Amended and Restated
Master City of San José Consultant Agreement

(Capital Projects)

(CPMS Contract No. 8753-1)

This amended and restated Master Agreement ("Master Agreement") is between the City of San José, a municipal corporation ("City"), and Construction Testing Services, Inc., a California Corporation ("Consultant").

This Master Agreement is made and entered into this ___ day of _____ 2019 ("Contract Date").

The City and Consultant previously entered into an agreement for specialty inspection and materials testing services for the San Jose-Santa Clara Regional Wastewater Facility Capital Improvement Program on June 19, 2018 ("Original Agreement"). The City and Consultant desire to amend and restate the Original Agreement in its entirety through this Master Agreement to allow for premium pay and change insurance requirements.

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 **General:** The Consultant will provide professional consulting services to the City on an as-needed basis pursuant to individual service orders issued in accordance with the terms and conditions of this Master Agreement. The type of professional consulting services the Consultant will provide can be described generally as: Special Inspection and Materials Testing Services for the San Jose-Santa Clara Regional Wastewater Facility Capital Improvement Program

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

Exhibit A: Approved Service Order Form

Exhibit B: Schedule of Rates and Charges

Exhibit C: Insurance Requirements

1.3 **Director:** "Director" means the Director of Environmental Services Department or the Director's designee.

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

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

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

2. AGREEMENT TERM

The term of this Master Agreement is from the Contract Date to December 31, 2023, inclusive, unless terminated earlier pursuant to Section 19 below.

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3. SERVICE ORDERS

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

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

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

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

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

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

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

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

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

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

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

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

3.6 **Performance:** Subject to Subsection 3.5 above, the Consultant must perform the Work in accordance with the specific requirements of the Approved Service Order. The Consultant must coordinate and cooperate with City staff, consultants and contractors in performing the Work, and must perform the Work to the Director's satisfaction.

4. DESIGN SERVICE REQUIREMENTS

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

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

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

5. CITY'S CONTRACT MANAGER

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

6. CONSULTANT'S STAFFING

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

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

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

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

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

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7. USE OF SUBCONSULTANTS

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

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

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

8. INDEPENDENT CONTRACTOR

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

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

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

9. STANDARD OF PERFORMANCE

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

10. COMPENSATION

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

10.1.1 **Maximum Total Compensation – Agreement:** The maximum *total, aggregate* compensation the City will pay the Consultant for all professional fees, costs and expenses for all Approved Service Orders issued under this Master Agreement shall not exceed $3,000,000 ("Maximum Total Compensation").

10.1.2 **Maximum Compensation – Service Order:** The cover page of each Approved Service Order will specify the maximum amount payable to the Consultant for all professional

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fees, costs and expenses related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall complete all Work required by the Approved Service Order for no more than the Maximum Service Order Compensation.

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

10.2.1 **Premium Pay:** "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will pay the Consultant Premium Pay for special inspection and materials testing services only if: (a) the Approved Service Order requires the inspection and materials testing services outside regular business hours, (b) the City has provided prior written approval to perform the special inspection and materials testing services outside of regular business hours, and (c) the Schedule of Rates and Charges sets forth the amount of Premium Pay for such special inspection and materials testing services

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

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

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

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

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

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

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

10.4.3.1 **Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is

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entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

10.4.3.2 **Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the Work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the Work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges attached to this Master Agreement as **Exhibit B**.

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

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

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

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

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

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

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

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

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

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

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

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

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

10.7 **Prevailing Wage - General:** In accordance with Chapter 14.09 of Title 14 of the San José Municipal Code, entitled "Prevailing Wage Requirements for City Contracts Involving Public Works," certain work performed by the Consultant may be subject to the payment of prevailing

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wages under Chapter 1 of Part 7 of the California Labor Code, starting with Labor Code Section 1720. which requires the payment of prevailing wages to all workers performing "construction." For purposes of this Master Agreement, "construction" has the meaning set forth in California Labor Code Section 1720(a) and includes construction-oriented work performed during the design and preconstruction phases, such as inspection, surveying, drilling, trenching, and excavation ("Construction").

10.7.1 **Prevailing Wage Requirement:** Notwithstanding anything to the contrary in this Master Agreement, the Consultant shall pay, or cause to be paid, the applicable prevailing wage to all workers performing work pursuant to an Approved Service Order if the work is prevailing wage work under the California Labor Code. The applicable prevailing wage shall be the wage rate established by the State Department of Industrial Relations for the applicable job classification.

