

9.1 Agreement with Macias, Gini & O’Connell LLP for Annual Financial and Compliance Audits. – TO BE HEARD IMMEDIATELY AFTER CONSENT

Recommendation:

(a) City Council approve an agreement with Macias, Gini & O’Connell LLP to perform annual financial and compliance audit services for fiscal years ending June 30, 2024, 2025, 2026, 2027, and 2028 with three one-year extension options for fiscal years ended June 30, 2029, 2030, and 2031, with annual compensation not to exceed \$895,653 in year one and with annual adjustments of 3% in years two through eight, for a total amount not to exceed \$7,964,448 for a potential eight year term subject to annual appropriation of funds by the City Council.

(b) Board of the Successor Agency to the Redevelopment Agency approve an agreement with Macias, Gini & O’Connell LLP to perform annual financial and compliance audit services for fiscal years ending June 30, 2024, 2025, 2026, 2027, and 2028 with three one-year extension options for fiscal years ended June 30, 2029, 2030, and 2031, with annual compensation not to exceed \$65,432 in year one and with annual adjustments of 3 percent in years two through eight, for a total amount not to exceed \$581,843 for a potential eight year term subject to annual appropriation of funds by the Board of the Successor Agency.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Auditor)

[Deferred from 1/23/2024 – Item 9.1]

TO BE HEARD IMMEDIATELY AFTER CONSENT

Memorandum

TO: Honorable Mayor and City Council
and Successor Agency Board

FROM: Joe Rois,
City Auditor

SUBJECT: AGREEMENTS WITH MACIAS GINI &
O'CONNELL LLP TO PROVIDE ANNUAL
FINANCIAL AND COMPLIANCE AUDITS

DATE: January 9, 2024

RECOMMENDATION

- a) Approval by the City Council of an agreement with Macias, Gini & O'Connell LLP to perform annual financial and compliance audit services for fiscal years ending June 30, 2024, 2025, 2026, 2027, and 2028 with three one-year extension options for fiscal years ended June 30, 2029, 2030, and 2031, with annual compensation not to exceed \$895,653 in year one and with annual adjustments of 3 percent in years two through eight, for a total amount not to exceed \$7,964,448 for a potential eight year term subject to annual appropriation of funds by the City Council.
- b) Approval by the Board of the Successor Agency to the Redevelopment Agency of an agreement with Macias, Gini & O'Connell LLP to perform annual financial and compliance audit services for fiscal years ending June 30, 2024, 2025, 2026, 2027, and 2028 with three one-year extension options for fiscal years ended June 30, 2029, 2030, and 2031, with annual compensation not to exceed \$65,432 in year one and with annual adjustments of 3 percent in years two through eight, for a total amount not to exceed \$581,843 for a potential eight year term subject to annual appropriation of funds by the Board of the Successor Agency.

OUTCOME

Accepting the recommendation will ensure the City has the resources available to conduct annual financial and compliance audits for the City and Successor Agency, in accordance with the City Charter, federal law, and other requirements.

BACKGROUND

Section 805 of the San José City Charter specifies that the Office of the City Auditor conduct or cause to be conducted annual post audits of all the fiscal transactions and accounts kept by or for the City. Section 805 specifies that such audits shall include but not be limited to the examination and analysis of fiscal procedures and the examination, checking, and verification of accounts and expenditures. The audits shall be conducted in accordance with generally accepted auditing standards and accordingly shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances. The audits shall include

the issuance of suitable reports of examination so the Council and the public will be informed as to the adequacy of the financial statements of the City.

Section 1215 of the San José City Charter further requires that the City Council employ an independent certified public accountant who shall audit the municipal books, records, accounts, and fiscal procedures of all officers of the City who receive, administer, or disburse public funds on behalf of the City.

In addition to the above requirements set forth in the City Charter, as a recipient of Federal, State, and local government financial assistance, the City is required to undergo a compliance audit in conformity with the provision of the Single Audit Act of 1984, as amended, and 2 CFR Part 200, subpart F, or subsequent updates to that CFR. Lastly, the City is required to perform tests of compliance with provisions of various bond measures approved by San José residents.

Macias Gini and O'Connell, LLP (MGO) has conducted the annual financial and compliance audits of the City and its related entities since 2018. The current agreements with MGO end on December 31, 2023. Accordingly, the Office of the City Auditor initiated a Request for Proposal (RFP) process to select a firm to provide financial and compliance audit services.

ANALYSIS

With input from various departments, the Office of the City Auditor prepared an RFP for external audit services for the City and its related entities. The RFP covered financial audit services related to the:

- Citywide Annual Comprehensive Financial Report (ACFR)
- Annual Single Audit
- San José Mineta International Airport
- Bicycle/Pedestrian Facilities Grant
- Convention Center and Cultural Facilities
- Executive Management and Professional Employees Defined 401(A) Plan
- Parks Bond Funds (Measure P)
- Branch Library Bonds Projects Funds (Measure O)
- Public Safety and Infrastructure Bond Funds (Measure T)
- Library Parcel Tax Funds (Measure S)
- South Bay Water Recycling
- San José Clean Energy
- Wastewater Treatment System Funds
- Investment Program Compliance
- Deferred Compensation Program
- Voluntary Employee Benefits Association (VEBA)
- Successor Agency to the Redevelopment Agency.

The RFP was posted on the Bidding e-procurement system on June 28, 2023 (RFP CSJ-AUD-2023). Several clarification requests were received, and answers were distributed on Bidding on July 12, 2023, and August 4, 2023.

Two proposals were received by the due date on August 14, 2023. The proposals were evaluated by an interdepartmental team consisting of staff from the City Auditor's Office, Finance, and the Airport. Proposals were evaluated using the following criteria and weighting:

Criteria	Weight
Proposal Responsiveness	Pass/Fail
Organizational Experience of the Firm	25%
Qualifications and Experience of Project Team	25%
Proposer Capabilities and Approach	20%
Fee Structure and Cost	20%
Local Business Enterprise	5%
Small Business Enterprise	5%

The evaluation team evaluated respondents based on their written proposals. The evaluation team recommended the selection of MGO based on their proposal receiving the highest overall score. The evaluation team determined that MGO's proposal is the most advantageous to the City and unanimously agreed with the recommendation of award.

The evaluation scores for the finalists are summarized in the table below:

Evaluation Category	Max Points	MGO LLP	Eide Bailly LLP
Organizational Experience of the Firm	25	24.0	18.0
Qualifications and Experience of Project Team	25	23.0	19.0
Proposer Capabilities and Approach	20	18.7	15.7
Fee Structure and Cost	20	17.0	20.0
Local Business Preference	5	5.0	0.0
Small Business Preference	5	0.0	0.0
Total	100	87.7	72.7

MGO is an experienced audit firm with extensive experience in the government sector. MGO has provided financial audit services to multiple large California cities, including Los Angeles, San Diego, San Francisco, Oakland, and Sacramento. MGO has also provided financial audit services as the City's financial auditor since 2018 and is familiar with the City's operations and organization. MGO has a staff of more than 700 professionals and 16 offices worldwide, including a local office in San José.

The services specified in the RFP will be addressed in four separate agreements as follows:

- Contract #1 - General Contract – City of San José Annual Comprehensive Financial Report (ACFR); Gann Report; Basic Financial Statements; Single Audit; San José Mineta International Airport ACFR; Pedestrian/Bicycle Facilities; Convention Center Cultural Facilities; Executive Management and Professional Employees Defined 401(A) Plan; Parks Bond Funds; Branch Library Bond Projects Fund; Public Safety and Infrastructure Bond Funds; Library Parcel Tax Funds; South Bay Water Recycling; San José Clean Energy Financial Statements and Compliance Report; Wastewater Treatment System Funds; and Semi-annual Investment Program Compliance
- Contract #2 - Deferred Compensation
- Contract #3 – Voluntary Employee Benefits Association (VEBA)
- Contract #4 – Successor Agency to the Redevelopment Agency

The Contracts for the Deferred Compensation and VEBA audit services are within staff's contract authority and therefore do not require Council approval. Staff recommends Council approval of the General Contract and Successor Agency agreements with MGO.

EVALUATION AND FOLLOW-UP

This memorandum will not require staff follow-up.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the January 23, 2024, Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

BUDGET REFERENCE

Annual compensation for all contracts in the first-year totals \$982,353. The costs of future years' audit services are subject to annual cost of living adjustments (3 percent per year) and annual appropriation of funds by the City Council and the Board of the Successor Agency to the Redevelopment Agency. The total not to exceed over the full term (including option years) totals \$8,735,413 for all contracts.

- Contract #1 (General Contract) – First-year costs total \$895,653, with a total not to

- exceed over the full term of \$7,964,448.
- Contract #2 (Deferred Compensation) – First-year costs of \$10,634, with a total not to exceed over the full term of \$94,562.
- Contract #3 (VEBA) – First-year costs of \$10,634, with a total not to exceed over the full term of \$94,562.
- Contract #4 (SARA) – First year costs of \$65,432, with a total not to exceed over the full term of \$581,843.

The following budget information addresses the compensation to be paid for the agreements recommended for approval.

Contract #1 (General Contract)

Fund #	Appn #	Appn Name	Total Appn	Cost	2023-24 Adopted Budget	Last Budget Action (Date, Ord. No.)
001	202Y	Annual Audit	\$284,966	\$282,645	926 (Operating)	06/20/2023, Ord #30933
001	2042	Grant Compliance Single Audit	\$100,195	\$155,975	927 (Operating)	06/20/2023, Ord #30933
001	3727	Bond Project Audits	\$87,488	\$72,206	927 (Operating)	06/20/2023, Ord #30933
418	2029	Annual Audit (Library)	\$17,000	\$15,733	1,023 (Operating)	06/20/2023, Ord #30933
523	2029	Annual Audit (Airport)	\$83,033	\$86,762	966 (Operating)	06/20/2023, Ord #30933
465	4292	Bicycle and Pedestrian Facilities	\$1,925,062	\$10,935	1,058 (Capital)	10/17/23 Ord #30966
160	0482	Human Resources Non-Personal/ Equipment (401A Plan)	\$25,000	\$10,634	972 (Operating)	06/20/2023, Ord #30933
536	3983	Convention Facilities Operations	- \$12,468,000	\$60,104	- 997	06/20/2023, Ord #30933
513	0762	Environmental Services Non-Personal/ Equipment	\$39,415,055	\$25,031	1,054 (Operating)	10/17/23 Ord #30966
501	212D	SJ Clean Energy Annual Audits	\$130,650	\$93,332	1,051 (Operating)	06/20/2023, Ord #30933
541	0762	Environmental Services Non-Personal/ Equipment	\$938,797	\$82,296	1,058 (Operating)	06/20/2023, Ord #30933

Contract #4

The proposed first year fee for the Successor Agency financial audit is \$65,432 (\$581,843 total over eight years) to be paid out of the Successor Agency's annual operating budget. The cost of future years' audit services is subject to annual appropriation of funds by the Successor Agency Board.

