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by AUDITOR, AUDITOR's representatives, or AUDITOR's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

AUDITOR shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. As of the date of entering into this AGREEMENT, AUDITOR's employees assigned to perform services as specified in EXHIBIT B of this AGREEMENT ("AUDITOR's Assigned Employees") shall not be required to complete and file a Form 700 with CITY's Clerk. In the event that the CITY subsequently determines to require AUDITOR's Assigned Employees to complete and file a Form 700 with CITY's Clerk, CITY will notify AUDITOR in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). AUDITOR shall cause AUDITOR's Assigned Employees to complete and file the Form 700 with CITY's Clerk

and to submit a copy to CITY's Auditor, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

SECTION 20. GIFTS.

- A. AUDITOR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. AUDITOR agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by AUDITOR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

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

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: City of San José – Finance Accounting
200 East Santa Clara Street, 13th Floor
San José, CA 95113-1905

and to: City Auditor
City of San José
200 East Santa Clara Street, 14th Floor
San José, CA 95113-1905

To AUDITOR: Macias Gini & O'Connell LLP
Attn: David Bullock
2121 N. California Blvd., Suite 750
Walnut Creek, CA 94596

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 24. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 25. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be

modified only by a written amendment duly executed by the parties to this
AGREEMENT.

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

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

DANIELLE KENEALEY
Chief Deputy City Attorney

By _____
TONI J. TABER, CMC
City Clerk

“AUDITOR”

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

By _____
DAVID BULLOCK
Partner

EXHIBIT A
RECITALS

WHEREAS, the CITY desires to obtain audit services to perform required financial and compliance audits; and

WHEREAS, MACIAS GINI & O'CONNELL LLP has the necessary professional expertise and skill to perform such auditing services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain MACIAS GINI & O'CONNELL LLP, a California limited liability partnership, as AUDITOR to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B
SCOPE OF SERVICES

A. OVERVIEW OF SERVICES

1. Subject to the provisions of SECTION 2 of this AGREEMENT, AUDITOR shall perform the services ("Audit Services") for the fiscal years ending on June 30th of 2018, 2019, and 2020 and, if CITY exercises its rights to extend the Initial Term of this AGREEMENT, for the fiscal years ending on June 30th of 2021, 2022 and 2023.
2. AUDITOR shall provide all Audit 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 Audit 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. AUDITOR shall inform, in accordance with the American Institute of CPAs ("AICPA") and U.S. Government Accountability Office ("GAO") guidelines, the CITY promptly of any discrepancy or irregularity, including fraud and defalcations, material to the financial statements which AUDITOR may discover in the course of the audits; and AUDITOR shall submit to the CITY 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. In addition, AUDITOR shall inform the CITY of upcoming Governmental Accounting Standards Board ("GASB") pronouncements and provide assistance for an appropriate and timely implementation.
4. AUDITOR shall provide consultation and guidance to aid the CITY in meeting the requirements of the Government Finance Officers Association's ("GFOA") Certificate of Achievement for Excellence in Financial Reporting program for the CITY's Comprehensive Annual Financial Report ("CAFR").
5. AUDITOR shall perform all Audit Services to the satisfaction of the CITY's Auditor.

B. AUDIT WORK PLANS

Each year during the term of this AGREEMENT, AUDITOR shall prepare and submit an audit work plan for the CITY to the CITY's Auditor, 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's Auditor not later than the agreed-upon due dates specified in EXHIBIT C. The audit work plan is to contain discussion on the following items: (1) the organizational structure of the CITY, the 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 that will be used to keep CITY personnel informed during audit fieldwork. Each audit work plan is subject to the review and approval of CITY's Auditor.

C. 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, 2011 revision. AUDITOR promptly shall provide CITY's Auditor with documentation of each external peer review which occurs during the term of this AGREEMENT.

AUDITOR shall utilize only staff members who are experienced in public sector auditing and who have, within the past two (2) years, received an appropriate level of education and training directly related to the government environment and government auditing.

D. AUDIT REPORTS

In connection with each of the audits described in Paragraph J, AUDITOR shall prepare a written audit report ("Audit Report") in accordance with generally accepted auditing standards as promulgated by the AICPA and the applicable audit standards contained in Government Auditing Standards, 2011 or later revision, issued by the Comptroller General of the United States, as well as comply with subsequent issued revisions, with the objective of expressing an opinion on the financial statements.