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

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

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

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

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

11. INDEMNIFICATION

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

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pursuant to the requirements of this Master Agreement, or **(d)** any breach of this Master Agreement.

11.2 Omitted.

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

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

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

12. INSURANCE REQUIREMENTS

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

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

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

13. OWNERSHIP OF WORK PRODUCT

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

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

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

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

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14. DISCLOSURE OF WORK PRODUCT

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

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

14.3 **Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures by and between the Consultant and its Subcontractors that are needed to perform any Work.

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

15. AUDIT/INSPECTION OF RECORDS

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

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

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

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

16. NONDISCRIMINATION/NON-PREFERENCE

16.1 **Prohibition:** The Consultant shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

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

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

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

16.2.3 **Waiver:** The Compliance Officer may waive any of the requirements of this Section if the Compliance Officer determines that the Consultant has its own nondiscrimination/nonpreference requirements or is bound in the performance of this Master Agreement by the nondiscrimination/nonpreference requirements of another governmental agency, and the nondiscrimination/nonpreference provisions of the Consultant or other governmental agency are substantially the same as those imposed by the City.

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

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

17. CONFLICT OF INTEREST

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

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

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

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- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

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

- The Consultant's performance of Work in an Approved Service Order may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related ***future*** services, particularly when the Work in an Approved Service Order comprises one element or aspect of a multi-phase process or project;

- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and

- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing Work in an Approved Service Order might have on its ability to obtain contracts to perform future services.

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

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

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

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

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;

- Situations where there is a high risk of cross-contamination with non-potable water; or

- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

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

18.3 **Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm. Environmental procurement policies and activities related to the completion of any Work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);

- The use of energy-star compliant equipment;

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

19. TERMINATION

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

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

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

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

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

20. NOTICES

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

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

20.3 **To Whom Given:** All notices and other communications between the parties regarding a specific Approved Service Order must be given to the contract managers identified in the Approved Service Order. All notices and other communications between the parties regarding the Master

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Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City:	City of San José Department of Public Works, Attn: Katie Razavi 700 Los Esteros Road Mailing San Jose, CA 95134 (408) 635-6650 Katie.Razavi@sanjoseca.gov
To the Consultant:	Construction Testing Services, Inc. Attn: Aaren Solis 2118 Rheem Drive Pleasanton, CA 94588 (925) 250-8462 asolis@cts-1.com

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

21. MISCELLANEOUS

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

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

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

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

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

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

21.7 **Assignability:** Except to the extent this Master Agreement authorizes the Consultant to use

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Subcontractors, the Consultant shall not assign any part of this Master Agreement without the Director's prior written consent. The Director, at the Director's discretion, may terminate this Master Agreement if a violation of this provision occurs.

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

21.9 **Disputes:** Any litigation resulting from this Master Agreement will be filed in and resolved by a federal or state court in California.

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

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

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

NOTE: The Consultant must make one of the following representations by placing its initials in the space provided. **The City will not process the Master Agreement unless the Consultant has initialed one of the provisions.**

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

Or

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

City of San José

By _____

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

Consultant

By _____ 5/

Name: Patrick Greenan Date
Title: President/Principal-in-Charge

By _____ 5/14/19

Name: Aaren Solis Date
Title: Vice President of Business Development

Approval as to Form (City Attorney):

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

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

☐ **Approved as to Form:** _____ 6/11/19

Egan Hill
Sr. Deputy City Attorney Date

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda }

On May 14, 2019 (Date) before me, C. Policar, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Patrick Greenan and Aaren Solis (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

C. POLICAR
Notary Public - California
Alameda County
Commission # 2238410
My Comm. Expires May 2, 2022

Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature C. Policar
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer – Title(s): _____	☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General	☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian of Conservator	☐ Trustee ☐ Guardian of Conservator
☐ Other: _____	☐ Other: _____
Signer is Representing: _____	Signer is Representing: _____

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

Cover Page

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

2. Approved Service Order No. [Insert Number]

3. Consultant's Name: [Insert Consultant's Legal Name as it Appears on the Master Agreement]

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

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

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

7. Budget/Fiscal:

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

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

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

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

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

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

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

Authorized Signature: _____ Date: _____

8. ***Division Analyst Approval:*** _____ Date: _____

9. ***Consultant Approval:*** _____ Date: _____

10. **Approval as to Form (City Attorney):**

☐ Service Order Form Approved by the Office of the City Attorney
(Maximum Service Order Compensation is $100,000 or less, and the provisions of the service order form are not altered.)

