

☒ **First**

Amendment to Master City of San José Consultant Agreement

(Capital Projects)

☐ **Second**

Consultants Name: H.T. Harvey & Associates

☐ **Third**

(Master Agreement AC No. 644608)

This Amendment to the Master Agreement is made and entered into this _____ day of _____, 201____. The City and the Consultant amend the above-referenced agreement as set forth herein.

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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.
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4. ☒ **Agreement Term:** Section 2 is amended to extend the expiration date from December 31, 2023 to December 31, 2027.
 5. ☒ **Maximum Total Compensation:** Subsection 7.1 is amended to ☒ Increase ☐ Decrease the Maximum Total Compensation from \$2,000,000 to \$3,125,000.
 6. ☐ **Agreement Section(s):** Section(s) _____ is/are amended to read as set forth in Attachment A of the Amendment.
 7. ☒ **Schedule of Performance – 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.
 8. ☒ **Compensation – Exhibit C:** The ☒ original ☐ First Revised ☐ Second Revised Exhibit C is amended to read as set forth in the attached ☒ First ☐ Second ☐ Third Revised Exhibit C, 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 _____

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

Date

By _____

Name: Ron Duke
Title: President and Principal

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:**

Jon Calegari
Deputy City Attorney

Date

By _____

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

Date

☒ **First**

☐ **Second**

☐ **Third**

Revised Exhibit B: Schedule of Performance

(Capital Project)

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

All work under this Agreement shall be completed on or before December 31, 2027. Work shall be initiated on an as-needed basis at the request of City, and work shall be prosecuted pursuant to details defined in each Service Order, as set forth in Exhibit A of this Agreement.

☒ **First**

☐ **Second**

☐ **Third**

Revised Exhibit C: Compensation

(Capital Project)

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

Section 1. Maximum Compensation for Master Agreement

1.1 **Maximum Amount:** The maximum amount of Compensation City will pay to the Consultant under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed \$3,125,000. Any hours worked or expense incurred for which payment would result in a total exceeding this maximum amount shall be at no cost to City.

1.2 **Manner of Payment:** Each Service Order will set forth whether City will pay the Consultant for work performed under such Service Order on a lump sum basis or on an hourly basis. Section 2 of this Exhibit applies to each Service Order where City will pay Consultant a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the City will pay Consultant on an hourly basis for the work performed.

Section 2. Lump Sum Payment

2.1 **Lump Sum Amount:** The Service Order shall specify the lump sum amount City will pay Consultant for performing the required work. The lump sum amount compensates Consultant for all its costs necessary to complete the work, including professional services and reimbursable expenses. Consultant shall complete all work set forth in the Service Order for the lump sum amount.

2.2 **Progress payments:** The Service Order may provide for City to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, Consultant shall invoice City for the appropriate progress payment. City will make the appropriate progress payment to Consultant within thirty (30) days of the Director's approval of Consultant's invoice.

2.3 **Lump Sum Payment:** If the Service Order does not provide for City to make progress payments, then City shall make a single lump-sum payment to Consultant upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, Consultant shall invoice the City for the lump-sum amount. City shall pay the lump-sum amount within thirty (30) days of the Director's approval of Consultant's invoice.

Section 3 Payment on an Hourly Basis

3.1 **Maximum Compensation:** The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional services and reimbursable expenses. Consultant shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for Exhibit C-

Compensation which payment would result in a total exceeding this maximum amount shall be at no cost to City.

3.2 Budget: If the Service Order itemizes budget amounts for any phase or category of work, then Consultant shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Hourly Rates: City will compensate Consultant at the hourly rates in set forth below. Notwithstanding anything to the contrary, these hourly rates are valid for the Initial Term, Additional Period, and any extension thereof unless changed by written amendment.

3.4 Reimbursable Expenses: City will reimburse for expenses subject to the following: Each Service Order will specify the maximum amount of expenses for which City will reimburse Consultant. CITY will reimburse expenses at actual cost plus ten percent (10%). Any expense Consultant incurs beyond the specified amount is at no cost to City. The following expenses are reimbursable to the extent Consultant documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to City, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the sub consultant, provided the Director has preapproved, in writing, the use and cost of the sub consultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, (f) transportation, (g) all other inhouse direct expenses as specified in this Exhibit D, and (h) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.5 Invoice: Every month Consultant shall invoice CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

SECTION 4. RATES

4.1 Personnel Category Rates

Charges will be made at the rates set forth below for time spent on management, consultation or meetings related to the project, field work, preparation and review, as further specified in each Service Order.

| Personnel Rates | Proposal Classification | Rate |
|----------------------------|-------------------------|-----------|
| Principal | | \$215-247 |
| Senior Associate Ecologist | Technical Associate | \$193 |
| Associate Ecologist | | \$179 |
| Senior Ecologist 2 | | \$163 |
| Senior Ecologist 1 | Project Manager | \$147 |
| Ecologist 2 | | \$131 |

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|------------------------|---|-------|
| Ecologist 1 | Ecologist, Specialist (e.g. vegetation) | \$116 |
| Field Biologist 2 | Biologist | \$100 |
| Field Biologist 1 | | \$84 |
| Field Inspector | Field Inspector | \$75 |
| Field Crew | Field Crew | \$65 |
| GIS Specialist | Graphic | \$85 |
| Technical Editor | | \$100 |
| Administrative Support | | \$80 |
| Clerical Support | Office Staff (Administration) | \$65 |

4.2 Expenses

As referenced in Section 3.4, City will reimburse expenses at actual cost plus ten percent (10%) and will apply to the following expenses.

A. Travel Expenses

1. Transportation

- Company or personal vehicle- IRS mileage reimbursement rate
- Car rental

2. Lodging, meals and related travel expenses

B. Communications

- Conference calls
- Shipping and express mail/fedex

C. Printing/Reproduction Rates

- Plotting -- \$2 per sq ft (black and white) and \$7 per sq ft (color)
- Outside reproduction

D. Equipment Rates – Below is a list of common equipment expenses expected. Other equipment might be identified by Service Order.

| Item | Rate |
|---------------------|-----------------------------------|
| GIS Computer time | \$10/hour |
| Trimble GPS | \$105/day |
| Surveying equipment | \$100/day |
| Weed trimmer | \$20/day, \$80/week, \$250/month |
| High weed mower | \$30/day, \$120/week, \$360/month |
| Chain saw | \$25/day, \$100/week |