E. USE OF WORK PRODUCT

AUDITOR shall perform the procedures necessary to ensure that CITY 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 and annual bond disclosure reporting. 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.

F. INTERNET PUBLICATION OF WORK PRODUCT

AUDITOR shall provide all written work product in an electronic format or publication on the internet such as a searchable Adobe PDF document or other electronic format as approved by the CITY that meets Disability Access Design Standards. 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.

G. 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.

H. GASB GUIDANCE

AUDITOR will provide guidance and information to CITY on changes in accounting principles due to new GASB pronouncements.

I. ADDITIONAL SERVICES

The CITY reserves the right to add or delete entities or request additional Audit Services. If an entity is added, CITY may request AUDITOR to provide a quote as to the cost of auditing the additional entity based on the per hour rate agreed upon in this AGREEMENT. CITY reserves the right to negotiate the quote or decline to engage AUDITOR's services for such.

J. AUDIT SERVICES

1. General City Audit – Basic Financial Statements

a. Audit Report

AUDITOR shall conduct an audit of the Basic Financial Statements (government-wide financial statements, fund financial statements, and financial disclosures) 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, of such Basic Financial Statements ("BFS"), prepared by CITY, pertaining to all funds 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 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 for inclusion in the CITY's CAFR.

AUDITOR shall review sections of the CITY's 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 BFS taken as a whole.

b. Management Letter

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 agreed-upon due dates specified in EXHIBIT C.

c. 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.

2. Single Audit

- a. AUDITOR shall conduct, for the fiscal years from July 1 to June 30, compliance audit procedures as required by applicable federal law or regulation, currently specified in Title 2 U.S. *Code of Federal Regulations* Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). AUDITOR shall conduct the compliance audit procedures in accordance with governmental auditing standards adopted by the GAO in *Standards for Audit of Governmental Organization, Programs, Activities and Functions* and in accordance with the guidelines detailed in the AICPA *Audit and Accounting Guide, Audits of State and Local Governmental Units* (Revised).
- b. AUDITOR shall evaluate the adequacy of the system of internal accounting and administrative controls as they relate to the Federal 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 (accounting and administrative) at the BFS level and the Federal Program level which describes the scope of the testing of internal controls and the results of the tests.
 - ii. A report on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the BFS and the Federal Program, identifying all findings of noncompliance and questioned costs.
 - iii. An in-relation report on a supplementary schedule of the Expenditures of Federal Awards, showing total expenditures

for each federal program and Schedule of the Office of Criminal Justice Planning, State Grants.

3. Norman Y. Mineta San José International Airport Audit

- a. AUDITOR shall conduct an audit of the financial statements of the CITY pertaining to the Norman Y. Mineta San José International Airport ("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.

b. Passenger Facility Charge Compliance Report

AUDITOR shall conduct an audit of the Airport's compliance with the requirements described in the Passenger Facility Charge Audit Guide for Public Agencies, issued by the Federal Aviation Administration, applicable to its passenger facility charge program for the year ended June 30. The Audit Report shall consist of the AUDITOR's written opinion on compliance together with the final financial statements and related notes.

c. Customer Facility Charge Compliance Report

AUDITOR shall conduct an audit of the Airport's compliance with the requirements described in the California Civil Code Section 1936, as amended by Assembly Bill 359, applicable to its customer facility charge program for the year ended June 30. The Audit Report shall consist of the AUDITOR's written opinion on compliance together with the final financial statements and related notes.

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 Hayes Mansion Conference Center Financial Statements and Agreed-Upon Procedures

- a. AUDITOR shall conduct an audit of the Hayes Mansion Conference Center ("Center") 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 in accordance with applicable professional auditing standards and reproduce the Center's Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Center's Financial Statements audited together with the final financial statements and related notes.

b. Management Letter

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 agreed-upon due dates specified in EXHIBIT C.