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

11. **City Director Approval:** _____ Date: _____

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Attachment A: Tasks

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

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

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

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

B. **Deliverable:** [Insert a description of the deliverable.]

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

☐ On or before the following date: _____.

☐ On or before ____ Business Days from _____.

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

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

B. **Deliverable:** [Insert a description of the deliverable.]

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

☐ On or before the following date: _____.

☐ On or before ____ Business Days from _____.

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

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

B. **Deliverable:** [Insert a description of the deliverable.]

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

☐ On or before the following date: _____.

☐ On or before ____ Business Days from _____.

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Attachment B: Terms and Conditions

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

Name:	Phone No.:
Department:	E-mail:
Address:	

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

		Required to File Form 700?		
Consultant's Contract Manager		**Yes Already Filed (Date Filed)**	**Yes Need to File**	**No**
Name: Paul Machi	Phone No.: 925-462-5151			
Address: 2118 Rheem Drive, Pleasanton, CA 94588	E-mail:pmachi@cts-1.com			
Other Staffing				
Name:	Assignment:			
1.				
2.				
3.				

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

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

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

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

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

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

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

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

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Attachment C: Compensation Table

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

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

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CPMS Contract No.: 8753-1
Consultant: Construction Testing Services, Inc.

Exhibit B: Schedule of Rates and Charges

(Capital Projects)

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2018-2023 FEE SCHEDULE - *P13520 3/15/18 revised 3/25/19*
PERSONNEL FEES AND BASIS OF CHARGES
INSPECTIONS, ENGINEERING & SPECIAL SERVICES

* FIELD INSPECTION AND LABORATORY SERVICE	Rate/Hour
Steel	$114.00
Nondestructive - UT, MT, PT	$119.00
Steel Visual/UT Combination	$119.00
Concrete ACI	$114.00
Concrete ICC	$114.00
Masonry	$114.00
Fireproofing	$114.00
Soil Technician w/Nuclear Gauge and/or Sand Cone *(portal-to-portal)*	$119.00
Asphalt Technician *(portal-to-portal)*	$218.00
Shoring/Soldier Piers	$218.00
Roofing & Waterproofing	$218.00
Multi-Disciplined Inspector	$218.00
Inspector Requiring G1 Pay Grade	$253.00
Specialty Inspector or Where Formal Certification is Required	$218.00
Field Inspector with Special Enhancement	$218.00
Laboratory Technician	$218.00
Technician Typist	$218.00

**PROFESSIONAL ENGINEERING SERVICES	Rate/Hour
Principal Engineer (Civil/Structural)	$350.00
Geotechnical Engineer	$300.00
Consulting Engineer (Civil/Structural)	$270.00
Associate Engineer, Licensed	$245.00
Project Manager	$215.00
Staff Engineer	$215.00
Field Supervision	$190.00
ASNT Level III	$205.00
Drafting	$150.00
Quality Control Manager	QOR

SPECIAL SERVICES		Rate/Hour
Portable and Mobile Laboratories, NDT and Soils		QOR
Rescue Team with Equipment, 3 Person Crew Daily Rate (does not include overtime)		$2,700.00
* Epoxy Bolt/Expansion Anchor - Installation Observation		$114.00
* Epoxy Bolt/Expansion Anchor Proof Load Testing *(portal-to-portal)*		$114.00
* Coring, 1 Person (including equipment) *(portal-to-portal)*		$275.00
* Coring, 2 Persons (including equipment) *(portal-to-portal)*		$440.00
* Asphalt Coring *(portal-to-portal)*		$300.00
Project Research		QOR
Ultrasonic Testing for Non-Metallic Materials		QOR
Pavement Rehabilitation Analysis Using Deflections		QOR
Roof Moisture Survey		QOR
Soil Drilling Equipment		QOR
Geotechnical Site Investigations/Foundation Reports		QOR
Pachometer, Schmidt Hammer, Windsor Probe *(portal-to-portal)*		$285.00
Floor Flatness Testing FF/FL - Equipment Fee $110/Day *(portal-to-portal)*		$285.00
Measuring Moisture Vapor Emission Rate (Calcium Chloride) - $50/Kit *(portal-to-portal)*	ASTM F1869	$285.00
Relative Humidity Testing - $70/Kit *(portal-to-portal)*	ASTM F2170	$285.00
Ferroscan - Equipment Fee $110/day *(portal-to-portal)*		$285.00
GPR - Equipment Fee $110/day *(portal-to-portal)*		$340.00
Administration, Secretarial, Special Projects, Notary, Certified Payroll		$160.00
Concrete/Grout/Mortar Mix Design Review (less than 48 hours notice - $500) each		$300.00/each
Welding Procedure Review (less than 48 hours notice - $500) each		$300.00/each
Welder Qualification Test (each)		$230.00
DSA Interim Reports (each)		$175.00
Geotechnical Pad Letter (less than 48 hours notice - $500) each		$340.00
Final Letter (less than 48 hours notice - $500) each		$300.00/each