CEQA

Not a project, File No. PPI7-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JR' with a stylized flourish.

Joe Rois
City Auditor

For questions, please contact Joe Rois, City Auditor at joseph.rois@sanjoseca.gov.

JR:lg
0792M

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

This AGREEMENT is between the CITY OF SAN JOSE, a public entity (hereinafter "CITY"), and MACIAS GINI & O'CONNELL LLP, a California limited liability partnership (hereinafter "AUDITOR").

This AGREEMENT is made and entered into this ____ day of _____ 20__
("Contract Date").

THE CITY AND AUDITOR AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 General: This AGREEMENT sets forth the terms and conditions under which the AUDITOR will provide professional consulting services to the CITY.

1.2 Exhibits: This AGREEMENT consists of this agreement form and the following exhibits, which are incorporated herein by reference:

Exhibit A: Scope of Basic Services

Exhibit B: Compensation

Exhibit C: Insurance Requirements

Exhibit D: Special Provisions

Exhibit E: Notice of Exercise of Option to Extend Agreement Form

1.3 Intentionally Omitted.

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

1.5 Entire Agreement: This 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 AGREEMENT may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

- 2.1** The Agreement term is from the Contract Date to December 31, 2028 inclusive, unless terminated earlier pursuant to Section 19 below.
- 2.2** CITY, in CITY'S sole discretion, may extend the term of this AGREEMENT for up to three (3) additional one-year option periods ("Option Period(s)"), subject to all of the terms and provisions of this AGREEMENT. The City Auditor is authorized to exercise these Option Periods upon written notice to AUDITOR, subject to the appropriation of adequate funding in the sole discretion of the City Council to pay the expense of this AGREEMENT for each year of the Option Periods. In the event the first Option Period is exercised by CITY, the first Option Period will commence on January 1, 2029 and expire on December 31, 2029. In the event the second Option Period is exercised by CITY, the second Option Period will commence on January 1, 2030 and expire on December 31, 2030. In the event the third Option Period is exercised by CITY, the third Option Period will commence on January 1, 2031 and expire on December 31, 2031.

3. SCOPE OF SERVICES

- 3.1 Basic Services:** "Basic Services" means the services set forth in **Exhibit A**. The AUDITOR must perform the Basic Services to the CITY's satisfaction.
- 3.2 Additional Services:** "Additional Services" means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.
- 3.2.1 Authorization:** The CITY will not compensate AUDITOR for any Additional Services without the CITY's prior written authorization.
- 3.2.2 CITY's Authorization:** The CITY may authorize the AUDITOR to perform Additional Services up to the cumulative, maximum amount set forth in

Exhibit B for such services. The CITY must authorize the AUDITOR to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the AUDITOR for such services. The City Auditor is authorized to execute the amendment for Additional Services for the CITY.

4. INTENTIONALLY OMITTED

5. CITY'S CONTRACT MANAGER

The CITY's contract manager for this Agreement is:

Name: Joe Rois	Phone No.: 408-535-1239
Department: Office of the City Auditor	Email: joseph.rois@sanjoseca.gov
Address: Office of the City Auditor 200 East Santa Clara Street, 14 th floor San Jose, CA 95113	

The CITY can change the above contract manager by giving the AUDITOR written notice.

6. AUDITOR'S STAFFING

6.1 AUDITOR's Contract Manager and Other Staffing: Identified below are the following: (a) the AUDITOR's contract manager, and (b) the AUDITOR(s) and/or employee(s) of the AUDITOR who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the CITY, the AUDITOR must comply with the requirements of Subsection 17.2 below.

<u>AUDITOR's Contract Manager</u>			<u>Required to File Form 700?</u>		
			Yes Already Filed (Insert Date Filed)	Yes Need to File	No
Name: Benjamin Lau	Phone No.: (925) 395-2839			x	
Address: 2121 N. California Blvd., Suite 750 Walnut Creek, CA 94596	Email: blau@mgocpa.com				
<u>Other Staffing</u>					
<u>Name:</u>	<u>Assignment:</u>	<u>Email:</u>			
1.Marlon Williams	Assurance Partner	mwilliams@mgocpa.com		x	
2.Guian Chhim	Senior Manager	gchhim@mgocpa.com		x	
3.Jon Waller	Senior Manager	jwaller@mgocpa.com		x	

6.2 Contract Manager's Authority: The AUDITOR's contract manager is authorized to act on behalf of the AUDITOR.

6.3 Staffing Changes: The CITY's prior written approval is required for the Auditor to remove, replace or add to any of its staffing identified in this provision.

7. USE OF SUBCONSULTANTS

7.1 Authority to Use: Whichever of the following is marked applies to this Agreement:

- ☒ The AUDITOR can ***not*** use any subconsultants without the CITY's prior written approval.
- ☐ The AUDITOR will use the following subconsultants for the specified areas of work. The AUDITOR can not remove, replace or add to any of the

subconsultants identified in this provision without the CITY's prior written approval.

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

- 7.2 Subconsultant Work:** The AUDITOR warrants all services and deliverables provided by any subconsultants 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 AUDITOR has complete control over its operations and employees, and is an independent contractor. The AUDITOR is not an agent or employee of the CITY, and shall not represent or act as the CITY'S agent or employee. The AUDITOR 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 AUDITOR has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the AUDITOR contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the AUDITOR is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this AGREEMENT.
- 8.3 Indemnity:** The AUDITOR 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 AUDITOR represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The AUDITOR represents that its performance of the Basic Services 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 Total Compensation: The maximum amount the CITY will pay the AUDITOR for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$7,964,447** ("Maximum Total Compensation").

10.2 Intentionally Omitted.

10.3 Exhibit B - Compensation: The CITY will pay the AUDITOR up to the Maximum Total Compensation in accordance with **Exhibit B**.

10.3.1 Compensation Table: **Exhibit B** sets forth a compensation table establishing the manner in which the CITY will pay the Maximum Compensation to the AUDITOR ("Compensation Table"). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.3.2 Schedule of Rates and Charges: If the CITY will compensate the AUDITOR for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the AUDITOR's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

10.3.2.1 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 not pay AUDITOR Premium Pay.

10.3.2.2 No Increases: The CITY will ***not*** increase the Schedule of Rates and Charges during the Agreement term.

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

10.4 Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. 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 AUDITOR. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the CITY will not compensate the AUDITOR separately for that task, and payment for such task is deemed included in the other task(s) for which the AUDITOR is receiving compensation.

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

10.4.3 Invoice Period (Column 3): Column 3 identifies when the AUDITOR must submit its invoice for payment. If invoicing is monthly, the AUDITOR must submit its invoice to the City Auditor 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 AUDITOR must submit its invoice to the City Auditor within 20 Business Days following completion of the task(s) to the City Auditor's satisfaction. If invoicing is upon the completion of all work, the AUDITOR must submit its invoice to the City Auditor within 20 Business Days following completion of all work to the City Auditor's satisfaction.

10.4.3.1 Invoice: Each invoice must include sufficient information and supporting documents to establish to the City Auditor's satisfaction that the AUDITOR is entitled to the payment requested. The CITY will pay the undisputed portion of the invoice amount within 20 Business Days of the CITY'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 AUDITOR will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the AUDITOR 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 AUDITOR in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

10.4.3.3 Monthly Invoices Based on Fixed Fee: If the AUDITOR invoices monthly for a "fixed fee," then the AUDITOR will base its monthly invoice on the percentage of work completed during the previous month. If the AUDITOR 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 AUDITOR 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 AUDITOR completes the task(s) for less than the amount set forth in Column 4, the CITY **may** use the cost savings to increase the budget of another task. The City Auditor 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 AUDITOR 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 AUDITOR separately for expenses incurred in providing the work. The following terms and conditions apply if the CITY reimburses the AUDITOR separately for expenses.

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

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

10.5.3 Expenses That Are Reimbursable: Any reimbursement to the AUDITOR 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 AUDITOR 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 other expenses expressly identified in Exhibit B as being reimbursable.	As specified, not to exceed 10%

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

10.6.1 Actual Costs: The AUDITOR can invoice the CITY for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5 percent.

10.6.2 Schedule of Rates and Charges: Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The CITY will compensate the AUDITOR in accordance with those rates and charges.

10.6.3 Maximum Amount: The CITY will compensate the AUDITOR 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 AUDITOR incurs in excess of the specified maximum amount are at no cost to the CITY.

10.7 Compensation Table – Part 4: Part 4 sets forth the maximum compensation that the City Auditor can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the AUDITOR that would result in compensation exceeding this maximum amount is at no cost to the CITY.

10.8 Tax Forms Required: The following are conditions on the CITY's obligation to process any payment pursuant to this Agreement:

10.8.1 U.S. Based Person or Entity: If the AUDITOR is a U.S. based person or entity, the AUDITOR acknowledges and agrees that the AUDITOR is required to provide the CITY with a properly completed Internal Revenue Service Form W-9 before the CITY will process payment. If the AUDITOR 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 AUDITOR acknowledges and agrees that the AUDITOR 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 AUDITOR is not a U.S. based person or entity, the AUDITOR acknowledges and agrees that the

AUDITOR 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 Obligation: The AUDITOR shall defend, indemnify and hold harmless the CITY and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The AUDITOR's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the AUDITOR, any of its Subcontractors, anyone directly or indirectly employed by either the AUDITOR or any of its Subcontractors, or anyone that they control; or
- 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 AUDITOR pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

11.2 Limitation on Obligation: The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the CITY or its officers, employees or agents.

11.3 Duty to Defend: The AUDITOR's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the CITY, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the CITY's written request, the AUDITOR, at its own expense,

shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

11.4 Insurance: The CITY's acceptance of any insurance in accordance with Section 12 does not relieve the AUDITOR from its obligations under this Section 11. The AUDITOR's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

11.5 Survival: The AUDITOR's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

12. INSURANCE REQUIREMENTS

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

12.2 Documentation: Before performing any services, the AUDITOR 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, and immediately when and as created by the AUDITOR or any other person engaged directly or indirectly by the AUDITOR to perform the AUDITOR's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "Work Product").

"Work Product" as used in this AGREEMENT shall not include the workpapers of the AUDITOR (e.g., files, notes, schedules, reports, summaries, analyses) whether in electronic or manual form, prepared by AUDITOR in connection with

its provision of services under this AGREEMENT which shall remain the exclusive property of AUDITOR. See Exhibit D Special Provisions.