c. Agreed-Upon Procedures

AUDITOR shall also perform agreed-upon procedures related to compliance by the operator of the Center with the management agreement between the operator and the CITY. AUDITOR shall evaluate the adequacy of the system of internal control at the Center 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 firm's substantive audit procedures. The resulting recommendations and any other audit findings or comments shall be included in a separate letter addressed to the City Council to be issued as soon as possible after conclusion of the audits, but not later than the agreed-upon due dates specified in 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 Team San José ("TSJ") for the San José Convention Center and Cultural Facilities ("Facilities")

a. AUDITOR shall conduct an audit of the Facilities Financial Statements prepared by TSJ for the fiscal years from July 1 to June 30, as required in Section 31.7 of the Agreement for the Management of the San José Convention Center and Cultural Facilities between the CITY and TSJ. The AUDITOR shall prepare a written Audit Report, which shall include a statement of net position, a statement of revenues, expenses and changes in net position, a statement of cash flows, and a budgetary comparison schedule, prepared 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 financial statements and related notes.

b. Management Letter

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 agreed-upon due dates specified in EXHIBIT C.

8. Parks Bond Funds Financial Statements and Report on Compliance with Measure "P" (2000)

- a. AUDITOR shall conduct an audit of the Parks Bond Funds ("Parks") Financial Statements for the fiscal years from July 1 to June 30. In connection with the Parks, the AUDITOR shall prepare a written Audit Report in accordance with applicable professional auditing standards and reproduce the Parks Bond Fund Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Parks Bond Fund Financial Statements audited together with the final financial statements, a statement of revenues, expenditures, and changes in fund balance by fiscal year for the period beginning June 6, 2001, and related notes.

b. Compliance Report

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 P (2000) as follows:

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.

AUDITOR's examination will be conducted in accordance with attestation standards established by the AICPA and will include tests of the CITY's records and other procedures necessary to express an opinion on whether the CITY complied with Measure P (2000) in all material respects.

9. **CITY's 911, Fire, Police, Paramedic and Neighborhood Security Act ("Public Safety Bonds") Financial Statements and Report on Compliance with Measure "O" (2002)**

- a. AUDITOR shall conduct an audit of the Public Safety Bond Funds Financial Statements for the fiscal years from July 1 to June 30. In connection with the Public Safety Bond Fund, the AUDITOR shall prepare a written 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 financial statements and related notes.

b. **Compliance Report**

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 CITY's Measure O (2002) 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.

AUDITOR's examination will be conducted in accordance with attestation standards established by the AICPA 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 "O" (2002) in all material respects.

10. **Branch Library Bond Projects Fund Financial Statements and Report on Compliance with Measure "O" (2000)**

- a. AUDITOR shall conduct an audit of the Branch Library Bond Projects Fund ("Libraries") Financial Statements for the fiscal years from July 1 to June 30. In connection with the Libraries, the AUDITOR shall prepare a written Audit Report in accordance with

applicable professional auditing standards and reproduce the Libraries Bond Fund Financial Statements, a statement of revenues, expenditures and changes in fund balance by fiscal year for the period beginning June 6, 2001, and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Libraries Financial Statements audited together with the final financial statements and related notes.

b. Compliance Report

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 (2000) as follows:

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.

The AUDITOR's examination will be conducted in accordance with attestation standards established by the AICPA and will include tests of the CITY's records and other procedures necessary to express an opinion on whether the CITY complied with Measure O (2000) in all material respects.

11. Library Parcel Tax Fund Financial Statements and Report on Compliance with Measure "S" (2004)

- a. AUDITOR shall conduct an audit of the Library Parcel Tax Fund ("Parcel Tax") Financial Statements for the fiscal year July 1 to June 30. In connection with the Parcel Tax, the AUDITOR shall prepare a written 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 financial statements and related notes.

b. Compliance Report

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 (2004) as follows:

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

The AUDITOR's examination will be conducted in accordance with attestation standards established by the AICPA 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 (2004) in all material respects.

12. Semi-Annual Investment Program Compliance Audit

a. Compliance Report

On a semi-annual basis, AUDITOR shall perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the CITY's investments within the CITY's pooled portfolio are in compliance with the CITY's Investment Policy (<http://www.sanjoseca.gov/DocumentCenter/View/3842>), 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. AUDITOR shall agree individual investments and deposits to supporting documentation and reconcile such to the CITY's Treasurer's Report as of June 30 and December 31, and the CITY's general ledger. AUDITOR shall evaluate the adequacy of the system of internal control over investments and design compliance tests, where appropriate, to determine that the controls are in operation.