EXPERT WITNESS TESTIMONY	
Court appearance, per day	$2,200.00
Court appearance, per half day	$1,100.00

** Field inspection services will be billed in accordance with minimums shown on Basis of Charges.*
***Professional engineering services and laboratory technician services will be billed at actual time.*

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BASIS OF CHARGES

GENERAL

Fees for tests and inspection include cost of technician, normal equipment and regular reports. Engineering services will be charged at applicable rates and will require travel and mileage charges for equipment transport and storage per code (portal to portal) from the nearest CTS laboratory. Soils testing with nuclear gauge and/or sand cone equipment and inspections requiring equipment will require applicable travel and mileage charges for equipment transport and storage per code (portal-to-portal) from the nearest CTS laboratory. Fees for special projects, services overseas, or elsewhere in the United States, will be quoted on request.

MINIMUM HOURLY CHARGES – INSPECTION

Technician personnel and the following minimum charges are contractual commitment:

One-half day or less	4 Hours
Over one-half day	8 Hours
Show-up time (less than 2 hours notice = 4 hour charge)	2 Hours

WORKING HOURS AND PREMIUM TIME

Regular workday is the first 8 hours between 6:00 am and 6:00 pm Monday through Friday. Premium time is as follows:

Overtime, Weekdays and Saturdays (first 8 hours)	1.5 x quoted hourly rate
Overtime Saturdays (over 8 hours) and Sundays (first 8 hours)	2 x quoted hourly rate
Overtime Sundays (over 8 hours) and Holidays	3 x quoted hourly rate
Shift differential, swing and graveyard - (Work performed between 2:00 pm and 4:00 am)	12.5%/hour additional to base or quoted rate.

MISCELLANEOUS CHARGES - *Only Where Applicable*

Notary Services Fee	$35.00/each
Facsimile Charges. Plus $1.00/page (n/c for cover page)	$6.00/minimum
Wireless Router/Data Card for Jobsite Internet	$130.00/day
Parking Fees	At Cost
Air Travel	In conformance with MCA 10.5.3
Outside Consultants	Cost Plus 5%
Other Services	Cost Plus 10%
Subsistence (per union contract for travel outside of Northern CA)	Per MCA 10.5.3
Mileage	Standard Federal Rate/In conformance with MCA 10.5.3
Sample Pickup	$15.00/each
Project Administration/EADOC daily/weekly/lab reporting	8% of Monthly Invoice
Samples Made by Others: Concrete Cylinders	$120 + Test
Samples Made by Others: All Other Tests	$50.00 + Test
Laboratory Sample Witness Fee	$120.00
Laboratory Sample Storage Fee (per sample)	$110.00
EZ Cure Boxes (Thermostatically Controlled Curing Boxes)	QOR
Returned Check Fee	$120.00

TESTS

Testing fees shown include normal time for performing test. Samples requiring special preparation will be charged at the laboratory technician rate. Fees for tests not listed will be quoted upon request. There will be a minimum charge of $100.00 for any engineering report. Please note some tests maybe tested by subconsultants. Compensation for subconsultants must confirm to MCA 10.6 and all subs must be approved by the City in service orders.

Per MCA 10.2.3, In case of a discrepancy between Schedule of Rates and Charges and MCA, the MCA governs.