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 AUDITOR hereby assigns to the CITY all copyrights to such works when and as created.

13.3 Intentionally Omitted.

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

14. DISCLOSURE OF WORK PRODUCT

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

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

14.3 Limit on Prohibition: The prohibition in Subsection 14.1 above does not apply to disclosures between the AUDITOR and its Subcontractors that are needed to perform the Basic Services.

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

15. AUDIT/INSPECTION OF RECORDS

15.1 Retention Period: The AUDITOR shall retain the following records (collectively “Records”) for a minimum of 3 years from the date of the CITY’s final payment to the AUDITOR under this Agreement or for any longer period required by law:

- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the AUDITOR’s charges for performing services, or to the AUDITOR’s expenditures and disbursements charged to the CITY; and
- All Work Product and other records evidencing AUDITOR’s performance.
- See Exhibit D Special Provisions for workpaper retention.

15.2 Producing Records: At any time during the Agreement term or during the period of time that the AUDITOR is required to retain the Records, the City Manager, the City Attorney, the City Auditor, the City’s Director of Finance, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The AUDITOR 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 AUDITOR shall produce the requested Records at no cost to the CITY.

15.3 State Auditor: In accordance with Government Code Section 8546.7, the AUDITOR may be subject to audit by the California State Auditor with regard to the AUDITOR’s performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

16. NON-DISCRIMINATION/NON-PREFERENCE

16.1 Prohibition: The AUDITOR 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.

16.2 Intentionally Omitted.

16.3 Subcontracts: The AUDITOR shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

17. CONFLICT OF INTEREST

17.1 General: The AUDITOR represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The AUDITOR 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 AUDITOR shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The AUDITOR has the obligation of determining if the manner in which it performs any part of this 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 Section 81000 et seq.), the AUDITOR shall cause each person performing services under this Agreement, and identified 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 CITY;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City Clerk with a copy submitted to the City Auditor.

17.3 Future Services: The AUDITOR acknowledges each of the following with regard to performing future services for the CITY:

- The AUDITOR's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the AUDITOR performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise 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 AUDITOR from performing or participating in the performance of such future services; and
- The AUDITOR is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 General: The AUDITOR shall perform its obligations under the 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 City Auditor.

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:
<https://www.sanjoseca.gov/home/showdocument?id=12833>. Environmental procurement policies and activities related to the completion of AUDITOR's 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;
- 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 CITY may terminate this Agreement at any time and for any reason by giving the AUDITOR 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 CITY may terminate this Agreement immediately upon written notice for any material breach by the AUDITOR. If the CITY terminates the Agreement for cause and obtains the same services from another AUDITOR at a greater cost, the AUDITOR is responsible for such excess cost in addition to any other remedies available to the CITY.
- 19.3 Delivery of Work:** If the CITY terminates the Agreement – whether for convenience or for cause – the CITY has the option of requiring the AUDITOR to provide to the CITY any finished or unfinished Work Product prepared by the AUDITOR up to the date of AUDITOR’s receipt of the written notice of termination.
- 19.4 Compensation:** The CITY will pay the AUDITOR the reasonable value of services satisfactorily rendered by the AUDITOR to the CITY up to the date of AUDITOR’s receipt of the written notice of termination. For services to be “satisfactorily rendered,” the CITY must determine that the AUDITOR provided them in accordance with the terms and conditions of this Agreement. The CITY will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the AUDITOR’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 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 served is effective when

personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.

- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the CITY: City of San José
Office of the City Auditor
Attn: Joe Rois, City Auditor
200 East Santa Clara Street, 14th floor
San Jose, CA 95113
408-535-1239
joseph.rois@sanjoseca.gov

To the AUDITOR: Macias Gini & O'Connell LLP
Attn: Benjamin Lau
2121 N. California Blvd., Suite 750
Walnut Creek, CA 94596
(925) 395-2839
blau@mgocpa.com

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

21. WAGE THEFT PREVENTION

- 21.1 Compliance with Wage and Hour Laws:** AUDITOR, and any subcontractor performing work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the San José Living Wage Policy, the San José Prevailing Wage Policy, and the San José Minimum Wage Ordinance.
- 21.2 Final Judgments, Decisions, and Orders:** For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory

government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, the City of San José Office of Equality Assurance, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

21.3 Prior Judgments against AUDITOR and/or its Subcontractors: BY SIGNING THIS AGREEMENT, AUDITOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS RELATING TO WAGE AND HOUR LAWS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING AS TO THE AUDITOR AND ITS SUBCONTRACTOR(S) – IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT. AUDITOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

21.4 Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that AUDITOR or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or AUDITOR learns of such a judgment, decision, or order that was not previously disclosed, AUDITOR shall inform the City's Office of Equality Assurance, no more than 15 days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. AUDITOR and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City's Office of Equality Assurance with documentary evidence of compliance with the final judgment, decision or order within five days of satisfying the final judgment, decision or order.

21.5 CITY's Right to Withhold Payment: Where AUDITOR or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency with respect to work under this Agreement, the CITY

reserves the right to withhold payment to AUDITOR until such judgment, decision or order has been satisfied in full.

21.6 Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

21.7 Notice to City Related to Wage Theft Prevention: Notice provided to the City's Office of Equality Assurance as required under this Section shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

22. MISCELLANEOUS

22.1 Gifts Prohibited: The AUDITOR 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 AUDITOR shall not offer any CITY officer or designated employee any gift prohibited by Chapter 12.08. The AUDITOR's violation of this Subsection 22.1 is a material breach.

22.2 Disqualification of Former Employees: The AUDITOR represents that it is familiar with Chapter 12.10 of the CITY's Municipal Code, which generally prohibits a former CITY officer and a former designated employee from providing services to the CITY connected with his/her former duties or official responsibilities. The AUDITOR 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 AUDITOR's violation of this Subsection 22.2 is a material breach.

22.3 Waiver of a Violation: The CITY's waiver of any violation of this Agreement by the AUDITOR is not a waiver of any other violation by the AUDITOR.

- 22.4 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 Agreement.
- 22.5 Compliance with Laws:** The AUDITOR 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 AUDITOR's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 22.6 Business Tax:** The AUDITOR 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 Agreement term.
- 22.7 Assignability:** Except to the extent this Agreement authorizes the AUDITOR to use subconsultants, the AUDITOR shall not assign any part of this Agreement without the City Auditor's prior written consent. The CITY, at the CITY's discretion, may void this Agreement if a violation of this provision occurs.
- 22.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 22.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.
- 22.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 22.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.
- 22.12 Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when

so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

22.13 Use of Electronic Signatures: Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the CITY.

///

IN WITNESS WHEREOF, the CITY and AUDITOR have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The AUDITOR must sign one of the following representations. **The CITY will not process this Agreement unless the AUDITOR has signed one of the provisions.**

{{__signer#}}

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

Or

{{__signer#}}

If the AUDITOR is unable to make the above certification, the AUDITOR 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 10.8 of this Agreement.

CITY

By {{__signer#}}

Name: Toni Taber

Title: City Clerk

AUDITOR

By {{__signer#}}

Name: Benjamin Lau

Title: Partner

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:**

{{__signer#}}

Name: Kevin Fisher

Title: Assistant City Attorney

EXHIBIT A: SCOPE OF BASIC SERVICES

The AUDITOR shall provide services and deliverables as set forth in this **Exhibit A**.

The AUDITOR shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the CITY.

General Description of Project: Annual Financial Audit Services to the City of San José.

Section 1 - Tasks

Task No. 1: Audit Services

A. Services:

1. Each year, during the term of this AGREEMENT, AUDITOR shall provide audit services for the fiscal year from July 1 to June 30 for the CITY.
2. AUDITOR shall provide all services in accordance with all applicable federal, state, and local codes, rules, regulations and generally accepted auditing and accounting professional standards for certified public accountants. All Audit Services to be furnished by AUDITOR under this AGREEMENT shall be of the highest professional standard and quality which prevail among certified public accountants of superior knowledge and skill engaged in related work throughout California under the same or similar circumstances.
3. AUDITOR shall inform, in accordance with American Institute of Certified Public Accountants ("AICPA") and Government Accountability ("GAO") guidelines, the City and related entities promptly of any discrepancy or irregularity, including fraud and defalcations, material to the financial statements which the AUDITOR may discover in the course of the audits; and AUDITOR shall submit to the CITY those recommendations resulting from their audits as to methods of investigation considered necessary or appropriate to determine the cause and extent of any such discrepancy or irregularity.
4. AUDITOR shall provide guidance and information to CITY on changes in accounting principles due to new Governmental Accounting Standards Board ("GASB") pronouncements and inform the CITY of upcoming GASB pronouncements and provide assistance for an appropriate and timely implementation.

5. AUDITOR shall provide consultation and guidance to aid the CITY in meeting the requirements of the Government Finance Officers Association's ("GFOA") Certificate of Achievement for Excellence in Financial Reporting program for the CITY's Annual Comprehensive Financial Report ("ACFR").
6. In order to maintain audit quality control and assurance, AUDITOR shall have an appropriate internal quality control system in place and shall undergo external peer review in accordance with AICPA guidelines and Government Auditing Standards, 2011 revision. AUDITOR promptly shall provide City Auditor with documentation of each external peer review which occurs during the term of this AGREEMENT.

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

7. Each year during the term of this AGREEMENT, AUDITOR shall prepare and submit an audit work plan for the CITY to the City Auditor, scheduling the required work for the efficient and prompt completion of the Audits, Reports and Opinions described herein. This audit work plan will be published by the AUDITOR and delivered to City Auditor not later than the agreed-upon due dates specified in Section 2 of this EXHIBIT A. The audit work plan is to contain discussion on the following items: (1) the organizational structure of the CITY, the Finance Department, and the audit firm; (2) an overview on the basis of accounting utilized, any significant accounting areas, data processing, and the budgetary process; (3) financial and operating information as considered necessary; (4) any areas of potential concern to AUDITOR; (5) description of CITY assistance required, including a listing of reports and workpapers and when those would be required; (6) engagement staffing; (7) other issues AUDITOR believes should be included; and (8) methods of communication that will be used to keep CITY personnel informed during audit fieldwork. Each audit work plan is subject to the review and

approval of City Auditor.

8. AUDITOR will assist CITY in responding to inquiries from federal, state, and/or regional agencies on issues related to AUDITOR's Audit Services.
9. AUDITOR shall perform all services to the satisfaction of City Auditor and the City's Director of Finance.