13. South Bay Water Recycling Audit

a. AUDITOR shall conduct an audit of the CITY's Schedule of Net Operating Revenues for South Bay Water Recycling for the fiscal year July 1 to June 30 ("Schedule"), as required by the terms of the Integration Agreement entered into between the CITY and the Santa Clara Valley Water District on March 2, 2010. The AUDITOR shall prepare a written Audit Report in accordance with applicable professional auditing standards and reproduce the Schedule and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Schedule audited together with the Schedule and related notes.

b. Report to the Recycled Water Policy Advisory Committee

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 related to the Schedule of Net Operating Revenues for South Bay Water Recycling. 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 addressed to the Recycled Water Policy Advisory Committee to be issued as soon as possible after conclusion of the audits, but not later than the agreed-upon due dates specified in EXHIBIT C.

EXHIBIT C
SCHEDULE OF PERFORMANCE

- A. AUDITOR shall complete the following phases and/or deliver the following documents according to the following time schedule for the audit of the fiscal years noted in Paragraph D below. "Delivered" shall mean physical receipt by the persons designated below as recipients of delivery. Two (2) bound copies of each of the documents listed below, together with an unbound copy of each report, and an electronic copy of each report, are to be delivered directly to CITY's Auditor and CITY's Director of Finance.

<u>TASK</u>	<u>SCHEDULE</u>
<u>Planning</u>	
Entrance conference	By April 15
Client service planning meeting	By May 15
Present final audit plan to CITY representatives	By July 15
<u>Interim Fieldwork</u>	
On-site interim fieldwork	April through July
Present interim findings and preliminary management letter listing to CITY representatives	August 15
<u>Year-End Fieldwork</u>	
Coordination of year end fieldwork status with CITY's Finance Department	August through November
On-site year-end financial statement fieldwork	August through November
Present preliminary audit findings and management letter comments to CITY representatives	September through October
Exit conference with CITY representatives	November

<u>Reports</u>	<u>Due by</u>
▪ General City Audit Workplan	July 15
▪ Convention Center Audit Report including Financial Statements and Opinion	September 30
▪ Convention Center Management Letter	
▪ Hayes Mansion Audit Report including Financial Statements and Opinion	September 30
▪ Hayes Mansion Management Letter	
▪ Hayes Mansion Agreed-upon Procedures Report	

<u>Reports</u>	<u>Due by</u>
▪ City's Investment Program Compliance	September 30 and March 30
▪ Libraries Bond Fund Audit Report including Financial Statements and Opinion ▪ Libraries Bond Fund Compliance Report	October 15
▪ Parks Bond Fund Audit Report including Financial Statements and Opinion ▪ Parks Bond Fund Compliance Report	October 15
▪ Library Parcel Tax Fund Audit Report including Financial Statements and Opinion ▪ Library Parcel Tax Compliance Report	October 15
▪ Public Safety Bonds Audit Report including Financial Statements and Opinion ▪ Public Safety Bonds Compliance Report	October 15
▪ San Jose-Santa Clara Clean Water Financing Authority Related Funds Compliance Audit	October 15
▪ Airport Comprehensive Annual Financial Report (CAFR) Opinion	October 31
▪ Bicycle/Pedestrian Facilities Grant	November 15
▪ South Bay Water Recycling Audit Report ▪ Report to the Recycled Water Policy Advisory Committee	November 15
▪ Single Audit Report	November 15
▪ Comprehensive Annual Financial Report Opinion	November 15
▪ Management Letter - City	November 15
▪ Gann Agreed-Upon Procedures Report	November 30

- B. Either CITY's Auditor or CITY's Director of Finance may, upon notice and showing of good cause therefore given and made by 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 letters for a reasonable period of time after the specified delivery dates.
- C. AUDITOR shall make its presentation to a City Council Committee (currently the Public Safety, Finance & Strategic Support Committee) and/or the City Council or any other Committee designated by CITY's Auditor.
- D. AUDITOR will perform all services associated with the audits for fiscal years ending on June 30th of 2018, 2019 and 2020 and with the audits for the Option Periods ending on June 30th of 2021, 2022 and 2023, in accordance with the schedule specified in Paragraph A above.