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CONSTRUCTION TESTING SERVICES

INSPECTING
TESTING
ENGINEERING

CONCRETE AND MASONRY TESTS

		Standard Rate/Each
CONCRETE		
Compressive Strength of Cylindrical Concrete Specimens (6x12)	ASTM C39	$75.00
Compressive Strength of Cylindrical Concrete Specimens (4x8)	ASTM C39	$75.00
Compressive Strength of Cylindrical Concrete Specimens (Over 8000 PSI)	ASTM C39	$130.00
Cylinder molds, 6" x 12" and 4" x 8"	ASTM C470	$65.00
Compressive Strength of Lightweight Insulating Concrete	ASTM C495	$85.00
Obtaining and Testing Sawed Beams and Drilled Cores of Concrete (Cores)	ASTM C42	$110.00
Flexural Toughness of Fiber Reinforced Concrete (Round Panel)	ASTM C1550	$400.00
Flexural Strength of Concrete (Using Simple Beam with Third-Point Loading)	ASTM C78	$280.00
Flex Beams per Caltrans Test Methods	CT523 and CT524	$280.00
Length Change of Hardened Hydraulic-Cement Mortar and Concrete (Shrinkage, 1 Sample)	ASTM C157	$135.00
Shotcrete Nozzleman Qualification Letter (Per Nozzleman, Per Position)	ACI 506, ASTM C42 and C1140	$400.00
Shotcrete Pre-Qualification Cores (Compression and Visual)	ACI 506, ASTM C42 and C1140	$100.00
Shotcrete Production Cores	ASTM C1140	$100.00
Coefficient of Thermal Expansion	AASHTO T336	$485.00
Determining Density of Structural Lightweight Concrete (Cylinders)	ASTM C567	$365.00
Standard Specification for Concrete Made by Volumetric Batching and Mixing	ASTM C685	$875.00
Cement Quality Sampling	CBC 2010	$605.00
Physical Testing of Gypsum, Gypsum Plasters and Gypsum Concrete	ASTM C472	$50.00
Splitting Tensile Strength of Cylindrical Concrete Specimens	ASTM C496	$230.00
Static Modulus of Elasticity and Poisson's Ratio of Concrete in Compression	ASTM C469	$195.00
Grab Sample, Sealing and Storing in a Humidity and Temperature Controlled Room	CBC	$135.00
Density of Hydraulic Cement	ASTM C188	$175.00
Testing of Controlled Low Strength Material (CLSM) Test Cylinders	ASTM D4832	$135.00
GFRC Pull Test	PCI	$340.00
GFRC Flexural Test	PCI	$340.00
Foaming Agents for Use in Producing Cellular Concrete Using Preformed Foam (Cell-Crete)	ASTM C796	$475.00
MASONRY		
Compressive Testing of Grout (Masonry)	ASTM C1019	$110.00
Compressive Strength of Hydraulic Cement Mortars Using 2" Cube Specimens	ASTM C109	$110.00
Compressive Strength of Masonry Prisms	ASTM C1314	$170.00
Testing Concrete Masonry Units and Related Units (Core Compression)	CBC 2105A.4	$170.00
Compressive Strength of Molded Masonry Mortar Cylinders and Cubes (2" Sample)	ASTM C780 A7.6	$110.00
Testing Concrete Masonry Units (CMU) and Related Units (Full Unit)	ASTM C140	$165.00
Linear Drying Shrinkage of Concrete Masonry Units (Per Unit)	ASTM C426	$245.00
Masonry Core Shear Testing	CBC 2105A.4	$245.00
Testing Concrete Masonry Units (Absorption, Moisture Content, Unit Weight)	ASTM C140	$305.00
Brick and Clay Tile (modulus of rupture, compression, saturation coefficient, suction rate, efflorescence)*	ASTM C67	$905.00
Mortar Molds, 2" x 4", Single Use		$110.00
Mortar or Grout, Stored and Cured, Not Tested (Including Mold)		$110.00
AGGREGATES (SOILS AND CONCRETE)		
Determining Sieve Analysis of Fine and Coarse Aggregates (Coarse Only)	CT202/ASTM C136	$200.00
Sieve Analysis of Fine and Coarse Aggregates (Fine Only)	CT202/ASTM C136	$265.00
Sieve Analysis of Fine and Coarse Aggregates (Wash Included)	CT202/ASTM C117	$335.00
Sieve Analysis of Fine and Coarse Aggregates (200 Wash Only)	ASTM C117	$200.00
Evaluating Cleanness of Coarse Aggregate	CT227	$335.00
Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate	ASTM C88/CT214	$245.00
Unit Weight of Aggregate	CT212	$165.00
Clay Lumps and Friable Particles in Aggregates	ASTM C142	$195.00
Flat Particles, Elongated Particles or Flat and Elongated Particles in Coarse Aggregate	ASTM D4791/CT235	$335.00
Organic Impurities in Fine Aggregates for Concrete	CT213/ASTM C40	$305.00
Density, Relative Density(Specific Gravity), and Absorption of Coarse Aggregate	ASTM C127/CT206	$305.00
Density, Relative Density(Specific Gravity), and Absorption of Fine Aggregate	ASTM C128/CT207	$305.00
Resistance to Degradation of Small Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine	ASTM C131(535) and C211	$485.00
Percentage of Crushed Particles/Standard Test Method for Determining the Percentage of Fractured Particles in Coarse Aggregate	ASTM D5821/CT205	$365.00
Uncompacted Void Content of Fine Aggregate (as Influenced by Particle Shape, Surface Texture, and Grading)	ASTM C1252/AASHTO T304A	$365.00
Sand Equivalent Value of Soils and Fine Aggregate	ASTM D2419/CT217	$245.00
Durability Index (Fine)	ASTM D3744/CT229	$365.00
Durability Index (Coarse)	ASTM D3744/CT229	$365.00
Durability Index (Fine and Coarse)	ASTM D 3744/CT229	$365.00
Lightweight Particles in Aggregate	ASTM C123/AASHTO T113	QOR
Resistance of Rock to Wetting and Drying	CRD-C169	$535.00