B. Deliverable: The AUDITOR will provide the Audit Services to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 2: General City Audit – Basic Financial Statements

A. Services:

1. Audit Report

AUDITOR shall conduct an audit of the Basic Financial Statements (government-wide financial statements, fund financial statements, and financial disclosures) of the CITY for the fiscal year July 1 to June 30 to the extent required for the AUDITOR to issue an Opinion on the fair presentation, in accordance with generally accepted accounting principles, of such Basic Financial Statements, prepared by the CITY, pertaining to all funds established by the CITY, and maintained by the CITY's Director of Finance during said fiscal year.

This Opinion shall include agencies other than the CITY which are required to be included in the CITY's annual financial statements by GASB Statement 14, "The Financial Reporting Entity" and as amended in Statement 39 "Determining Whether Certain Organizations Are Component Units", as well as comply with subsequently issued amendments. The Opinion will be used for inclusion in the CITY's Annual Comprehensive Financial Report (ACFR).

AUDITOR shall review sections of the CITY's ACFR - transmittal letter, combining schedules, and statistical section - all of which will be prepared by CITY personnel. The review of the transmittal letter and the statistical section will be designed to enable the AUDITOR to comply with the requirements of Statement on Auditing Standards No. 8, "Other Information in Documents Containing Audited Financial Statements." The review of the combining schedules will be designed to enable the AUDITOR to report on such supplementary data as being fairly stated in all material respects in relation to the Basic Financial Statements taken as a whole.

2. Management Letter

AUDITOR shall evaluate the adequacy of the system of internal control and design compliance tests, where appropriate, to determine that the controls are in operation. This evaluation will be performed to the extent required by generally accepted auditing standards and will be for the purpose of determining the nature, timing, and extent of the AUDITOR's substantive audit procedures. The resulting recommendations and any other audit findings or comments shall be included in a separate letter ("Management Letter") addressed to the City Council to be issued as soon as possible after conclusion of the audits, but not later than the agreed-upon due dates specified in Section 2 of EXHIBIT A of this AGREEMENT.

a. Gann Agreed-Upon Procedures Report

AUDITOR shall perform certain agreed-upon procedures relating to the CITY's calculation of its appropriation limit in accordance with Article XIIIB of the California Constitution. AUDITOR will provide a report addressed to CITY documenting the results of the agreed-upon procedures.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A .

- C. Completion Time:** The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 3: Single Audit

A. Services:

Audit Report

AUDITOR shall conduct, for the fiscal years from July 1 to June 30, compliance audit procedures as required by the Single Audit Act of 1984 (P.L. 98-502), as amended, and 2 CFR part 200, subpart F (which superseded OMB Circular A133 on December 26, 2013), or subsequent updates to that CFR. AUDITOR shall conduct the compliance audit procedures in accordance with governmental auditing standards adopted by the GAO in Standards for Audit of Governmental Organization, Programs, Activities and Functions and in accordance with the guidelines detailed in the AICPA Audit and Accounting Guide, Audits of State and Local Governmental Units (Revised).

AUDITOR shall evaluate the adequacy of the system of internal accounting and administrative controls as they relate to the Federal Programs and design compliance tests, where appropriate, to determine that the controls are in operation. As a result of the single audit procedures, the AUDITOR shall issue reports which include the following:

- i. A report on internal controls (accounting and administrative) at the Basic Financial Statement level and the Federal Program level which describes the scope of the testing of internal controls and the results of the tests.
- ii. A report on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Basic Financial Statements and the Federal Program, identifying all findings of noncompliance and questioned costs.

- iii. An in-relation report on a supplementary schedule of the Expenditures of Federal Awards, showing total expenditures for each federal program.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in this Section 2 of Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 4: San José Mineta International Airport

A. Services:

1. Audit Report

AUDITOR shall conduct an audit of the financial statements of the CITY pertaining to the San José Mineta International Airport ("Airport") for the fiscal years from July 1 to June 30, in accordance with the requirements of the Disclosure Agreements for the City of San José Airport Revenue Bonds. The Opinion will be used for inclusion in the CITY's Annual Comprehensive Financial Report (ACFR).

2. Passenger Facility Charge Compliance Report

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

3. Customer Facility Charge Compliance Report

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

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A .

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 5: Bicycle/Pedestrian Facilities Grant

A. Services:

Audit Report

AUDITOR shall conduct an audit of the financial statements of the City with regard to grant funds received by the City from the Metropolitan Transportation Commission ("MTC") related to pedestrian bicycle projects in conformance with the requirements of the California Public Utilities Code including, but not limited to, Sections 99245, 99245.2, 99233.3, Title 21, California Code of Regulations Sections 6664, 6664.1, 6666, and MTC allocation instructions and as such provisions and instructions may be amended. The audit shall include a review of compliance with prescribed operating procedures as promulgated by the MTC, the State of California Department of Transportation, and the State of California Controller's Office. The AUDITOR shall issue its audit report in conformance with the requirements set forth above.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 6: Audit of the Financial Statements Prepared by Team San Jose (TSJ) for the San José Convention Center and the Cultural Facilities

A. Services:

1. Audit Report

AUDITOR shall conduct an audit of the Facilities Financial Statements prepared by TSJ for the fiscal years from July 1 to June 30, as required in Section 31.7 of the Agreement for the Management of the San José Convention Center and Cultural Facilities between the CITY and TSJ.

The AUDITOR shall prepare a written Audit Report, which shall include a statement of net position, a statement of revenues, expenses and changes in net position, a statement of cash flows, and a budgetary comparison schedule, prepared in accordance with generally accepted accounting principles and applicable professional auditing standards. The Audit Report shall consist of the AUDITOR's written opinion on the Financial Statements audited together with the final financial statements and related notes.

2. Management Letter

AUDITOR shall evaluate the adequacy of the system of internal control and design compliance tests, where appropriate, to determine that the controls are in operation. This evaluation will be performed to the extent required by generally accepted auditing standards, and will be for the purpose of determining the nature, timing, and extent of the AUDITOR's substantive audit procedures. The resulting recommendations and any other audit findings or comments shall be included in a separate letter ("Management Letter") addressed to the City Council to be issued as soon as possible after conclusion of the audits, but not later than the agreed-upon due dates specified in Section 2 of this EXHIBIT A.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 7: Executive Management and Professional Employees Defined Contribution 401(A) Plan

A. Services:

Audit Report

AUDITOR shall conduct an audit for the fiscal year from July 1 to June 30 of the financial statements of the City of San José Defined Contribution 401(a) plan as set out in Chapter 3.49 of the San José Municipal Code (referred to as the “Tier 3 Plan”). The AUDITOR shall prepare a written audit report, which shall include a statement of net position due to participants and a statement of changes in net position due to participants, prepared in accordance with generally accepted accounting principles and applicable professional auditing standards. The Audit Report shall consist of the AUDITOR's written opinion on the Financial Statements audited together with the final financial statements and related notes.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A .

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 8: Parks Bond Funds Financial Statements and Report on Compliance with Measure “P” (2000)

A. Services:

1. Audit Report

AUDITOR shall conduct an audit of the Parks Bond Funds Financial Statements for the fiscal years from July 1 to June 30. The AUDITOR shall prepare a written audit report in accordance with applicable professional auditing standards and reproduce the Parks Bond Fund Financial Statements and related notes. The Audit Report shall consist of

the AUDITOR's written opinion on the Parks Bond Fund Financial Statements audited together with the final financial statements, a statement of revenues, expenditures, and changes in fund balance by fiscal year for the period beginning June 6, 2001, and related notes.

2. Compliance Report

AUDITOR shall also perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine certain provisions of the CITY's Measure P (2000) as follows:

Bond proceeds are used for installing lighting, reconstructing deteriorating playgrounds and restrooms; preserving open space; constructing trails; constructing new recreational sports facilities; improving Community and Senior Centers; and constructing improvements to regional parks, like Happy Hollow. Bond proceeds are not used for park administrators' salaries. Annual audits are performed and a citizen's oversight committee is established.

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

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 9: Branch Library Bonds Projects Fund Financial Statements and Report on Compliance Measure “O” (2000)

A. Services:

1. Audit Report

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

2. Compliance Report

AUDITOR shall also perform tests of the CITY’s compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine certain provisions of the CITY’s Measure O (2000) as follows:

Bond proceeds are used for expanding and improving aging branch libraries to reduce noise, add parking, and add space for more books and computers; and building new libraries in neighborhoods throughout the City. Bond proceeds are not used for library administrators’ salaries. Annual audits are performed and a citizen’s oversight committee is established.

The AUDITOR’s examination will be conducted in accordance with attestation standards established by the AICPA and will include tests of

the CITY's records and other procedures necessary to express an opinion on whether the CITY complied with Measure O (2000) in all material respects.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 10: Public Safety and Infrastructure Bond Fund Financial Statements and Report on Compliance with Measure "T" (2018)

A. Services:

1. Audit Report

Commencing with the fiscal year ending June 30, 2020, AUDITOR shall conduct an audit of the Public Safety and Infrastructure ("Measure T") Bond Fund Financial Statements. In connection with Measure T Bond Fund Financial Statements, the AUDITOR shall prepare a written Audit Report in accordance with applicable professional auditing standards and reproduce the Measure T Bond Fund Financial Statements, a statement of revenues, expenditures and changes in fund balance by fiscal year for the period beginning July 1, 2019, and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Measure T Bond Fund Financial Statements audited together with the final financial statements and related notes.

2. Compliance Report

AUDITOR shall also perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine

certain provisions of the CITY's Measure T (2018) as described in Part 66 of Chapter 4.80 of the San Jose Municipal Code and Resolution 78739 of the San Jose City Council.

The AUDITOR's examination will be conducted in accordance with attestation standards established by the AICPA and will include tests of the CITY's records and other procedures necessary to express an opinion on whether the CITY complied with Measure T (2018) in all material respects.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 11: Library Parcel Tax Fund Financial Statements and Report on Compliance with Measure "S" (2004)

A. Services:

1. Audit Report

AUDITOR shall conduct an audit of the Library Parcel Tax Fund ("Parcel Tax") Financial Statements for the fiscal year July 1 to June 30. In connection with the Parcel Tax, the AUDITOR shall prepare a written Audit Report in accordance with applicable professional auditing standards and reproduce the Parcel Tax Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Parcel Tax Financial Statements audited together with the final financial statements and related notes.

2. Compliance Report

AUDITOR shall also perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or

agreements to obtain reasonable assurance that the financial statements are free of material misstatement. In addition, AUDITOR shall examine certain provisions of the CITY's Measure S (2004) as follows:

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

The AUDITOR's examination will be conducted in accordance with attestation standards established by the AICPA and will include tests of the CITY's records and other procedures in order to express an opinion on whether the CITY complied with Measure S (2004) in all material respects.

