

## ATTACHMENT 2

### DRAFT CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF SUNNYVALE AND CDM SMITH, INC. FOR ON-CALL SERVICES TO SUPPORT THE DEVELOPMENT OF RECYCLED WATER AND POTABLE RE-USE PROJECTS IN THE COUNTY

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CDM SMITH, INC., a California corporation ("CONSULTANT").

WHEREAS, CITY desires to secure as-needed consultant services necessary to perform independent engineering, regulatory and financial review to validate the CITY's regional partners' concepts, coordinate with existing financial and implementation plans, evaluate impacts to the Water Pollution Control Plant (WPCP) rebuild program, account for any risks, and make contingency plans to be incorporated into any agreements that will be developed; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, possess the professional qualifications and expertise to provide the required services and are licensed by the State of California to practice engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide Consultant Services in accordance with Exhibit "A" entitled "Scope of Services." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Jan Davel, P.E. to this project, to act in the capacity of Program Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed

CONSULTANT shall commence services upon receipt of a Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.

3. Time for Performance

The term of this Agreement shall be a three-year period, beginning on the date of execution, unless otherwise terminated. At the option of the CITY, Agreement may be extended up to two additional years in increments and amounts determined by CITY, subject to available funding.

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the assigned tasks shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase, and shall include services as identified in Exhibit "A. In no event shall the total amount of compensation payable under this agreement exceed

the sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

5. No Assignment of Agreement

CONSULTANT bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

8. Standard of Workmanship

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONSULTANT shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

14. Hold Harmless/Indemnification

To the extent permitted by law (including, without limitation, California Civil Code section 2782.8), CONSULTANT agrees to 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. Such defense and indemnification shall not apply in any

instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

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 and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

17. 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 shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY:                      Manuel Pineda, City Engineer  
                                     Department of Public Works  
                                     CITY OF SUNNYVALE  
                                     P. O. Box 3707  
                                     Sunnyvale, CA 94088-3707

To CONSULTANT:        CDM SMITH, INC.  
                                     Attn: Jan Davel, P.E.  
                                     100 Pringle Avenue, Suite 300  
                                     Walnut Creek, CA 94596

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. 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 days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising

this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. 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 Standard Conflict of Interest Code, Council Policy 7.3.7, and the Political Reform Act, CITY has determined that any individual performing services under this Agreement may be required to file a Statement of Economic Interest (Form 700), Disclosure Category 1. See [www.fppc.ca.gov](http://www.fppc.ca.gov) for Form 700.

22. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

- 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.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.

28. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. 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 by writing signed by all parties.

32. 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. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

CDM SMITH, INC. ("CONSULTANT")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name/Title

By \_\_\_\_\_  
\_\_\_\_\_  
Name/Title

## Exhibit “A”

### SCOPE OF SERVICES

The City is completing a master planning effort for replacement of the Water Pollution Control Plant (WPCP) and has retained a program management and a construction management consultant to support the implementation of this master plan. Central to the many projects included in this plan is the phased conversion of the WPCP to conventional activated sludge (CAS) secondary treatment.

In addition to this implementation, there are several alternative implementations that involve potentially partnering with other agencies to supply them with effluent for potable reuse. This potential potable reuse program is above and beyond the WPCP rebuild program. City staff will require consultant support to perform independent engineering, regulatory, and financial review to validate our regional partners' concepts, coordinate with our existing financial plan and implementation plan, evaluate impacts to our WPCP rebuild program, account for any risks, and make contingency plans to be incorporated into any agreements that will be developed.

The following categories of services are anticipated:

A. Engineering Evaluation for Potential Reuse Program—Engineering evaluation of alternatives such as the following may be required:

1. Construction of MBR secondary treatment, MF/RO/UV tertiary treatment, and conveyance of final effluent to recharge ponds in Los Gatos.
2. Construction of a CAS plant and conveyance of final effluent to a remote MF/RO/UV facility.
3. Replacement of the existing chlorine contact tanks with UV, and construction of a stacked MF/RO facility on the existing CCT footprint.
4. Same as #3, but with final effluent from a remote plant piped in to the WPCP to be treated in the new MF/RO facility along with Sunnyvale's effluent.
5. Connection of the Palo Alto recycled water system to Sunnyvale's system, to serve existing non-potable customers.
6. Connection of the Palo Alto recycled water system to an MF/RO/UV facility.
7. A combination of #5 and #6.