*Unusual sample preparation for brick specimen will be charged at the established hourly rate.

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CONSTRUCTION TESTING SERVICES

INSPECTING
TESTING
ENGINEERING

SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS

		Standard Rate/Each
SOILS		
Direct Shear Test of Soils Under Consolidated Drained Conditions	ASTM D3080	$484.00
Caltrans Corrosivity Package		$455.00
Determining Field and Laboratory Resistivity and pH Measurements for Soil and Water	CT643	QOR
Soils and Waters for Sulfate Content	CT417	QOR
Soils and Waters for Chloride Content	CT422	QOR
Particle-Size Analysis of Soils (with Hydrometer)	ASTM D422	$535.00
Pore Water Extraction and Determination of the Soluble Salt Content of Soils by Refractometer	ASTM D4542	$565.00
Standard Test Method for Particle-Size Analysis of Soils (without Hydrometer)	ASTM D422	$485.00
Liquid Limit, Plastic Limit, and Plasticity Index of Soils	ASTM D4318/CT204	$485.00
Laboratory Compaction Characteristics of Soil Using Modified/Standard Effort	ASTM D1557/D698	$455.00
Hydrometer Only	ASTM D422	$485.00
pH of Soils	ASTM D4972	$424.00
Relative Compaction of Untreated and Treated Soils and Aggregates	CT216	$535.00
Determining the Resistance "R" Value of Treated and Untreated *Bases, Subbases, and Basement Soils by the Stabiliometer*	ASTM D2844/CT301	$535.00
Laboratory Determination of Water(*moisture) Content of Soil and Rock by Mass	ASTM D2216/CT226	$135.00
Density of Soil in Place by the Drive-Cylinder Method	D2937	$105.00
Expansion Index of Soils	ASTM D4829	$365.00
Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter (Permeability)	ASTM D5084/CT220	$500.00
Lab Compaction Characteristics of Soil 1 Point Proctor (Check Point)	ASTM D698/D1557	$305.00
Maximum Index Density and Unit Weight of Soils Using a Vibratory Table	ASTM D4253	$255.00
Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density	ASTM D4254	$255.00
Density of Hydraulic Cement	ASTM C188	$230.00
Volatile Organic Content	EPA 8260B	QOR
Semi Volatile Organics by GC/Ms (Basic Target List)	EPA 8270C	QOR
Total Organic Carbon	ASTM 2974/EPA 5310Bm	QOR
ICP Metals Concentration	EPA 6020 - CAM/CCR 17	QOR
Total Extractable Petroleum Hydrocarbons: TPH, MTBE, Benzene,Toluene, Ethylbenzene, Zylenes, %SS	EPA 8015B	QOR
ICP Metals Concentration	EPA 6020	QOR
pH	EPA 9045D	$485.00
Sequential Batch Extraction of Waste with Acidic Extraction Fluid	ASTM D5284	QOR
Chromium Soluble	EPA 7196A	QOR
Moisture, Ash and Organic Matter of Peat and Other Organic Soils (Organic Content)	ASTM D2974	$245.00
Universal Soil Classification System (USCS) Test	ASTM D2487	$265.00
California Bearing Ratio Test	ASTM D1883	$335.00
Unconfined Compressive Strength of Cohesive Soil	ASTM D2166/CT221	$170.00
ASPHALT		
Quantitative Extraction of Bitumen from Bituminous Paving Mixtures (Solvent)	ASTM D2172/CT310	$665.00
Determining Low Temperature Performance Grade (PG) of Asphalt *Binders*	ASTM 6816	QOR
Thickness/Height of Compacted Bituminous Paving Mixture Specimens (Cores)	ASTM D3549/CT308	$245.00
Method of Prep of Bituminous Mixture Test Specimens	ASTM D6926/CT304	$245.00
Bulk Specific Gravity and Density of Compacted Bituminous Mixtures (LTMD)	ASTM D1188 and D2726/CT308	$900.00
Indirect Tensile (IDT) Strength of Bituminous Mixtures (TSR)	ASTM D6931/CT371	$2,860.00
Mechanical Size Analysis (*Coarse and Fine*) *of Extracted Aggregate*	ASTM D5444/CT202	$365.00
Marshall Stability and Flow of Bituminous Mixtures	ASTM D6927	$900.00
Theoretical Maximum Specific Gravity and Density (Rice)	ASTM D2041/CT309	$365.00
Measuring *the Permeability of Bituminous Pavements* and Seal Coats	CT341	QOR
Swell of Bituminous Mixtures	CT305	$335.00
Moisture Vapor Susceptibility of Bituminous Mixtures/Moisture or Volatile Distillates in Asphalt	ASTM D1461/CT307	$845.00
Stabilometer Value (1 sample)	CT366	$335.00
Determination of Asphalt Content of Bituminous Paving Mixtures by the *Ignition Method*	CT382/ASTM D6307	$365.00
Determination of Correction Factor of Bituminous Paving Mixtures by the Ignition Method	CT382/ASTM D6307	$365.00
Determination of Asphalt and Moisture Contents of Bituminous Mixtures by Microwave Oven	CT370	$365.00
Effect of Water on Compressive Strength of Compacted *Bituminous Mixtures (Set of 6)*	ASTM D1075	$3,025.00
Compressive Strength of Bituminous Mixtures	ASTM D1074	$245.00
Hamburg Wheel Track	AASHTO T324	$3,300.00
Moisture Susceptibility	AASHTO T283	$3,300.00

