

## Master Services Agreement

This Master Services Agreement (“**Agreement**”) between Sierra-Cedar, Inc., a Delaware corporation with its principal offices at 1255 Alderman Drive, Alpharetta, Georgia 30005 (“Consultant”) and City of Sunnyvale, a California municipality with principal offices at 650 West Olive Avenue, Sunnyvale, California 94086 (“Client”) is effective as of the date on which it has been signed by both Parties. Collectively Consultant and Client shall be known individually as a “Party” and collectively as the “Parties”.

The Parties agree as follows:

### MASTER TERMS AND CONDITIONS

#### 1. **Services Provided by Consultant**

Consultant shall provide Client with information technology consulting services (“Services”) as specified in one or more Statement(s) of Work executed by the Parties (each, a “SOW”). Each SOW is a separate and independent contractual obligation from any other SOW. Together, these Master Terms and Conditions and the SOW(s) comprise this Agreement. Client acknowledges that the performance of the Services under this Agreement will be an interdependent effort with employees and agents from both Consultant and Client working together to perform the Services. Both Parties agree to fully cooperate with each other in the performance of the Services and to meet the obligations assigned to each party in the SOW. The Services may include presentation of options and advice, but Consultant will not make any decisions on behalf of Client in connection with such options and advice.

#### 2. **Fees, Expenses, & Payment**

A schedule of deliverables and progress payments has been defined based on the pricing outlined in the SOW. The SOW explicitly overrides any pricing and payment schedules referenced in Consultant’s original proposal and in Client’s RFP. Consultant will invoice Client for its services as set forth in the SOW. Client agrees to remit payment for accurately submitted invoices within 30 days of receipt of invoice. Client is responsible for all sales and use taxes, duties, and customs fees concerning the Services performed hereunder, but is not liable for taxes based on Consultant’s income or gross revenue.

#### 3. **Staffing**

3.1 Coordination of Resources. Consultant will work with Client to assess and meet staffing and resource needs for provision of the Services.

If Client notifies Consultant that it is dissatisfied with the services of any individual supplied by Consultant, Consultant shall try in good faith to promptly resolve any concerns. If Client continues to be dissatisfied with such individual, Consultant will remove that individual from the situation and identify a suitable/qualified proposed replacement that the Client has the authority to interview and approve before the

Consultant assigns the replacement. Consultant shall have the right to remove or replace an assigned individual with a similarly skilled individual in the event such removal or replacement is required due to promotion, leave of absence, illness, or the like. Any replacement, of an individual at the Consultant's request shall include a transition plan approved by City that provides continuity and avoids cost and schedule impact to the project. Notwithstanding, Client may not require the replacement of Consultant personnel assigned to a fixed-fee or similar engagement except for issues related to performance, organizational fit, or inappropriate behavior.

#### **4. Obligations of Consultant**

Consultant shall perform its obligations as set forth in the applicable SOW.

Consultant shall not be entitled to subcontract the performance obligations provided herein to any other party without the prior written consent of Client, which shall not be unreasonably withheld, conditioned, or delayed. All subcontractors hired by Consultant to perform Consultant obligations pursuant to a SOW shall be bound to perform such obligations as if such obligations were being performed by Consultant and Consultant shall be liable for the actions of such subcontractors while performing Services pursuant to this Agreement as if such actions were the actions of Consultant. Nothing in this Agreement shall create any contractual relationship between any subcontractor and Client or any obligation on the part of Client to pay or to see the payment of any monies due to any subcontractor.

In addition, Consultant shall:

- (a) designate and provide for each SOW one Consultant point of contact who shall be responsible for answering and resolving Client's questions and issues relating to the project(s) described therein; and
- (b) provide sufficient, qualified, knowledgeable personnel capable of performing Consultant's obligations as set forth in the applicable SOW.