- B. Deliverable:** The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.
- C. Completion Time:** The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 12: South Bay Water Recycling Audit

A. Services:

1. Audit Report

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

AUDITOR's written opinion on the Schedule audited together with the Schedule and related notes.

2. Report to the Recycled Water Policy Advisory Committee

AUDITOR shall evaluate the adequacy of the system of internal control and design compliance tests, where appropriate, to determine that the controls are in operation related to the Schedule of Net Operating Revenues for South Bay Water Recycling. This evaluation will be performed to the extent required by generally accepted auditing standards, and will be for the purpose of determining the nature, timing, and extent of the AUDITOR's substantive audit procedures. The resulting recommendations and any other audit findings or comments shall be included in a separate letter addressed to the Recycled Water Policy Advisory Committee to be issued as soon as possible after conclusion of the audits, but not later than the agreed-upon due dates specified in Section 2 of this EXHIBIT A.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 13: Audit of the San Jose Clean Energy Fund Financial Statements and Agreed-Upon Procedures

A. Services:

1. Audit Report

AUDITOR shall conduct an audit of the San José Clean Energy ("SJCE") Fund Financial Statements. In connection with the SJCE Fund, the AUDITOR shall prepare a written Audit Report in accordance with applicable professional auditing standards and reproduce the Financial

Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on SJCE Fund's Financial Statements audited together with the final financial statements and related notes.

2. Agreed Upon Procedures

AUDITOR shall perform tests of City's compliance with the following related to CITY's operation of SJCE: applicable laws and regulations, including the CITY's Energy Risk Management Policy and Energy Risk Management Regulations, and the provisions of contracts or agreements to obtain reasonable assurance that SJCE's investments and risk management practices are in compliance with the internal controls, risk management policies, and department procedures. AUDTOR shall evaluate the adequacy of the system of internal control over risk management practices and design compliance tests, where appropriate, to determine that the controls are in operation.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 14: Wastewater Treatment System Fund Financial Statements

A. Services:

Audit Report

AUDITOR shall conduct an audit of the CITY's wastewater treatment system funds financial statements for the fiscal year July 1 to June 30 as prepared for the annual financial disclosure of the City of San José Wastewater Treatment System Fund, in accordance with the Master Resolution. The AUDITOR shall prepare a written Audit Report in accordance with applicable professional auditing standards and reproduce

the Financial Statements and related notes. The Audit Report shall consist of the AUDITOR's written opinion on the Financial Statements audited together with the Financial Statements and related notes.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 15: Semi-Annual Investment Program Compliance Agreed Upon Procedures

A. Services:

Compliance Report

On a semi-annual basis, AUDITOR shall perform tests of the CITY's compliance with applicable laws, regulations, and the provisions of contracts or agreements to obtain reasonable assurance that the CITY's investments within the CITY's pooled portfolio are in compliance with the CITY's Investment Policy (<https://www.sanjoseca.gov/home/showpublisheddocument/83406/637834622847370000>), internal controls, and department procedures. The CITY's Investment Policy refers to California Government Code Sections 53600 et. Seq. as standards to which the CITY has determined it should conform, although not legally required to. AUDITOR shall agree individual investments and deposits to supporting documentation and reconcile such to the CITY Treasurer's Report as of June 30 and December 31, and the CITY's general ledger. AUDITOR shall evaluate the adequacy of the system of internal control over investments and design compliance tests,

where appropriate, to determine that the controls are in operation.

B. Deliverable: The AUDITOR will provide the Audit Report to the CITY's Contract Manager, as specified in Section 2 of this Exhibit A.

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Section 2 – Timeline

A. AUDITOR shall complete the following phases and/or deliver the following documents according to the following time schedule.

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

<u>Reports</u>	<u>Due by</u>
Executive Management and Professional Employees Defined Contribution 401(A) Plan (Task 7)	September 30
Audit of the Financial Statements Prepared by Team San Jose (TSJ) for the San José Convention Center and the Cultural Facilities, and Management Letter	September 30

<u>Reports</u>	<u>Due by</u>
(Task 6)	
Semi-Annual Investment Program Compliance Agreed Upon Procedures (Task 15)	September 30 and March 30
Parks Bond Funds Financial Statements and Report on Compliance with Measure “P” (2000) (Task 8)	October 15
Branch Library Bonds Projects Fund Financial Statements and Report on Compliance with Measure “O” (2000) (Task 9)	October 15
Public Safety and Infrastructure Bond Fund Financial Statements and Report on Compliance with Measure “T” (2018) (Task 10)	October 15
Library Parcel Tax Fund Financial Statements and Report on Compliance with Measure “S” (2004) (Task 11)	October 15
San Jose Mineta International Airport ACFR and PFC and CFC Compliance Reports (Task 4)	October 31
Audit of the San Jose Clean Energy Fund Financial Statements and Agreed Upon Procedures (Task 13)	October 31
Wastewater Treatment System Fund Financial Statements (Task 14)	October 31
Bicycle/Pedestrian Facilities Grant (Task 5)	November 15
South Bay Water Recycling Audit Report and Report to the Recycled Water Policy Advisory Committee (Task 12)	November 15
CITY Annual Comprehensive Financial Report (ACFR) Opinion and Management Letter (Task 2)	November 15
Single Audit Report (Task 3)	November 15
Gann Agreed Upon Procedures Report (Task 2)	November 30

B. Either CITY’s Auditor or CITY’s Director of Finance may, upon notice and showing of good cause therefore given and made by AUDITOR at least fifteen (15) days before the above-scheduled dates, grant an extension of time for completion of such audit and completion and delivery of such reports and management letters for a reasonable period of time after the specified delivery dates.

C. AUDITOR shall make its presentation to a City Council Committee (currently the Public Safety, Finance & Strategic Support Committee) and/or the City Council or any other Committee designated by CITY’s Auditor.

EXHIBIT B: COMPENSATION

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services						
Column 1	Column 2		Column 3			Column 4
Task Nos.	Basis of Compensation		Invoice Period			Cumulative Compensation Not to Exceed
1	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$2,513,374
2	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	
3	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$1,386,982
4	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$771,517
5	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$97,238
6	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$534,465
7	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$94,561
8	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$163,966
9	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$163,966
10	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$163,966
11	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$139,903
12	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$222,584
13	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$829,939
14	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$731,804
15	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$150,183
Part 2 – Reimbursable Expenses						

<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.	<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:	\$
Part 3 – Subconsultant Costs		
<input checked="" type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.	<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:	\$
Part 4 – Additional Services		
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the CITY can not authorize any Additional Services.	<input type="checkbox"/> The CITY may authorize the AUDITOR to perform Additional Services up to the following maximum amount:	
Maximum Total Compensation (sum of Parts 1 through 4):		\$7,964,448

Section 2 – Schedule of Rates and Charges

☐ **Omitted.** No Schedule of Rates and Charges is included because the CITY will not be compensating the AUDITOR for any Basic Services on a “time & materials” basis.

☒ The following is the Schedule of Rates and Charges applicable to this Agreement:

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

<u>Year</u>	<u>Compensation</u>
Contract Date – December 31, 2024	\$895,653
January 1, 2025 – December 31, 2025	\$922,523
January 1, 2026 – December 31, 2026	\$950,198
January 1, 2027 – December 31, 2027	\$978,704
January 1, 2028 – December 31, 2028	\$1,008,065
January 1, 2029 – December 31, 2029	\$1,038,307

January 1, 2030 – December 31, 2030	\$1,069,457
January 1, 2031 – December 31, 2031	\$1,101,541
TOTAL:	\$7,964,448

The total amount of compensation to be paid to AUDITOR under this AGREEMENT for all professional services related to this AGREEMENT for the Initial Term and, if exercised, all Option Periods shall not exceed Seven Million Nine Hundred Sixty-Four Thousand Four Hundred Forty-Eight Dollars (\$7,964,448).

Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

B. Such compensation for services related to the first year of the Initial Term shall not exceed the following annual amount:

<u>Services</u>	<u>Compensation</u>
Annual Comprehensive Financial Audit Report (Task No. 1 and 2)	\$282,645
Single Audit (Task No. 3)	\$155,975
San José Mineta International Airport (Task No. 4)	\$86,762
Bicycle/Pedestrian Facilities Grant (Task No. 5)	\$10,935
San José Convention and Cultural Facilities (Task No. 6)	\$60,104
Defined Contribution 401(A) Plan (Task No. 7)	\$10,634
Parks Bond Funds (Measure "P") (Task No. 8)	\$18,439
Branch Library Bonds Projects Funds (Measure "O") (Task No. 9)	\$18,439
Public Safety and Infrastructure Bond Funds (Measure "T") (Task No. 10)	\$18,439
Library Parcel Tax Fund (Measure "S") (Task No. 11)	\$15,733
South Bay Water Recycling (Task No. 12)	\$25,031
San Jose Clean Energy Financial Statements and AUP (Task No. 13)	\$93,332
Wastewater Treatment System Funds (Task No. 14)	\$82,296
Semi-Annual Investment Program AUP (Task No. 15)	<u>\$16,889</u>
Total	\$895,653

- C. CITY will pay AUDITOR on a monthly basis for its accumulated time spent in accordance with the hourly rates set forth below, up to ninety percent (90%) of the amount set forth in Paragraph B above, designated for each component of the services to be provided by AUDITOR under this AGREEMENT. For billing purposes, each monthly statement shall include an itemization of staff, hours worked, and hourly rates. After the first year of the AGREEMENT, AUDITOR may increase the hourly rates annually by up to the lesser amount of three percent (3%) or the increase in the Consumer Price Index for All Urban Consumers, All Items, for the San Francisco-Oakland-San José Metropolitan Area (1982-84=100) (October) as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

<u>Staff Classification</u>	<u>Hourly Rate</u>
Partner	\$420
Director	\$420
Senior Manager	\$278
Manager	\$235
Supervisors and Senior Associate	\$214
Experienced and Staff Associate	\$172
Administrative Assistant	\$105

The balance of the amount due to AUDITOR will be paid within thirty (30) days after the delivery of the Audit Report and the filing of the final draft of the Management Letter, provided that the CITY has determined that all conditions and terms of this AGREEMENT have been met by AUDITOR.

EXHIBIT C: INSURANCE REQUIREMENTS

AUDITOR, at AUDITOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by AUDITOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

B. Minimum Limits of Insurance

AUDITOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions: \$2,000,000 per claim and \$2,000,000 aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, AUDITOR; products and completed operations of AUDITOR; premises owned, leased or used by AUDITOR; and automobiles owned, leased, hired or borrowed by AUDITOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees.
 - b. AUDITOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of AUDITOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by AUDITOR shall not affect coverage provided CITY, its officers, employees, or agents.