EXHIBIT D
COMPENSATION

- A. The amount of compensation to be paid to AUDITOR under this AGREEMENT for all professional services related to this AGREEMENT shall not exceed the following amounts for each year of the Initial Term and, if exercised, the Option Periods:

<u>Year</u>	<u>Compensation</u>
Contract Date – December 31, 2018	\$612,663.57
January 1, 2019 – December 31, 2019	\$629,127.83
January 1, 2020 – December 31, 2020	\$648,001.66
January 1, 2021 – December 31, 2021	\$667,441.71
January 1, 2022 – December 31, 2022	\$687,464.97
January 1, 2023 – December 31, 2023	\$708,088.91
TOTAL:	\$3,952,788.66

The total amount of compensation to be paid to AUDITOR under this AGREEMENT for all professional services related to this AGREEMENT for the Initial Term and, if exercised, all Option Periods shall not exceed Three Million Nine Hundred Fifty-Two Thousand Seven Hundred Eighty-Nine Dollars (\$3,952,789).

Any hours worked 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 first year of the Initial Term shall not exceed the following annual amount for the following services:

<u>Services</u>	<u>Compensation</u>
Comprehensive Annual Financial Report Audit	\$239,380.24
Single Audit	\$84,166.45
Norman Y. Mineta San José International Airport Audit	\$73,837.61
Hayes Mansion Conference Center Audit and Agreed-Upon Procedures	\$35,635.94
San José-Santa Clara Clean Water Financing Authority Related Funds Compliance Audit	\$24,695.28
Bicycle/Pedestrian Facilities Grant Audit	\$9,135.07
San José Convention Center and Cultural Facilities Audit	\$50,928.35
Library Bond Fund Audit	\$15,438.67
Library Parcel Tax Fund Audit	\$13,386.91
Parks Bond Fund Audit	\$15,438.67

<u>Services</u>	<u>Compensation</u>
City's Investment Program Compliance Audit (two each year)	\$14,270.65 for both audits
Public Safety Bonds Audit	\$15,337.73
South Bay Water Recycling Program and System Audit	\$21,012.00
TOTAL:	\$612,663.57

- C. CITY will pay AUDITOR on a monthly basis for its accumulated time spent in accordance with the hourly rates set forth below, up to ninety percent (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, and hourly rates. After the first year of the AGREEMENT, AUDITOR may increase the hourly rates annually by up to the lesser amount of three percent (3%) or the increase in the Consumer Price Index for All Urban Consumers, All Items, for the San Francisco-Oakland-San José Metropolitan Area (1982-84=100) (October) as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

<u>Staff Classification</u>	<u>Hourly Rate</u>
Partner	\$335
Senior Manager	\$234
IT and Actuarial Consultant	\$295
Senior Auditor	\$153
Staff Auditor	\$115
Administrative Assistant	\$80

There shall be no separately reimbursable expenses under this AGREEMENT.

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 CITY's Auditor has determined that all conditions and terms of this AGREEMENT have been met by AUDITOR.

EXHIBIT E
INSURANCE

AUDITOR, at AUDITOR '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 AUDITOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

AUDITOR 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
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 & Omissions: \$2,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or AUDITOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, AUDITOR; products and completed operations of AUDITOR; premises owned, leased or used by AUDITOR; and automobiles owned, leased, hired or borrowed by AUDITOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. AUDITOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of AUDITOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by AUDITOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that AUDITOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

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

3. 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

AUDITOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

G. Subcontractors

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

EXHIBIT F
SPECIAL PROVISIONS

I. AUDITOR's Workpapers and Reports.

- A. AUDITOR shall maintain all audit workpapers and reports which demonstrate performance under this AGREEMENT for a minimum period of seven (7) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- B. Any audit workpapers or reports required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at no cost to CITY, at any time during regular business hours upon written request by the City Attorney, the City Auditor, the City Manager, CITY's Director of Finance, and successor auditors, or a designated representative of any of these officers. Copies of such audit workpapers and reports shall be provided CITY for inspection at AUDITOR's address indicated for receipt of notices in this AGREEMENT.

II. Designation of Coordinators.

The CITY designates its Director of Finance and its City Auditor as CITY's coordinators of this AGREEMENT. AUDITOR designates David Bullock as AUDITOR's coordinator of this AGREEMENT. These coordinators, or their designated successors, will perform the function of coordinating the parties' efforts to efficiently execute this AGREEMENT.