#### **5. Obligations of Client**

Client shall fulfill the following obligations, in addition to Client obligations set forth in the applicable SOW (collectively "Client Obligations"):

- (a) designate and provide for each SOW one Client point of contact who shall be responsible for answering and resolving Consultant's questions and issues relating to the project(s) described therein; and
- (b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing Client Obligations; (ii) participating in the project and assisting Consultant's consultant resources in reviewing Work Product; and (iii) facilitating searches for information and requirements;

- (c) license or subscribe to and provide all of the software that will be required to render Services other than standard productivity software resident on Consultant devices and any software Consultant specifically agrees to provide in a SOW.

## **6. SOW Change Order Process**

If Consultant is performing services on an hourly basis and Client wishes to add services or extend the engagement, Client may so request in writing to Consultant, which may be via e-mail. If Consultant is not able to accommodate the request, it will so notify Client.

If either Party desires to change the Services to be provided pursuant to a SOW as to which payment for which is not on an hourly basis, the following process shall be followed:

- (a) Consultant will prepare a Change Order for Client's review documenting the change, including relevant information such as a change in resources required, revised end-dates, and change in fees, if applicable;
- (b) When Consultant and Client have agreed by Executive Project Sponsor or Designee on the contents of the Change Order, both parties shall so indicate, either by signing the Change Order or transmitting approval of the Change Order email, or other electronic means.
- (c) Once a Change Order has been agreed to in such manner by the Parties, it shall constitute an amendment to, and shall be deemed part of, the terms and conditions of the applicable SOW. Consultant shall not be obligated to provide the work covered by the Change Order until the Change Order is signed by both Parties.

## **7. Ownership and Proprietary Rights**

- 7.1 Ownership of Pre-existing Technology. Client acknowledges and agrees that Consultant is the sole and exclusive owner of all rights, including but not limited to all patent rights, copyrights, trade secrets, trademarks, and other proprietary rights in the systems, programs, templates, methodologies, tools, accelerators, specifications, user documentation, training materials, and other materials used by Consultant in the course of its provision of Services which were created prior to or independently of the performance of the Services, plus any modifications or enhancements thereto and derivative works based thereon (collectively "Consultant's Technology"). Client acquires no rights in Consultant's Technology. Client shall not copy, transfer, sell, give, loan, distribute, assign, display, or otherwise make Consultant's Technology available to third parties.
- 7.2 Ownership of Tangible Work Product. The work product created by Consultant for delivery to Client pursuant to this Agreement ("Deliverables") shall mutually belong to Client and Consultant and may be used by each Party for its business purposes.
- 7.3 Ownership of Data Processing Know-how. Client recognizes that Consultant's business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and

develops in its client engagements. Accordingly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of Client, then Consultant will own such material including, without limitation: methodologies; delivery strategies, approaches and practices; generic software tools, routines, and components; generic content, research and background materials; training materials; application building blocks; templates; analytical models; project tools; development tools; inventions; solutions and descriptions thereof; ideas; and know-how (collectively "Know-how"). To the extent such Know-how is contained or reflected in the Deliverables, Consultant hereby grants Client a fully paid up, perpetual license to use such Know-how only for its internal business. Client will not sublicense, give, or sell Know-How to any third party, and will not use or exploit the Know-How to compete with the information technology consulting business of Consultant.

## 8. Confidentiality

The Parties acknowledge and agree that in the course of performing under this Agreement, each will disclose to the other trade secrets and other confidential information relating to each Party's business, including Consultant's Technology and Know-how. Any such information which is designated in writing as confidential or which a Party should reasonably understand to be confidential will be deemed "Confidential Information". Confidential Information will not include Know-How. Each Party agrees to store and use the other Party's disclosed Confidential Information only to the extent necessary to perform the Services. Each Party agrees not to disclose the Confidential Information of the other to any third party and to treat it with the same degree of care as it would its own confidential information. Each Party further agrees not to disclose the Confidential Information of the other to any employees other than those with a need to have access to it, and to instruct those employees of the need to maintain the confidentiality of the Confidential Information. The Parties acknowledge and agree that failure to abide by these confidentiality obligations would constitute a material breach hereof, and may irreparably harm the non-breaching Party, and that the aggrieved Party shall be free, in addition to other relief, to seek injunctive relief to cure or prevent any such breach, without need of posting a bond. Confidential Information will not include information that: (i) is or becomes publicly available through no wrongful act of the receiving Party; (ii) was lawfully obtained by the receiving Party from a third party who had no obligation to maintain the Confidential Information as confidential; (iii) was previously known to the receiving Party without any obligation to keep it confidential; or (iv) was independently developed by the receiving Party without the use of or reliance upon the Confidential Information of the disclosing Party. All proprietary and other information received from Consultant by City, whether received in connection with Consultant's proposal to City or in connection with any Services performed by Consultant, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City