- d. Coverage shall state that AUDITOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

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

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

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

F. Verification of Coverage

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

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

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

EXHIBIT D: SPECIAL PROVISIONS

AUDITOR's Workpapers and Reports.

- A. AUDITOR shall maintain all audit workpapers and reports which demonstrate performance under this AGREEMENT for a minimum period of seven (7) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

- B. Any audit workpapers or reports required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at no cost to CITY, at any time during regular business hours upon written request by the City Attorney, the City Auditor, the City's Director of Finance, and successor auditors, or a designated representative of any of these officers. Copies of such audit workpapers and reports shall be provided CITY for inspection at AUDITOR's address indicated for receipt of notices in this AGREEMENT.

EXHIBIT E: NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE: DATE:	
AUDITOR Name: Address: Email:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2.2 of the Agreement referenced above, the City of San José ("City") hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin Date:	
End Date:	

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Auditor an amount not to exceed the amount set forth above for Auditor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSE a municipal corporation
By _____ Name: Title:

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

This AGREEMENT is between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public entity (hereinafter "SUCCESSOR AGENCY"), and MACIAS GINI & O'CONNELL LLP, a California limited liability partnership (hereinafter "AUDITOR").

This AGREEMENT is made and entered into this ____ day of _____ 20__ ("Contract Date").

THE SUCCESSOR AGENCY AND AUDITOR AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 General: This AGREEMENT sets forth the terms and conditions under which the AUDITOR will provide professional consulting services to the SUCCESSOR AGENCY.

1.2 Exhibits: This AGREEMENT consists of this agreement form and the following exhibits, which are incorporated herein by reference:

Exhibit A: Scope of Basic Services

Exhibit B: Compensation

Exhibit C: Insurance Requirements

Exhibit D: Special Provisions

Exhibit E: Notice of Exercise of Option to Extend Agreement Form

1.3 Director: "Director" means the Executive Officer of the SUCCESSOR AGENCY or the Executive Officer's designee.

1.4 Business Days: "Business Day" and "Business Days" means the day(s) on

which City Hall is open to conduct business.

- 1.5 Entire Agreement:** This 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 AGREEMENT may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

- 2.1** The Agreement term is from the Contract Date to December 31, 2028 inclusive, unless terminated earlier pursuant to Section 19 below.
- 2.2** SUCCESSOR AGENCY, in SUCCESSOR AGENCY'S sole discretion, may extend the term of this AGREEMENT for up to three (3) additional one-year option periods ("Option Period(s)"), subject to all of the terms and provisions of this AGREEMENT. SUCCESSOR AGENCY's Executive Officer is authorized to exercise these Option Periods upon written notice to AUDITOR, subject to the appropriation of adequate funding in the sole discretion of the Successor Agency Board to pay the expense of this AGREEMENT for each year of the Option Periods. In the event the first Option Period is exercised by SUCCESSOR AGENCY's Executive Officer, the first Option Period will commence on January 1, 2029 and expire on December 31, 2029. In the event the second Option Period is exercised by SUCCESSOR AGENCY's Executive Officer, the second Option Period will commence on January 1, 2030 and expire on December 31, 2030. In the event the third Option Period is exercised by SUCCESSOR AGENCY's Executive Officer, the third Option Period will commence on January 1, 2031 and expire on December 31, 2031.

3. SCOPE OF SERVICES

3.1 Basic Services: “Basic Services” means the services set forth in **Exhibit A**.

The AUDITOR must perform the Basic Services to the Director’s satisfaction.

3.2 Additional Services: “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.

3.2.1 Authorization: The SUCCESSOR AGENCY will not compensate AUDITOR for any Additional Services without the Director’s prior written authorization.

3.2.2 Director’s Authorization: The Director may authorize the AUDITOR to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the AUDITOR to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the AUDITOR for such services. The Director is authorized to execute the amendment for Additional Services for the SUCCESSOR AGENCY.

4. INTENTIONALLY OMITTED

5. SUCCESSOR AGENCY’S CONTRACT MANAGER

The SUCCESSOR AGENCY’s contract manager for this Agreement is:

Name: Joe Rois	Phone No.: 408-535-1239
Department: Office of the City Auditor	Email: joseph.rois@sanjoseca.gov

Address: Office of the City Auditor 200 East Santa Clara Street, 14 th floor San Jose, CA 95113	
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The Director can change the above contract manager by giving the AUDITOR written notice.

6. AUDITOR'S STAFFING

6.1 Auditor's Contract Manager and Other Staffing: Identified below are the following: (a) the AUDITOR's contract manager, and (b) the AUDITOR(s) and/or employee(s) of the AUDITOR who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the SUCCESSOR AGENCY, the AUDITOR must comply with the requirements of Subsection 17.2 below.

		<u>Required to File Form 700?</u>		
<u>AUDITOR's Contract Manager</u>		Yes Already Filed (Insert Date Filed)	Yes Need to File	No
Name: Benjamin Lau	Phone No.: (925) 395-2839		<u>X</u>	
Address: 2121 N. California Blvd., Suite 750, Walnut Creek, CA 94596	Email: blau@mgocpa.com			
<u>Other Staffing</u>				

<u>Name:</u>	<u>Assignment:</u>	<u>Email:</u>			
1. Guian Chhim	Senior Manager	gchhim@mgocpa.com		x	
2.					
3.					

6.2 Contract Manager's Authority: The AUDITOR's contract manager is authorized to act on behalf of the AUDITOR.

6.3 Staffing Changes: The Director's prior written approval is required for the Auditor to remove, replace or add to any of its staffing identified in this provision.

7. USE OF SUBCONSULTANTS

7.1 Authority to Use: Whichever of the following is marked applies to this Agreement:

- ☒ The AUDITOR can ***not*** use any subconsultants without the Director's prior written approval.
- ☐ The AUDITOR will use the following subconsultants for the specified areas of work. The AUDITOR can not remove, replace or add to any of the subconsultants identified in this provision without the Director's prior written approval.

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

7.2 Subconsultant Work: The AUDITOR warrants all services and deliverables provided by any subconsultants 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 AUDITOR has complete control over its operations and employees, and is an independent contractor. The AUDITOR is not an agent or employee of the SUCCESSOR AGENCY, and shall not represent or act as the SUCCESSOR AGENCY'S agent or employee. The AUDITOR does not have any rights to retirement benefits or other benefits accruing to SUCCESSOR AGENCY employees, and expressly waives any claim it may have to any such rights.
- 8.2 Subcontractors:** As an independent contractor, the AUDITOR has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the AUDITOR contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the AUDITOR is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this AGREEMENT.
- 8.3 Indemnity:** The AUDITOR shall place in each Subcontractor agreement indemnity obligations in favor of the SUCCESSOR AGENCY in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The AUDITOR represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The AUDITOR represents that its performance of the Basic Services 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 Total Compensation: The maximum amount the SUCCESSOR AGENCY will pay the AUDITOR for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$581,843** ("Maximum Total Compensation").

10.2 Intentionally Omitted.

10.3 Exhibit B - Compensation: The SUCCESSOR AGENCY will pay the AUDITOR up to the Maximum Total Compensation in accordance with **Exhibit B**.

10.3.1 Compensation Table: **Exhibit B** sets forth a compensation table establishing the manner in which the SUCCESSOR AGENCY will pay the Maximum Compensation to the AUDITOR ("Compensation Table"). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.3.2 Schedule of Rates and Charges: If the SUCCESSOR AGENCY will compensate the AUDITOR for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the AUDITOR's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

10.3.2.1 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 SUCCESSOR AGENCY will not pay AUDITOR Premium Pay.

10.3.2.2 No Increases: The SUCCESSOR AGENCY will **not** increase the Schedule of Rates and Charges during the Agreement term.

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

10.4 Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. 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 SUCCESSOR AGENCY will compensate the AUDITOR. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the SUCCESSOR AGENCY will not compensate the AUDITOR separately for that task, and payment for such task is deemed included in the other task(s) for which the AUDITOR is receiving compensation.

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

10.4.3 Invoice Period (Column 3): Column 3 identifies when the AUDITOR must submit its invoice for payment. If invoicing is monthly, the AUDITOR must submit its invoice to the SUCCESSOR AGENCY 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 AUDITOR 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 AUDITOR 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 AUDITOR is entitled to the payment requested. The SUCCESSOR AGENCY 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 AUDITOR will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the AUDITOR 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 SUCCESSOR AGENCY will compensate the AUDITOR in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

10.4.3.3 Monthly Invoices Based on Fixed Fee: If the AUDITOR invoices monthly for a “fixed fee,” then the AUDITOR will base its monthly invoice on the percentage of work completed during the previous month. If the AUDITOR 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 SUCCESSOR AGENCY will pay the AUDITOR 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 SUCCESSOR AGENCY. If the AUDITOR 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 AUDITOR 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 SUCCESSOR AGENCY.

10.5 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether or not the SUCCESSOR AGENCY will reimburse the AUDITOR separately for expenses incurred in providing the work. The following terms and conditions apply if the SUCCESSOR AGENCY reimburses the AUDITOR separately for expenses.

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

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

10.5.3 Expenses That Are Reimbursable: Any reimbursement to the AUDITOR is limited to the expenses set forth below in the Reimbursable Expense Schedule. The SUCCESSOR AGENCY 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 SUCCESSOR AGENCY'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 SUCCESSOR AGENCY's contract manager, mileage and other travel-related expenses to the same extent that the SUCCESSOR AGENCY reimburses its employees pursuant to the Employee Travel Policy (SUCCESSOR AGENCY Policy Manual, Sections 1.8.2 and 1.8.3). The AUDITOR 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 other expenses expressly identified in Exhibit B as being reimbursable.	As specified, not to exceed 10%

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

10.6.1 Actual Costs: The AUDITOR can invoice the SUCCESSOR AGENCY for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5 percent.

10.6.2 Schedule of Rates and Charges: Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in

Exhibit B, must be the subconsultant's actual rates and charges exclusive of any markup. The SUCCESSOR AGENCY will compensate the AUDITOR in accordance with those rates and charges.

10.6.3 Maximum Amount: The SUCCESSOR AGENCY will compensate the AUDITOR 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 AUDITOR incurs in excess of the specified maximum amount are at no cost to the SUCCESSOR AGENCY.

10.7 Compensation Table – Part 4: Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the AUDITOR that would result in compensation exceeding this maximum amount is at no cost to the SUCCESSOR AGENCY.

