

**ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF
SUNNYVALE AND J.R. MILLER AND ASSOCIATES INC. FOR CONSULTING
SUPPORT FOR SOLID WASTE SERVICES**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE ("CITY"), a California chartered municipal corporation, and J.R. MILLER AND ASSOCIATES INC. ("CONSULTANT")

WHEREAS, CITY is in need of On-Call Contracts for Consulting Support for Solid Waste Services; and

WHEREAS, CITY advertised a Request for Qualifications on April 28, 2023, for On-Call Contracts for Consulting Support for Solid Waste Services (F23-112); and

WHEREAS, CONSULTANT submitted a proposal on May 26, 2023; and

WHEREAS, CITY accepted CONSULTANT proposal submitted on August 8, 2023 and;

WHEREAS, in reliance upon CONSULTANT's representations regarding its qualifications, CITY finds that CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work". All exhibits, including all associated attachments, are attached hereto and incorporated herein by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be for three (3) years from the execution date, unless otherwise terminated in accordance with Section 17 below. CONSULTANT shall deliver the agreed-upon services to CITY as specified in Exhibit "A". This agreement may be renewed for an additional two (2) one-year periods granted by the City Manager as an amendment in accordance with Section 18 below.

3. Duties of CITY

CITY shall supply to CONSULTANT any documents or information available to CITY and required by CONSULTANT for performance of the services. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "B". Total compensation shall not exceed Three Hundred Seventy Five Thousand and 00/100 Dollars (\$375,000.00).

CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707 or accountspayable@sunnyvale.ca.gov. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Wage Rates

CONSULTANT shall comply with the City's the minimum wage set forth in Section 3.80.040 of the Sunnyvale Municipal Code.

6. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

7. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

Pursuant to CITY's Conflict of Interest Code, Council Policy 7.3.7, CITY has determined that, depending on the position, certain individuals performing services under this Agreement may be required to file a Statement of Economic Interest (Form 700), which can be found at www.fppc.ca.gov. If applicable, to facilitate electronic submittal of Form 700, CONSULTANT shall send the following information to cityclerk@sunnyvale.ca.gov: 1) first and last name(s) of CONSULTANT's employee(s); 2) email address(es) of CONSULTANT's employee(s); 3) date when CONSULTANT's employee(s) will begin work under this contract; and 4) (if known) date when CONSULTANT's employee(s) will cease work under this contract.

Government Code Section 91013 provides that any person who files a statement after its deadline shall be liable in the amount of \$10 per day, up to a maximum of \$100, in addition to any administrative penalty (up to the statutory maximum, currently \$5,000) imposed by the Fair Political Practices Commission (FPPC). If any of CONSULTANT's employee(s) is required to submit Form 700, and CITY does not receive CONSULTANT's Form 700, then CITY is required to refer this matter to the FPPC or other appropriate enforcement agency.

8. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

9. Compliance with Laws

- A. CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, veteran or military status, or any other protected characteristic in violation of federal or state law. This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.
- B. CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

10. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

11. Hold Harmless/Indemnification

CONSULTANT shall indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. However, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the CONSULTANT shall meet and confer with other parties regarding unpaid defense costs. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence or willful misconduct of CITY, its officers, employees, agents or

representatives.

12. Insurance

The City requires that all CONSULTANT shall maintain insurance requirements on the Pacific Insurance Network System (PINS). CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C" through PINS for approval by the City Risk Manager prior to CONSULTANT (or subcontractor) commencing any work under this Agreement.

13. CITY Representative

Ramana Chinnakotla, Director of Environmental Services as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement ("CITY representative"). All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

14. CONSULTANT Representative

Kevin McCarthy, Project Manager shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement ("CONSULTANT representative"). All requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

15. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Ramana Chinnakotla, Director of Environmental Services,
Environmental Services Division
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Kevin McCarthy, Project Manager
J.R. Miller and Associates, Inc
2700 Saturn Street
Brea, CA 92821

16. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

17. Termination

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

18. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing as an amendment to this Agreement signed by all parties. If the amendment is signed electronically, the digital signatures must comply with the requirements of California Government Code Section 16.5.

19. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

20. Ordering

The City shall require that the Consultant submit a proposal for each task order in competition with other consultants prior to issuing a Purchase Order under this Agreement. Task orders will only be issued by authorized users of this Agreement. The task order request will generally include:

- (a) the statement of work;
- (b) a list of reporting requirements and any other deliverables;
- (c) instructions to the Consultant including, for example, information concerning the period of performance, and any special terms or conditions applicable to the task order.

The City project manager will determine the due date for responses and the level of review required based on the nature and complexity of the requirements. Payment for services rendered in the Task Order will be made in accordance with the rates set forth in Exhibit B "Compensation Schedule" and may be contingent on the completion and approval of deliverables.

21. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

J.R. MILLER AND ASSOCIATES INC.
("CONSULTANT")

By _____
City Manager

By _____

Name and Title

ATTEST:

By _____
City Clerk

By _____

Name and Title

APPROVED AS TO FORM:

By _____
City Attorney

Exhibit A
SCOPE OF WORK

A. Solid Waste Services

1. **Technical assistance with solid waste programs, study-specific topics, and equipment research:** City routinely looks for program improvements and cutting-edge equipment technology to increase diversion. Staff can ideate such improvements but may need support on identifying details and conceptualizing them related to City programs. On occasion, City Council study topics arise and staff require subject matter expertise for research and analysis.