shall give notice to Consultant of any request for the disclosure of such information. The Consultant shall then have five (5) days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. The Consultant shall have sole responsibility for defense of the actual "trade secret" designation of such information. The parties understand and agree that any failure by Consultant to respond to the notice provided by CITY and/or to enter into an agreement with City, in accordance with this Section, shall constitute a complete waiver by Consultant of any rights regarding the information designated "trade secret" by Consultant, and such information shall be disclosed by City pursuant to applicable procedures required by the Public Records Act.

#### **9. Warranty and Warranty Exclusions**

For a period of 90 days from Go-Live Acceptance for each Rollout, which includes the production support period, Consultant warrants that: (a) it will perform the Services in a competent, professional, and workmanlike manner in accordance with industry standards; (b) it will perform the Services in a manner that complies with all applicable laws and regulations; and (c) all work performed by Consultant and all Consultant deliverables shall be provided in accordance with and shall conform in all material respects to any specifications and requirements set forth in this Agreement. Client agrees that all development work performed under this Agreement using third-party proprietary development and integration tools shall be subject to the limitations, if any, of Client's license agreements with such third-party software vendors.

For each of the First Time System Events, as that term is used in the SOW, the Warranty provision in the first paragraph of this section will apply for 90 days after the first occurrence.

To receive warranty remedies, Client must report any deficiencies to Consultant in writing within the warranty period. Consultant shall correct all deficiencies in the Services identified by Client during the warranty period provided that the defective Services are not caused by any inappropriate, improper, or unforeseen usage of the work product or Services by Client, unless such actions are taken at the direction of Consultant. If the deficiency is related to a software issue beyond the control of Consultant, Consultant shall work in good faith with Oracle to resolve the situation or develop a work around solution that materially meets Client's requirements as set forth in the SOW.

The warranties contained herein and in the SOW are consultant's sole and exclusive warranties. Consultant affirmatively excludes any and all other warranties, conditions, or representations (express or implied, oral or written) with respect to the services, including any and all implied warranties or conditions of title, merchantability, or fitness whether arising by law or by reason of custom of the trade.

#### 10. **Sole Remedy and Limitation of Liability**

Client's sole remedy hereunder shall be return of fees paid to Consultant for any service which Client demonstrates to be in breach hereof or otherwise actionable by Client. In no event shall Consultant be liable for consequential, indirect, exemplary, punitive, or incidental damages, including, without limitation, lost data, lost profits, or cost of procurement of substitute goods or services, however arising, even if it has been advised of a possibility of such damages. Any liability incurred by Consultant in connection with the implementation services under this Agreement shall be limited to the applicable dollar amounts of insurance limits as set forth in section 15.10. This limitation of liability shall not apply to claims arising from personal injury or damage to tangible property.

#### 11. **Trademarks/Service Marks**

Neither Party has any rights in any trademark or service mark of the other Party and neither shall use such marks without written consent and consistent with City Administrative Policy Manual Chapter 7, Article 4(attached and incorporated as Exhibit C). Consultant may include Client's name and logo on a client list. Consultant will not identify Client as a reference or use Client's name or logo for other purposes without Client consent.

#### 12. **Termination**

This Agreement may be terminated upon the following events:

Termination by Mutual Agreement. In the event the parties mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.