10.8 Tax Forms Required: The following are conditions on the SUCCESSOR AGENCY's obligation to process any payment pursuant to this Agreement:

10.8.1 U.S. Based Person or Entity: If the AUDITOR is a U.S. based person or entity, the AUDITOR acknowledges and agrees that the AUDITOR is required to provide the SUCCESSOR AGENCY with a properly completed Internal Revenue Service Form W-9 before the SUCCESSOR AGENCY will process payment. If the AUDITOR 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 AUDITOR acknowledges and agrees that the AUDITOR is required to provide the SUCCESSOR AGENCY 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 AUDITOR is not a U.S. based person or entity, the AUDITOR acknowledges and agrees that the AUDITOR is required to provide the SUCCESSOR AGENCY 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 SUCCESSOR AGENCY will process payment.

11. INDEMNIFICATION

11.1 Obligation: The AUDITOR shall defend, indemnify and hold harmless the SUCCESSOR AGENCY and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The AUDITOR's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the AUDITOR, any of its Subcontractors, anyone directly or indirectly employed by either the AUDITOR or any of its Subcontractors, or anyone that they control; or
- 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 SUCCESSOR AGENCY's use of any services, deliverables or other items provided by the AUDITOR pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

11.2 Limitation on Obligation: The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the SUCCESSOR AGENCY or its officers, employees or agents.

11.3 Duty to Defend: The AUDITOR's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the SUCCESSOR AGENCY, its officers, employees and agents as set forth in Section 2778 of the

California Civil Code. Upon the SUCCESSOR AGENCY's written request, the AUDITOR, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

- 11.4 Insurance:** The SUCCESSOR AGENCY's acceptance of any insurance in accordance with Section 12 does not relieve the AUDITOR from its obligations under this Section 11. The AUDITOR's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.
- 11.5 Survival:** The AUDITOR's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

12. INSURANCE REQUIREMENTS

- 12.1 General:** The AUDITOR shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 Documentation:** Before performing any services, the AUDITOR must submit to the SUCCESSOR AGENCY'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 SUCCESSOR AGENCY owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the AUDITOR or any other person engaged directly or indirectly by the AUDITOR to perform the AUDITOR's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "Work Product").

"Work Product" as used in this AGREEMENT shall not include the workpapers of

the AUDITOR (e.g., files, notes, schedules, reports, summaries, analyses) whether in electronic or manual form, prepared by AUDITOR in connection with its provision of services under this AGREEMENT which shall remain the exclusive property of AUDITOR. See Exhibit D Special Provisions.

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 SUCCESSOR AGENCY. In the event it is ever determined that any Work Product is not a work for hire under United States law, the AUDITOR hereby assigns to the SUCCESSOR AGENCY all copyrights to such works when and as created.

13.3 Intentionally Omitted.

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

14. DISCLOSURE OF WORK PRODUCT

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

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

14.3 Limit on Prohibition: The prohibition in Subsection 14.1 above does not apply to disclosures between the AUDITOR and its Subcontractors that are needed to perform the Basic Services.

14.4 Survival: This Section 14 survives the expiration or earlier termination of this

Agreement.

15. AUDIT/INSPECTION OF RECORDS

15.1 Retention Period: The AUDITOR shall retain the following records (collectively “Records”) for a minimum of 3 years from the date of the SUCCESSOR AGENCY’s final payment to the AUDITOR under this Agreement or for any longer period required by law:

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

15.2 Producing Records: At any time during the Agreement term or during the period of time that the AUDITOR 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 AUDITOR 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 AUDITOR shall produce the requested Records at no cost to the SUCCESSOR AGENCY.

15.3 State Auditor: In accordance with Government Code Section 8546.7, the AUDITOR may be subject to audit by the California State Auditor with regard to the AUDITOR’s performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

16. NON-DISCRIMINATION/NON-PREFERENCE

16.1 Prohibition: The AUDITOR 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.

16.2 Intentionally Omitted.

16.3 Subcontracts: The AUDITOR shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

17. CONFLICT OF INTEREST

17.1 General: The AUDITOR represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The AUDITOR 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 AUDITOR shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The AUDITOR has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the SUCCESSOR AGENCY 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 Section 81000 et seq.), the AUDITOR shall cause each person performing services under this Agreement, and identified 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 person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and

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

17.3 Future Services: The AUDITOR acknowledges each of the following with regard to performing future services for the SUCCESSOR AGENCY:

- The AUDITOR's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the AUDITOR performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise 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 SUCCESSOR AGENCY to disqualify the AUDITOR from performing or participating in the performance of such future services; and
- The AUDITOR is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 General: The AUDITOR shall perform its obligations under the Agreement in conformance with SUCCESSOR AGENCY Council Policy 1-19, entitled "Prohibition of SUCCESSOR AGENCY Funding for Purchase of Single Serving Bottled Water," and SUCCESSOR AGENCY Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 Prohibition of SUCCESSOR AGENCY Funding for Purchase of Single Serving Bottled Water: The SUCCESSOR AGENCY's policy is that SUCCESSOR AGENCY 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 SUCCESSOR AGENCY for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the SUCCESSOR AGENCY 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 SUCCESSOR AGENCY's website at the following link:

<https://www.sanjoseca.gov/home/showdocument?id=12833>. Environmental procurement policies and activities related to the completion of AUDITOR's 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;
- 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 Agreement at any time and

for any reason by giving the AUDITOR 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 Agreement immediately upon written notice for any material breach by the AUDITOR. If the Director terminates the Agreement for cause and obtains the same services from another AUDITOR at a greater cost, the AUDITOR is responsible for such excess cost in addition to any other remedies available to the SUCCESSOR AGENCY.
- 19.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the AUDITOR to provide to the SUCCESSOR AGENCY any finished or unfinished Work Product prepared by the AUDITOR up to the date of AUDITOR's receipt of the written notice of termination.
- 19.4 Compensation:** The SUCCESSOR AGENCY will pay the AUDITOR the reasonable value of services satisfactorily rendered by the AUDITOR to the SUCCESSOR AGENCY up to the date of AUDITOR's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the AUDITOR provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the AUDITOR'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 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 served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.

20.3 To Whom Given: All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the SUCCESSOR AGENCY: City of San José
Office of the City Auditor
Attn: Joe Rois, City Auditor
200 East Santa Clara Street, 14th floor
San Jose, CA 95113
408-535-1239
joseph.rois@sanjoseca.gov

To the AUDITOR: Macias Gini & O'Connell LLP
Attn: Benjamin Lau
2121 N. California Blvd., Suite 750
Walnut Creek, CA 94596
(925) 395-2839
blau@mgocpa.com

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

21. WAGE THEFT PREVENTION

21.1 Compliance with Wage and Hour Laws: AUDITOR, and any subcontractor performing work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the

San José Living Wage Policy, the San José Prevailing Wage Policy, and the San José Minimum Wage Ordinance.

21.2 Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, the City of San José Office of Equality Assurance, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

21.3 Prior Judgments against AUDITOR and/or its Subcontractors: BY SIGNING THIS AGREEMENT, AUDITOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS RELATING TO WAGE AND HOUR LAWS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING AS TO THE AUDITOR AND ITS SUBCONTRACTOR(S) – IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT. AUDITOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

21.4 Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that AUDITOR or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or AUDITOR learns of such a judgment, decision, or order that was not previously disclosed, AUDITOR shall inform the City’s Office of Equality Assurance, no more than 15 days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. AUDITOR and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City’s Office of Equality Assurance with documentary evidence of compliance with the final judgment, decision or order within five days of satisfying the final judgment, decision or order.

- 21.5 SUCCESSOR AGENCY's Right to Withhold Payment:** Where AUDITOR or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency with respect to work under this Agreement, the SUCCESSOR AGENCY reserves the right to withhold payment to AUDITOR until such judgment, decision or order has been satisfied in full.
- 21.6 Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- 21.7 Notice to City Related to Wage Theft Prevention:** Notice provided to the City's Office of Equality Assurance as required under this Section shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

22. MISCELLANEOUS

- 22.1 Gifts Prohibited:** The AUDITOR represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a SUCCESSOR AGENCY officer or designated employee from accepting any gift. The AUDITOR shall not offer any SUCCESSOR AGENCY officer or designated employee any gift prohibited by Chapter 12.08. The AUDITOR's violation of this Subsection 22.1 is a material breach.
- 22.2 Disqualification of Former Employees:** The AUDITOR represents that it is familiar with Chapter 12.10 of the SUCCESSOR AGENCY's Municipal Code, which generally prohibits a former SUCCESSOR AGENCY officer and a former designated employee from providing services to the SUCCESSOR AGENCY connected with his/her former duties or official responsibilities. The AUDITOR 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 AUDITOR's violation of this Subsection 22.2 is a material breach.

22.3 Waiver of a Violation: The SUCCESSOR AGENCY's waiver of any violation of this Agreement by the AUDITOR is not a waiver of any other violation by the AUDITOR.

22.4 Acceptance of Services Not a Waiver: The SUCCESSOR AGENCY'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 Agreement.

22.5 Compliance with Laws: The AUDITOR 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 AUDITOR's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.

22.6 Business Tax: The AUDITOR represents and warrants that it currently has a SUCCESSOR AGENCY business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.

22.7 Assignability: Except to the extent this Agreement authorizes the AUDITOR to use subconsultants, the AUDITOR shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.

22.8 Governing Law: California law governs the construction and performance of this Agreement.

22.9 Disputes: Any litigation resulting from this Agreement will be filed and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.

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

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

22.12 Execution in Counterparts: This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

22.13 Use of Electronic Signatures: Unless otherwise prohibited by law or SUCCESSOR AGENCY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the SUCCESSOR AGENCY.

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IN WITNESS WHEREOF, the SUCCESSOR AGENCY and AUDITOR have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The AUDITOR must sign one of the following representations. **The SUCCESSOR AGENCY will not process this Agreement unless the AUDITOR has signed one of the provisions.**

{{__signer#}}

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

Or

{{__signer#}}

If the AUDITOR is unable to make the above certification, the AUDITOR acknowledges and agrees to provide the SUCCESSOR AGENCY with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

SUCCESSOR AGENCY

By {{__signer#}}

Name: Jennifer Maguire
Title: Executive Officer of the Successor
Agency

AUDITOR

By {{__signer#}}

Name: Benjamin Lau
Title: Partner

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:**

{{__signer#}}

Name: Kevin Fisher
Title: Assistant City Attorney

EXHIBIT A: SCOPE OF BASIC SERVICES

The AUDITOR shall provide services and deliverables as set forth in this **Exhibit A**.

The AUDITOR shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

General Description of Project: Annual Audits of the Financial Statements of the Successor Agency to the Redevelopment Agency of the City of San José.