** Unusual sample preparation (dried clays, saturated clays, etc.) and all other tests for treated or untreated soils, aggregate subbase and aggregate base will be charged at established rates for laboratory technician.*

*** Does not include sample preparation or sieve analysis*

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MATERIALS MECHANICAL TESTS		Standard Rate/Each
Mechanical Testing of Steel Products (General Tensile)	ASTM A370	$425.00
Fillet Weld Break Test for Qualification (Welding)	AWS B4.0	$185.00
Tension Testing of Metallic Materials, Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products, (Welding Coupon Tensile)	ASTM E8, B557 and AWS B4.0	$425.00
Mechanical Testing of Steel Products (Couplers)	ASTM A370	$415.00
Impact Testing of Miniaturized Charpy V-Notch Specimens, Notched Bar Impact Testing of Metallic Materials	ASTM E2248 and ASTM E23	QOR
Testing, Practices, and Terminology for Chemical Analysis of Steel Products	ASTM A751	$305.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #3-#8	ASTM A370 and E290	$335.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #9-#11	ASTM A370 and E290	$400.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #14+	ASTM A370 and E290	QOR
Mechanical Testing of Steel Products, Standard Specification for Steel Wire, Plain, for Concrete Reinforcement	ASTM A370, A82 and A185	$400.00
Guided Bend Test for Ductility of Welds, Mechanical Testing of Welds	ASTM E190 and AWS B4.0	$245.00
Determining the Mechanical Properties of Externally and Internally Threaded Fasteners, Anchor Bolts Only (Tension and Yield)	ASTM F307, F1554 and F606	$480.00
Rockwell Hardness of Metallic Materials	ASTM E18	$135.00
Proof Test for Carbon and Alloy Steel (Nuts Only)	ASTM A194 or A563	$305.00
Radiographic Examination of Metallic Castings/Weldments	ASTM E94, E1030 and E1032	QOR
Macroetching Metals and Alloys	ASTM E340, E381 and AWS	$305.00
Determining the Mechanical Properties of Externally and Internally Threaded Fasteners, Washers, Direct Tension Indicators, and Rivets (HSB Assemblies)	ASTM F606	$335.00
Mechanical Testing of Steel Products (Terminators Tensile)	ASTM A370	$335.00
Strength for Sewn or Bonded Seams of Geotextiles	ASTM D4884	$305.00
Tearing Strength of Fabrics by the Tongue (Single Rip) Procedure	ASTM D2261	$305.00
Breaking Strength and Elongation of Textile Fabrics (Grab Test)	ASTM D5034	$245.00
Tensile Properties of Fiber Reinforced Polymer Matrix Composite Bars	ASTM D3039	$900.00
Steel Strand, Uncoated Seven-Wire for Prestressed Concrete	ASTM A416 and A1061	$1,330.00
FIREPROOFING		
Thickness and Density of Sprayed Fire-Resistive Material (SFRM)	ASTM E605	$245.00
Cohesion/Adhesion of Sprayed Fire-Resistive Materials (Test Kit Only)	ASTM E736	$70.00