Termination Without Cause. Client shall have the right to terminate this Agreement without cause by providing Consultant with thirty (30) calendar days' written notice.

Termination for Cause. In the event of a material breach, either party may provide the other party with written notice of the material breach, with such sufficient detail so the party can readily understand the claim for material breach. The other party shall have thirty (30) calendar days from the date of its receipt of such notification to cure such material breach. If the material breach is not cured within that time period, the non-breaching party may terminate this Agreement immediately.

Termination for Lack of Funds. In the event the funds to finance this Agreement become unavailable or are not allocated, Client shall provide Consultant with thirty (30) calendar days' written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the parties from negotiating a new Agreement in this event.

Upon termination of this Agreement for any reason, including expiration, Consultant shall place no further orders nor enter into subcontracts for materials or services unless it is necessary in accordance with agreed upon wind-down disentanglement procedures. Consultant shall, upon receipt of termination notice, unless otherwise directed by the Client (i) take such action as may be necessary for the protection and preservation of the Client's materials and property; and (ii) shall act in good faith to mitigate costs to Client.

In the event of any termination, Client and Consultant shall mutually agree upon "wind-down" disentanglement procedures to include, without limitation, the scope, staffing, and costs required by such procedures. Such services shall be paid to Consultant on a time and materials basis at the rates listed in this Agreement.

Notwithstanding any other provisions of this Agreement, the provisions regarding insurance, indemnification, confidentiality, limitation of liability, non-solicitation and any other provisions which by their terms survive, shall survive the termination or expiration of this Agreement.

In the event of termination, Client shall compensate Consultant pursuant to the terms of the Agreement for all accepted work performed through the termination date. For any work which has been performed but not yet accepted, Contractor shall be equitably compensated, after negotiation with the City and agreement of partial work completed for each work product within a deliverable, for all Services performed prior to notification of termination, provided that Client can verify the performance of work .

### **13. Dispute Resolution**

Any dispute, disagreement, claim, or controversy between the Parties arising out of or relating to this Agreement (the "Disputed Matter") shall be resolved as detailed in SOW Section 4.2.

### **14. Indemnification**

To the fullest extent provided by law, Consultant shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), which Liabilities arise from third party claims for personal injury or death, damage to personal or real property or the environment, or regulatory penalties, to the extent arising out of or in any way connected with performance of or failure to perform this Agreement by Consultant, any subconsultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification shall apply whether or not such Liabilities are litigated, settled or reduced to judgment. For avoidance of doubt, the foregoing indemnity does not apply to

liability related to any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of City, its agents, servants, or independent contractors who are directly responsible to City, except when such agents, servants, or independent contractors are under the direct supervision and control of Consultant. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 14, nor shall the limits of such insurance limit the liability of Consultant hereunder.

Consultant shall fully indemnify, defend (including Consultant's providing and paying for legal counsel reasonably agreeable to the City for the City) and hold harmless City, its officials, officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, royalties, fines, penalties, costs or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark or other intellectual property right or proprietary right by Consultant. Should any work become, or be likely to become, in Consultant's opinion, the subject of infringement of such patent, copyright or other intellectual property right, and without limiting Consultant's infringement indemnity obligations above, Consultant shall procure for Client (i) the right to continue using the same, or (ii) replace or modify it to make it non-infringing, provided that the replacement or modification performs the same functions and matches or exceeds the performance and functionality of the original Work. If neither (i) nor (ii) is commercially reasonable, Consultant will refund amounts paid for the infringing work. Such refund is not intended to foreclose other remedies of the City. Consultant's obligations under this Section 14 shall survive termination of this Agreement.

With regard to intellectual property infringement, Consultant shall have no liability to indemnify for any claim based on: (a) use of Consultant Work Product outside the scope of this Agreement and/or a Statement of Work; (b) the combination, operation, or use of the Work Product furnished or authorized under this Agreement and/or a Statement of Work with software, hardware, or other materials not furnished by Consultant or reasonably anticipated by the applicable Statement of Work if such infringement would have been avoided by the use of the Work Product without such software, hardware or other materials; or (c) any modification by City of the Work Product not made or authorized in writing by Consultant.