Typical services could include:

- Performing peer review of assumptions and analysis used to develop the alternative design concepts.
- Responding to peer review comments by others.
- Assessing siting, staging, phasing, utility, hydraulic, power, and other impacts on the WPCP rebuild program.
- Identifying risks and benefits to the City. Developing recommendations for mitigating or transferring risk.
- Preparing shadow cost estimates.
- Analyzing schedule impacts of reuse alternatives on the WPCP rebuild program, and vice versa.

B. Permitting Strategy for Potential Reuse Program— From the efforts of the City, SCVWD, and their consultants, three regulatory issues related to the construction of MBR secondary treatment and MF/RO/UV tertiary treatment were identified that warrant further investigation. These issues are:

1. Construction in jurisdictional habitat to build EQ/emergency storage, raise the access road, and retire the treatment ponds.
2. Diversion of freshwater from Moffett Channel to aquifer recharge.
3. Disposal of RO concentrate.

SCVWD is actively investigating approaches for issue No. 3 and is proceeding with their Expedited Purified Water Program with the understanding that one or more feasible solutions are available. The City requires assistance to investigate issue Nos. 1 and 2.



Typical services could include:

- Reviewing area planning efforts to identify relationships between projects in the potential reuse program and work planned by third-party stakeholders.
- Meeting with key stakeholders, to obtain information about their interests and recent developments.
- Preparing memos and figures to document the work performed.
- Identifying regulatory risks and tactics to mitigate them.
- Drafting a preliminary permitting strategy that identifies required water quality and biological permits, key issues associated with each permit, additional studies needed, estimated cost, stakeholder communication strategy, and timeline.
- Conducting workshops with planners, regulators, and/or potential partners.
- Confirming the preferred alternative for open decisions, such as the location of EQ/emergency storage and the fate of Ponds 1 and 2.
- Developing a similar strategy for SJWC and/or Palo Alto alternatives.

C. Technical Support for Financial and Legal Analysis—The City anticipates procuring specialized financial and legal consultants to apply for grants and low-cost loans, forecast rate impacts, craft cost-sharing agreements, and advise on legal risks. Some of the information needed by these consultants is likely to be technical in nature and not readily available. Engineering consultants familiar with the potential reuse program alternatives and WPCP rebuild program would be best-suited to prepare technical information in support of other consultants' efforts. Typical services could include:

- Developing cost-loaded schedules of interrelated projects that include improvements to benefit potable reuse partners, as well as those necessary for the WPCP rebuild program.
- Identifying decision deadlines and the cost or other impact of delay.
- Preparing technical evaluations to demonstrate eligibility for grants or special financing terms.
- Responding to technical questions related to allocation of costs.

D. Project Management—All consultant services will require the administration and management of a contract, subconsultant contracts, and staff. Services under this category include:

- Preparing monthly invoices and reports of progress.
- Reviewing subconsultant invoices.
- Establishing subconsultant contracts and task orders.
- Leading regular progress meetings.
- Producing meeting agendas and minutes.

E. Quality Management—All consultant deliverables will be internally reviewed and checked prior to submittal to the City. Services under this category include:

- Reviewing deliverables (to be performed by a senior technical specialist).
- Documenting quality control activities.

**Exhibit "B "**

**COMPENSATION SCHEDULE**

The following rates are applicable for CDM Smith.

<b>PROFESSIONAL AND SUPPORT SERVICES</b>	<b>HOURLY RATES</b>				
	2016	2017	2018	2019	2020
Senior Vice President (Grade 10)	\$276	\$284	\$293	\$302	\$311
Vice President (Grade 9)	\$254	\$262	\$270	\$278	\$286
Principal/Associate (Grade 8)	\$244	\$251	\$259	\$267	\$275
Senior Engineer/Scientist (Grade 7)	\$234	\$241	\$248	\$255	\$263
Senior Engineer/Scientist (Grade 6)	\$216	\$222	\$229	\$236	\$243
Engineer/Scientist (Grade 5)	\$197	\$203	\$209	\$215	\$221
Engineer/Scientist (Grade 4)	\$160	\$165	\$170	\$175	\$180
Staff Engineer/Scientist (Grades 1, 2 & 3)	\$143	\$147	\$151	\$156	\$161
Drafter/Designer (DNDF1–DNDF8)	\$116	\$119	\$123	\$127	\$131
Contract/Project Administrator (FNCA5-8)	\$143	\$147	\$151	\$156	\$161
Technical Editor (CDMK5–CMMK8)	\$143	\$147	\$151	\$156	\$161
Secretary/Word Processor (ASWP1–ASWP5)	\$116	\$119	\$123	\$127	\$131
Administrative Assistant (ASAD1-ASAD5)	\$106	\$109	\$112	\$115	\$118
Technician/Clerk (TEGN 1-3)	\$79	\$81	\$83	\$85	\$88