B. Operational review

1. **Solicitation development, review, negotiation, and support:**
The Consultant shall provide assistance with solicitations development and evaluation for various products and services.

EXHIBIT B – SCHEDULE OF FEES

09/15/2023

The hourly billing rates for services of the Architect and the Consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Consultants' normal review practices:

Associate/Architect	220-230.00	per hour*
Associate/Engineer	215-230.00	per hour*
Associate/Project Manager	225.00	per hour
Senior Project Architect	200-220.00	per hour*
Project Architect	160-190.00	per hour*
Senior Engineer	225-240.00	per hour*
Senior Project Manager	200-255.00	per hour*
Project Engineer	150-195.00	per hour*
Project Manager	170-210.00	per hour*
Senior Project Leader	160.00	per hour
Production Manager	190.00	per hour
Designer	130-170.00	per hour*
Technical Leader	140-165.00	per hour*
Engineering CADD BIM Specialist	120-155.00	per hour*
Engineering CADD BIM Manager	165.00	per hour
BIM Manager	190.00	per hour
CADD BIM Specialist	100-135.00	per hour*
CADD Manager	135.00	per hour
CADD Technician	85-115.00	per hour*
Senior Graphic Modeler	145.00	per hour
Graphic Modeler	90-115.00	per hour*
Lead Interior Design Manager	185.00	per hour
Interior Designer	145-155.00	per hour*
Sustainable Design Leader	135.00	per hour
Sustainable Design Coordinator	110.00	per hour
Managing Principal	300.00	per hour
Director of Design	285.00	per hour
Principal Architect	250-285.00	per hour*
Principal Engineer	250-320.00	per hour*
Principal/PM	275.00	per hour
Managing Senior Engineer	265.00	per hour
Senior Advisor	270.00	per hour
Senior Facility Advisor	225.00	per hour
Strategic Advisor	350.00	per hour
Marketing Coordinator	120.00	per hour
Technical Assistant	80.00	per hour
Director of Operations	260.00	per hour
Director of Finance	220.00	per hour
Project Administrator	105.00	per hour
Project Engineering Assistant	100.00	per hour
Solid Waste Planner	225.00	per hour
Admin Assistant	85.00	per hour

*Actual rates may vary depending on individual experience level.

These hourly rates are for work performed during normal office hours. Work specifically requested during overtime hours will be charged at 1.5 times the above rates.

Reimbursable Expenses:

Auto Mileage: Published IRS rate plus 20%.

Outside services performed by others and direct expenses incurred on the Client's behalf are charged at cost plus 20%. Such items include, but are not limited to, outside consultants and testing laboratories, subsistence, transportation and air travel charges, long distance communications, delivery charges and express mail, inspection, and any City agency fees. Plots generated in-house will be invoiced at \$0.55 per square foot for bond plots and \$1.50 per square foot for color plots. All reimbursable expenses are in addition to the stated fee.

Exhibit C **INSURANCE REQUIREMENTS**

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this Agreement for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☒ **Professional Liability / Errors and Omissions Liability** coverage with limits not less than \$2,000,000 per occurrence or claim.
- ☒ **Valuable Papers and Electronic Data Processing** with limits not less than \$10,000 each.
- ☐ Cyber & Tech Liability coverage with limits not less than of \$1,000,000 per occurrence or claim.
- ☐ Crime coverage with limits not less than \$500,000 to include third party premises endorsement.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale, Risk Manager. The Consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the Agreement, the City of Sunnyvale, its officers, officials,

employees, agents, and volunteers are to be covered as an additional insured in the Consultant's commercial general liability policy (and if industry specific coverage box is checked above, valuable papers, electronic data processing, and cyber liability policies) with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

2. During the term of the Agreement, the Consultant's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For all Architects, Engineers and Design Professionals - If Industry Specific Coverage box is checked above and if the Consultant's Professional Liability/Errors and Omissions coverage is written on a claims made basis:
 - a. The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
 - b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the Agreement of work.*
 - c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the Agreement effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of Agreement work.
4. For any claims related to this agreement, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
6. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
8. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the

additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the Consultant's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.

9. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Consultant's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

The City of Sunnyvale utilizes PINSAdvantage.com (PINS) to track and verify all insurance related documents. The City is no longer accepting Certificates of Insurance by mail and requires the use of PINS. The City will email the Consultant requesting proof of insurance for this Agreement through the PINS platform (no-reply@pinsadvantage.com), which include instructions on how to upload insurance documents electronically. Consultant shall furnish the City of Sunnyvale with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale, Risk Manager prior to commencement of work.

The Consultant shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. Consultant shall submit insurance certificates reflecting the policy renewals through PINS. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors

Consultant shall require all sub-contractors to procure and maintain insurance policies subject to these requirements. Failure of Consultant to verify existence of sub-contractor's insurance shall not relieve Consultant from any claim arising from sub-contractors work on behalf of Consultant.