Client acknowledges that Consultant makes no representations regarding and accepts no indemnification obligation with regard to any third party commercially available software.

## **15. General**

- 15.1 **Notices.** Any notice hereunder by one Party to the other Party shall be given in writing by personal delivery, facsimile, regular mail, or overnight mail, or certified mail with proper postage, to the Party at the address designated in this



Agreement. Any notice shall be effective on the date it is received by the addressee. Either Party may change its address for notice purposes by giving the other party notice of such change in accordance with this paragraph.

Notices shall be addressed as follows:

**If to Consultant:**

**Sierra-Cedar, Inc.**

Attn. General Counsel

1255 Alderman Drive

Alpharetta, GA 30005

Phone: (678) 381-8685

With a copy to: CFO

**If to Client:**

**City of Sunnyvale**

Attn: Teri Silva

456 W. Olive Ave

Sunnyvale, CA 94086

Phone: (408) 730-7910

Email: tsilva@sunnyvale.ca.gov

- 15.2 Governing Law and Venue. The validity, performance, and enforcement of this Agreement shall be governed by and be construed in accordance with the laws of the State of California, without regard to the conflicts of law rules thereof and the state courts or the federal courts of California shall have exclusive jurisdiction and venue over the Parties with respect to any dispute or Disputed Matter arising under this Agreement. By signing this Agreement, each Party consents to personal jurisdiction in state and federal courts located in California and venue shall be in the County of Santa Clara, and agrees to not raise any defense to same.
- 15.3 Attorneys' Fees. In the event of any litigation between the parties hereto relating to the interpretation or enforcement of any of the terms of this Agreement, the prevailing party therein shall be entitled to its reasonable costs and attorneys' fees, all of which shall be included in the judgment rendered in such litigation.
- 15.4 Relationship of Parties. This is an agreement for professional services. The parties hereto are independent of one another and both agree that no agency, employment, franchise, or other relationship exists between the parties. Neither party shall have the authority to bind the other with respect to third parties or in any other manner.
- 15.5 Severability. If any provision of this Agreement is held to be unenforceable or invalid, in whole or in part, then all of the remaining provisions shall nevertheless continue in full force and effect.
- 15.6 No Assignment. Neither party may assign this Agreement or the rights granted hereunder without the prior written consent of the other, except that a party may assign this Agreement to any successor to the business of the party by merger, consolidation, or sale of assets or to any corporation controlling, controlled by,

or under common control with the party and Consultant may assign its right to receive payment hereunder. Any required approval shall not be unreasonably withheld, conditioned, or delayed.

- 15.7 Payment by Credit Card or Bank Issued Purchasing Card. Sierra-Cedar does not accept payment by credit card or bank issued purchasing card.
- 15.8 Client Use of Third-Party Vendors. If Client requests Consultant to submit information such as time records or invoices to a third-party agency such as a vendor manager or payment manager, all costs associated with Consultant's use of the third-party agency shall be borne by Client. Consultant shall have no obligation to provide such third-party agency with confidential or personal information nor shall Consultant's submission of information to the third-party agency relieve Client of any obligations hereunder.
- 15.9 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the parties hereto. Both parties acknowledge and agree that none of the rights or obligations granted or undertaken herein shall inure to the benefit of any third parties.
- 15.10 Insurance. Consultant agrees that it shall maintain at least the following minimum levels of insurance and, upon Client's request, shall cause a Certificate of Insurance to be issued and mailed to the Client.