The following rates are applicable for H.T. Harvey & Associates.

<b>PROFESSIONAL AND SUPPORT SERVICES</b>	<b>HOURLY RATES</b>				
	2016	2017	2018	2019	2020
Principal	\$221	\$228	\$235	\$242	\$249
Senior Ecologist 1	\$151	\$156	\$161	\$165	\$170
Wildlife Ecologist 2	\$135	\$139	\$143	\$147	\$152
Wildlife Ecologist 1	\$119	\$123	\$127	\$131	\$134
Graphics/GIS Analyst	\$108	\$111	\$115	\$118	\$122
Administrative Support	\$82	\$85	\$87	\$90	\$93

The following rates are applicable for Larry Walker Associates.

PROFESSIONAL AND SUPPORT SERVICES	HOURLY RATES				
	2016	2017	2018	2019	2020
President	\$291	\$300	\$309	\$318	\$328
Vice President	\$271	\$279	\$287	\$296	\$305
Associate	\$244	\$251	\$259	\$267	\$275
Senior Staff	\$217	\$224	\$231	\$238	\$245
Project Staff 2A	\$197	\$203	\$209	\$215	\$221
Project Staff 2B	\$175	\$180	\$185	\$191	\$197
Project Staff 1A	\$160	\$165	\$170	\$175	\$180
Project Staff 1B	\$138	\$142	\$146	\$150	\$155
Contract Administrator	\$148	\$152	\$157	\$162	\$167
Administrative	\$79	\$81	\$83	\$85	\$88

The following rates are applicable for ESA.

PROFESSIONAL AND SUPPORT SERVICES	HOURLY RATES				
	2016	2017	2018	2019	2020
Senior Director III	\$285	\$294	\$303	\$312	\$321
Senior Director II	\$265	\$273	\$281	\$289	\$298
Senior Director I	\$250	\$258	\$266	\$274	\$282
Director III	\$230	\$237	\$244	\$251	\$259
Director II	\$215	\$221	\$228	\$235	\$242
Director I	\$200	\$206	\$212	\$218	\$225
Managing Associate III	\$195	\$201	\$207	\$213	\$219
Managing Associate II	\$180	\$185	\$191	\$197	\$203
Managing Associate I	\$165	\$170	\$175	\$180	\$185
Senior Associate III	\$160	\$165	\$170	\$175	\$180
Senior Associate II	\$150	\$155	\$160	\$165	\$170
Senior Associate I	\$140	\$144	\$148	\$152	\$157
Associate III	\$130	\$134	\$138	\$142	\$146
Associate II	\$120	\$124	\$128	\$132	\$136
Associate I	\$100	\$103	\$106	\$109	\$112
Project Technician III	\$115	\$118	\$122	\$126	\$130
Project Technician II	\$95	\$98	\$101	\$104	\$107
Project Technician I	\$80	\$82	\$84	\$87	\$90

The above are based on regular rates current at the time of execution of this Agreement. Hourly billing rates will be increased once each year beginning April 1, 2017 by 3% annually for the duration of the contract.

## Exhibit "C"

### INSURANCE REQUIREMENTS FOR CONSULTANTS

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

**Minimum Scope and Limits of Insurance:** Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation** and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per occurrence and \$2,000,000 aggregate.

### **Deductibles and Self-Insured Retentions**

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

### **Other Insurance Provisions**

The **general liability** and **automobile liability** policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds 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; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, 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.
3. 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.
4. 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.
5. 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.

### **Claims Made Coverage**

If the General Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase an extended period coverage for a minimum of five years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Sunnyvale for review.

#### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

#### **Verification of Coverage**

Consultant shall furnish the City of Sunnyvale with original a 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 prior to commencement of work.