Section 1 – Tasks

Task No. 1: Audit Services

A. Services:

1. Each year, during the term of this AGREEMENT, AUDITOR shall conduct an audit for the fiscal year from July 1 to June 30, of the financial statements of the SUCCESSOR AGENCY to the extent required for the AUDITOR to issue an opinion on the fair representation, in accordance with generally accepted accounting principles, of the financial statements.
2. AUDITOR shall provide all services in accordance with all applicable federal, state, and local codes, rules, regulations and generally accepted auditing and accounting professional standards for certified public accountants. All Audit Services to be furnished by AUDITOR under this AGREEMENT shall be of the highest professional standard and quality which prevail among certified public accountants of superior knowledge and skill engaged in related work throughout California under the same or similar circumstances.
3. AUDITOR shall inform, in accordance with American Institute of Certified Public Accountants (“AICPA”) and Government Accountability (“GAO”) guidelines, the SUCCESSOR AGENCY and related entities promptly of any discrepancy or irregularity, including fraud and defalcations, material to the financial statements which the AUDITOR may discover in the course of the audits; and AUDITOR shall submit to the SUCCESSOR AGENCY those recommendations resulting from their audits as to methods of investigation considered necessary or appropriate to determine the cause and extent of any such discrepancy or irregularity. In addition, AUDITOR shall inform the City of upcoming GASB pronouncements and provide assistance for an appropriate and timely implementation.

4. AUDITOR shall provide guidance and information to SUCCESSOR AGENCY on changes in accounting principles due to new Governmental Accounting Standards Board (GASB) pronouncements and inform the SUCCESSOR AGENCY of upcoming GASB pronouncements and provide assistance for an appropriate and timely implementation.
5. In order to maintain audit quality control and assurance, AUDITOR shall have an appropriate internal quality control system in place and shall undergo external peer review in accordance with AICPA guidelines and Government Auditing Standards, 2011 revision. AUDITOR promptly shall provide City Auditor with documentation of each external peer review which occurs during the term of this AGREEMENT.

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

6. Each year during the term of this AGREEMENT, AUDITOR shall prepare and submit an audit work plan for the SUCCESSOR AGENCY to the City Auditor, scheduling the required work for the efficient and prompt completion of the Audits, Reports and Opinions described herein. This audit work plan will be published by the AUDITOR and delivered to City Auditor not later than the agreed-upon due dates specified in Section 2 of this EXHIBIT A. The audit work plan is to contain discussion on the following items: (1) the organizational structure of the SUCCESSOR AGENCY, the Finance Department, and the audit firm; (2) an overview on the basis of accounting utilized, any significant accounting areas, data processing, and the budgetary process; (3) financial and operating information as considered necessary; (4) any areas of potential concern to AUDITOR; (5) description of SUCCESSOR AGENCY assistance required, including a listing of reports and workpapers and when those would be required; (6) engagement staffing; (7) other issues AUDITOR believes should be included; and (8) methods of communication

that will be used to keep SUCCESSOR AGENCY personnel informed during audit fieldwork. Each audit work plan is subject to the review and approval of City Auditor.

7. AUDITOR will assist SUCCESSOR AGENCY in responding to inquiries from federal, state, and/or regional agencies on issues related to AUDITOR's Audit Services.
8. AUDITOR shall perform all services to the satisfaction of the SUCCESSOR AGENCY's Executive Officer, and shall coordinate the scheduling of the required work with the SUCCESSOR AGENCY.

B. Deliverable: The AUDITOR will provide the Audit Services to the SUCCESSOR AGENCY's Contract Manager, as specified in Section 2 of this Exhibit A .

C. Completion Time: The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 2: Audit Report

- A. Services:** AUDITOR shall prepare a written audit report in accordance with generally accepted auditing standards as promulgated by the AICPA and the applicable audit standards contained in Government Auditing Standards, current revision, issued by the Comptroller General of the United States with the objectives of expressing an opinion on the financial statements, as a whole. The Audit Report shall consist of the (1) AUDITOR's written opinion on the Successor Agency to the Redevelopment Agency of the City of San José Financial Statements together with the final financial statements and related notes and (2) reporting on the scope of testing on internal control over financial reporting and compliance with certain provisions of laws, regulations, contracts, and other materials and the results of testing.
- B. Deliverable:** The AUDITOR will provide the Audit Report to the SUCCESSOR AGENCY's Contract Manager, as specified in Section 2 of this Exhibit A.
- C. Completion Time:** The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Task No. 3: Management Letter

- A. Services:** AUDITOR shall evaluate the adequacy of the system of internal control and design compliance tests, where appropriate, to determine that the controls are in operation. This evaluation will be performed to the extent required by generally accepted auditing standards, and will be for the purpose of determining the nature, timing, and extent of the AUDITOR's substantive audit procedures. AUDITOR shall submit a draft of said Management Letter to the SUCCESSOR AGENCY. The SUCCESSOR AGENCY shall prepare a response to the recommendations and return the response to Proposer for incorporation into the Management Letter. The resulting recommendations and any other audit findings or comments shall be included in a separate letter (Management Letter) addressed to the Oversight Board to be issued as, soon as possible after conclusion of the audits.

- B. Deliverable:** The AUDITOR will provide the Management Letter to the SUCCESSOR AGENCY's Contract Manager, as specified in Section 2 of this Exhibit A.
- C. Completion Time:** The AUDITOR must complete the services and deliverable for this task in accordance with Section 2 of this Exhibit A.

Section 2 – Timeline

AUDITOR shall complete the following phases and/or deliver the following documents according to the following time schedule.

<u>TASK</u>	<u>SCHEDULE</u>
<u>Audit Services - Planning</u>	
Entrance conference	By April 15
Client service planning meeting	By May 15
Present audit plan to SUCCESSOR AGENCY representatives	By July 15
<u>Audit Services - Interim Fieldwork</u>	
On-site interim fieldwork	May through July
Present interim findings and to-date management letter listing to SUCCESSOR AGENCY representatives	The second week of August
<u>Audit Services - Year-End Fieldwork</u>	
Coordination of year end fieldwork status with City's Finance Department	August through October
On-site year-end financial statement fieldwork	August through October
Exit conference with SUCCESSOR AGENCY representatives	October

<u>Reports</u>	<u>Due by</u>
Successor Agency to the Redevelopment Agency Audit Report including Financial Statements Opinion and Management Letter	October 31

EXHIBIT B: COMPENSATION

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services			
Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	Compensation
1	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	Cumulative compensation not to exceed maximum total compensation of \$581,843 for the term of the agreement
2	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	
3	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	
Part 2 – Reimbursable Expenses			
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:	\$
Part 3 – Subconsultant Costs			
<input checked="" type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.		<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:	\$
Part 4 – Additional Services			
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.		<input type="checkbox"/> The Director may authorize the AUDITOR to perform Additional Services up to the following maximum amount:	\$
Maximum Total Compensation (sum of Parts 1 through 4):			\$581,843

Section 2 – Schedule of Rates and Charges

☐ **Omitted.** No Schedule of Rates and Charges is included because the SUCCESSOR AGENCY will not be compensating the AUDITOR for any Basic Services on a “time & materials” basis.

☒ The following is the Schedule of Rates and Charges applicable to this Agreement:

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

<u>Year</u>	<u>Compensation</u>
Contract Date – December 31, 2024	\$65,432
January 1, 2025 – December 31, 2025	\$67,395
January 1, 2026 – December 31, 2026	\$69,417
January 1, 2027 – December 31, 2027	\$71,499
January 1, 2028 – December 31, 2028	\$73,644
January 1, 2029 – December 31, 2029	\$75,854
January 1, 2030 – December 31, 2030	\$78,129
January 1, 2031 – December 31, 2031	\$80,473
TOTAL:	\$581,843

The total amount of compensation to be paid to AUDITOR under this AGREEMENT for all professional services related to this AGREEMENT for the Initial Term and, if exercised, all Option Periods shall not exceed Five Hundred Eighty-One Thousand Eight-Hundred Forty-Three Dollars (\$581,843).

Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to SUCCESSOR AGENCY.

- B. Such compensation for services related to the first year of the Initial Term shall not exceed the following annual amount for the following services:

<u>Services</u>	<u>Compensation</u>
Successor Agency to the Redevelopment Agency of the City of San José Financial Statements Audit	\$65,432

- C. SUCCESSOR AGENCY will pay AUDITOR on a monthly basis for its accumulated time spent in accordance with the hourly rates set forth below, up to ninety percent (90%) of the amount set forth in Paragraph B above, designated for each component of the services to be provided by AUDITOR under this AGREEMENT. For billing purposes, each monthly statement shall include an itemization of staff, hours worked, and hourly rates. After the first year of the AGREEMENT, AUDITOR may increase the hourly rates annually by up to the lesser amount of three percent (3%) or the increase in the Consumer Price Index for All Urban Consumers, All Items, for the San Francisco-Oakland-San José Metropolitan Area (1982-84=100) (October) as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

<u>Staff Classification</u>	<u>Hourly Rate</u>
Partner	\$420
Director	\$420
Senior Manager	\$278
Manager	\$235
Supervisors and Senior Associate	\$214
Experienced and Staff Associate	\$172
Administrative Assistant	\$105

The balance of the amount due to AUDITOR will be paid within thirty (30) days after the delivery of the Audit Report and the filing of the final draft of the Management Letter, provided that SUCCESSOR AGENCY's Managing Director has determined that all conditions and terms of this AGREEMENT have been met by AUDITOR.

EXHIBIT C: INSURANCE REQUIREMENTS

AUDITOR, at AUDITOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by AUDITOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

B. Minimum Limits of Insurance

AUDITOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions: \$2,000,000 per claim and \$2,000,000 aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, AUDITOR; products and completed operations of AUDITOR; premises owned, leased or used by AUDITOR; and automobiles owned, leased, hired or borrowed by AUDITOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees.
 - b. AUDITOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of AUDITOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by AUDITOR shall not affect coverage provided CITY, its officers, employees, or agents.

- d. Coverage shall state that AUDITOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

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

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

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

F. Verification of Coverage

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

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

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

EXHIBIT D: SPECIAL PROVISIONS

AUDITOR's Workpapers and Reports.

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

EXHIBIT E: NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE: DATE:	
AUDITOR Name: Address: Email:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2.2 of the Agreement referenced above, the SUCCESSOR AGENCY hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin Date:	
End Date:	

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, SUCCESSOR AGENCY shall pay AUDITOR an amount not to exceed the amount set forth above for AUDITOR's services and reimbursable expenses, if any. The undersigned signing on behalf of the SUCCESSOR AGENCY hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>SUCCESSOR AGENCY</p>	
By _____	
Name:	
Title:	

NVF:KWF:CLS
10/19/2023