Type of Insurance:	Policy Limits:
General Liability	\$1,000,000 each occurrence and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit
Workers Compensation and Employer's Liability	State minimum for each state where work is performed
Errors and Omissions, including Cyber Coverage	\$2,000,000

Mailing Address for Certificate of Insurance:
<b>CITY OF SUNNYVALE</b>
Attn: Human Resources – Risk Management
<b>505 W. OLIVE AVENUE, SUITE 200</b>
<b>SUNNYVALE, CA 94086</b>

The **general liability** policy shall 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 respect to liability arising out of: activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by 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 claim related to this project, 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 in excess of Consultant's insurance and shall not contribute with it.
3. To the extent permitted by Consultant's insurance policies, 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. 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, other than errors and omissions, shall be endorsed to state that coverage shall not be cancelled before 30 days prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale. As to errors and omissions insurance, Consultant will give the required notice, since its carrier does not give notice to clients.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

#### Verification of Coverage

Consultant shall furnish the City of Sunnyvale with a Certificate of Insurance evidencing the coverage required. The certificate is to be signed by a person authorized by the 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.

- 15.11 Schedules, Exhibits, and Attachments. These terms are used interchangeably and refer to the following referenced documents:

Reference	Description
A.	Sierra-Cedar Travel and Expense Billing Policy
B.	Sierra-Cedar Labor and Rates Policy
C.	City Administrative Policy Manual, Chapter 7, Article 4
D.	Reserved
E.	Reserved

Reference	Description
F.	Reserved
G.	Reserved

- 15.12 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance hereunder due to circumstances beyond its reasonable control, including but not limited to acts of God, labor disputes, and governmental and judicial action not the fault of the party causing such failure or delay in performance. Upon receipt of notice of failure or delay in performance caused by the foregoing, performance time shall be considered extended for a period of time equivalent to the time lost as a result of such delay. If either party is unable to continue to perform for a period of 30 calendar days from the date such notice was issued, then either party may terminate this Agreement.
- 15.13 Entire Agreement. This Agreement shall constitute the entire Agreement between the Parties and supersedes all prior agreements and/or representations between the Parties relating to the subject matter hereof. The Parties acknowledge and agree that they have not relied upon any representations not set forth herein in entering into this Agreement. Both Parties have had the opportunity to have this Agreement reviewed by competent counsel. No terms, provisions, or conditions of any purchase order will have any effect on the obligations of the Parties under or otherwise modify or be incorporated into this Agreement.
- 15.14 Waiver or Modification of Agreement.
- (a) Both Parties understand and agree that any and all changes and modifications to the terms and conditions of this Agreement shall be by mutual written agreement of both Parties.
  - (b) No waiver or modification of this Agreement or of any covenant, condition, or limitation contained herein shall be valid unless it is reduced to written form and duly executed by the Parties. No evidence of any waiver or modification of the terms herein shall be offered or received into evidence in any proceeding, mediation, arbitration, or litigation between the parties arising in any manner out of this Agreement, unless such waiver or modification is in writing and duly executed by the Parties.
  - (c) No waiver by either Party of any default, breach, or condition precedent shall be construed as a waiver of any provision of this Agreement nor as a waiver of any other default, breach, condition precedent, or any other right hereunder.
- 15.15 No Conflict. Consultant and Client each represent and warrant that execution and performance of this Agreement does not and will not violate, conflict with, or constitute a default under any contract, commitment, arrangement, understanding, agreement, or restriction, or any adjudication, order, injunction,

or finding of any kind by any court or agency to which Consultant or Client respectively is bound.

