

☒ First

**Amendment to Master Consultant Agreement – RWF Capital Projects**

☐ Second

☐ Third

Consultants Name: Kennedy/Jenks Consultants, Inc

(CPMS Contract No. 8125-1)  
(Master Agreement AC No. 27745)

This Amendment to the Master Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018. 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.
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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**

By \_\_\_\_\_  
Name: Toni Taber  
Title: City Clerk  
Date \_\_\_\_\_

**Consultant**

By \_\_\_\_\_ 12/14/18  
Name: Dennis Sanchez  
Title: 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:**

\_\_\_\_\_  
Sr. Deputy City Attorney  
Date 1/16/18

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date \_\_\_\_\_

☒ **First**

## **Revised Exhibit B: Basis of Compensation**

☐ **Second**

(Capital Project)

☐ **Third**

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

This First Revised Exhibit B, replaces the original Exhibit B, and any previous amendment to the original Exhibit B, in their entirety.

## **Exhibit B: Basis of Compensation**

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.

**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, the City will pay Consultant an amount equal to the Consultant's Direct Labor Rate (as defined below) multiplied by 2.82 ("Multiplier"), plus any applicable Overtime Pay (as defined below) (collectively, "Multiplier Compensation"). 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.

**1.2 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 seeking Overtime Pay.

- 1.3 Overhead Costs.** Consultant acknowledges and agrees that 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.

- 1.4 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 ten percent ( 10 %) of direct labor and overhead cost approved by the City. 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.

- 1.5 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. 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.	With the written pre-authorization of the City's project 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

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. **Contract Personnel.** Consultant shall be compensated for Contract Personnel costs in accordance with Subsection 10.4.4 of the Agreement.
  4. **Subconsultant Costs.** Consultant shall be compensated for subconsultant costs in accordance with Subsection 10.4.6 of the Agreement.
  5. **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  
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-63-3-9-2018-2

**ISSUE DATE:** August 22, 2018

**EXPIRATION DATE OF DETERMINATION:** September 30, 2019\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**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)	Employer Payments						Straight-Time		Overtime Hourly Rate		
	Basic	Health	Pension	Vacation	Training	Other	Hours	Total	Daily <sup>b</sup>	Saturday <sup>b</sup>	Sunday/ Holiday
	Hourly Rate	and Welfare <sup>a</sup>		and Holiday		Payment		Hourly Rate	1 1/2X	1 1/2X	2X
Group 1	\$47.03	13.88	9.57	6.24	1.13	0.24	8	78.09	101.605	101.605	125.12
Group 2	45.03	13.88	9.57	6.24	1.13	0.24	8	76.09	98.605	98.605	121.12
Group 3	38.89	13.88	9.57	6.24	1.13	0.24	8	69.95	89.395	89.395	108.84
Group 4	33.66	13.88	9.57	6.24	1.13	0.24	8	64.72	81.550	81.550	98.38

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

<http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at <http://www.dir.ca.gov/das/das.html>.

<sup>a</sup> Amount shall be paid for all hours worked up to 173 hours per month.

<sup>b</sup> 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-63-3-9-2018-2

**ISSUE DATE:** August 22, 2018

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CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Health and Welfare <sup>a</sup>	Employer Payments				Straight-Time Hours	Total Hourly Rate	Overtime Hourly Rate		
			Pension	Vacation and Holiday	Training	Other Payment			Daily <sup>b</sup> 1 1/2X	Saturday <sup>b</sup> 1 1/2X	Sunday/ Holiday 2X
Group 1	\$52.91	13.88	9.57	6.24	1.13	0.24	8	83.97	110.425	110.425	136.88
Group 2	50.66	13.88	9.57	6.24	1.13	0.24	8	81.72	107.050	107.050	132.38
Group 3	43.75	13.88	9.57	6.24	1.13	0.24	8	74.81	96.685	96.685	118.56
Group 4	37.87	13.88	9.57	6.24	1.13	0.24	8	68.93	87.865	87.865	106.80

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Lead Inspector	Shear Wall/Floor System Inspector	Excavation and Backfill	NICET Level I
NICET Level IV	Building/Construction Inspector	NICET Level II	Proofload Testing
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**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**