CONTACT INFORMATION

Headquarters: 2118 Rheem Drive • Pleasanton, CA 94588 • P 925.462.5151 • F 925.462.5183
Peninsula: One Embarcadero Center, Suite 535 • San Francisco, CA 94111 • P 415.334.4747 • F 415.438.2357
Oakland: 246 30th Street, Suite 101 • Oakland, CA 94601 • P 510.444.4747 • F 510.835.1825
San Jose: 2033 Gateway Place, #500 • San Jose, CA 95110 • P 408.573.6992 • F 408.437.1201
Stockton: 343 East Main Street, #711 • Stockton, CA 95202 • P 209.507.7555 • F 209.507.7554
Rocklin: 4400 Yankee Hill Road • Rocklin, CA 95677 • P 916.419.4747 • F 916.419.4774
Las Vegas: 3842 E. Post Road • Las Vegas, NV 89120 • P 702.257.4747 • F 702.257.4718

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Exhibit C: Insurance Requirements

(Capital Projects)

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Consultant, his agents, representatives, employees or subconsultants. The cost of such insurance shall be included in the Consultant's proposal.

C-1 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 CG 0001 including products and completed operations; and
   a. Products and completed operations/product hazard coverage:
      i. Such insurance shall be maintained for five years after final payment.
      ii. Consultant shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and five years thereafter.
   b. Blanket contractual liability coverage.
   c. Broad form property damage coverage.
   d. Severability of interest.
   e. Personal injury coverage.
   f. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos." Coverage also to include code 8 "hired autos" and code 9 "non-owned" autos; and

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and

4. Professional Liability Errors and Omissions insurance for all professional services.

C-2 Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this

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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 Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors and Omissions: $2,000,000 per claim limit.

5. Umbrella or Excess Coverage: In the event that Consultant requests to use an umbrella policy or excess policy to meet Consultant's policy limits for any of the above mentioned coverages, coverage must follow form or have greater scope of coverage. City shall receive the same status on the excess/umbrella policy including additional insured endorsements with coverage being primary and not contributory to any City insurance programs or self-insured programs.

C-3 Deductibles and Self-Insured Retentions

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

C-4 Other Insurance Provisions

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

1. General Liability and Automobile Liability Coverages

   a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.

   b. The Consultant's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the Consultant's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.

   d. Coverage shall state that the Consultant'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.

2. Workers' Compensation and Employers' Liability: Coverage shall contain a separate waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

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3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City.

C-5 Duration

If any of such coverages are written on a claims-made basis, the City Risk Manger must approve the coverage as meeting minimum requirements and it must have, at a minimum:

a. A retroactive date preceding the date work commenced under this AGREEMENT.

b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Consultant must purchase an extended reporting period equal to or greater than five (5) years after completion of work under this AGREEMENT.

C-6 Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

C-7 Verification of Coverage

Consultant shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Consultant's insurance company as evidence of the stipulated coverages.

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

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

C-8 Subcontractors

Consultant shall include all subcontractors or subconsultants as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor or subconsultant of the same scope and limits of no less than $1,000,000 per occurrence or more if typical of the industry as has otherwise been required herein.

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