- 15.16 Electronic documents. The Parties agree to treat facsimile or electronic copies of documents as binding on the Parties in the same manner and to the same degree as original versions of the same documents.
- 15.17 Change in Document. By signing and delivering this Agreement and/or any schedule, exhibit, amendment, or addendum, each Party will be deemed to represent to the other that the signing Party has not made any changes to such document from the draft(s) most recently provided to the other Party by the signing Party, or vice versa, unless the signing Party has expressly called such changes to the other Party's attention in writing (e.g., by "redlining" the document or by a comment in a memo or email).
- 15.18 Excused Performance. Consultant's nonperformance of its obligations as to any specific Deliverable or other obligation under this Agreement shall be excused to the extent such nonperformance is due to: (a) the acts or omissions of Client or any third party authorized to act on Client's behalf which hinder or delay Consultant's ability to perform its obligations under this Agreement; or (b) unanticipated substantive changes to applicable laws and regulations that interrupt, delay, or fundamentally alter the scope of the engagement.
- 15.19 Survival. All sections of this Agreement which by their nature would be expected to survive termination or expiration will do so. This includes but is not limited to sections 2, 3.2, 7, 8, 9, 10, 14, and 15.17.
- 15.20 Order of Precedence. If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: (1) The SOW; (2) the terms and conditions set forth in this Agreement.
- 15.21 Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
- 15.22 Non-Discrimination. Consultant agrees that it will not discriminate against any person(s) because of age, ancestry, race, color, creed, marital status, political affiliation, religion, disability, national origin, citizenship, sex, or sexual orientation.
- 15.23 Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts, each of which shall be deemed an original, shall constitute one and the same instrument.
- 15.24 Participation by Other Local Government Agencies. Consultant agrees to allow other government entities or agencies to purchase services pursuant to the terms

and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such purchases, subject to mutual agreement. Client shall not be a party to such purchases and assumes no liability or responsibility associated with such purchases.

IN WITNESS WHEREOF, the Parties acknowledge that they have each read the terms hereof and that in signing below, they agree to all of said terms.

**City of Sunnyvale, CA**

**Sierra-Cedar, Inc.**

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Kent Steffens  
City Manager

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Kevin Bryant  
General Manager, Public Sector

ATTEST:

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David Carnahan  
City Clerk

Approved as to Form:

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John A. Nagel  
City Attorney

**EXHIBIT A**  
**SIERRA-CEDAR TRAVEL AND EXPENSE BILLING POLICY**

The following are Sierra-Cedar's policies for consultant travel and expenses:

**Actual Costs:**

All travel and living expenses (with the exception of per diem meal allowances) are billed at the actual costs incurred, with receipts for such costs retained by Sierra-Cedar in accord with IRS guidelines.

**Airfare:**

Client is responsible for the cost of round-trip coach airfare. Consultants purchase airline tickets as early as possible consistent with Client schedules in order to obtain a reasonable fare. Discounted fares are normally non-refundable. Client assumes the cost of any penalties due to cancellations as a result of Client's changes in consultants' schedules. Sierra-Cedar assumes the cost for any penalties arising from Sierra-Cedar requested schedule changes.

On international travel with flight time greater than 7 hours, Client will be charged for a business class ticket unless other arrangements have been made in advance.

**Lodging:**

Consultants acquire lodging consistent with business travel rates for the area of Client's offices. Consultants use the lower of Sierra-Cedar's or Client's corporate rate at designated national brand hotels whenever possible.

**Per Diem:**

Meal expenses are calculated on a per diem basis using the allowed rate for a specific local or metropolitan area under the General Service Administration ("GSA") tables applicable to Federal employees traveling at government expense. GSA publishes Continental US (CONUS) per diem tables for each local or metropolitan area annually on October 1. The per diem rate includes all meals, meal tips, and incidental expenses. The per diem rate is prorated for partial days of travel away from home according to the GSA guidelines. Refer to the GSA website for per diem rates at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem), and the meal per diem breakdown at [www.gsa.gov/mie](http://www.gsa.gov/mie). Foreign Per Diem Rates can be found at [http://aoprals.state.gov/web920/per\\_diem.asp](http://aoprals.state.gov/web920/per_diem.asp).

**Car Rental:**

Car rental is for a four-door mid-sized car. Consultants attempt to share transportation whenever possible.



**EXHIBIT A**Taxis/Trains:

Client is billed for the cost of taxi, bus, shuttle, or train fare to Client's offices. Consultants attempt to use the most cost and time effective means for commuting to the Client's site.

Parking/Tolls:

Client is billed for the cost of parking and tolls associated with transportation to and from the Client's site, as well as airport parking and mileage to and from the airport.

Mileage:

Mileage is billed at the current published IRS mileage rate.

**EXHIBIT B****LABOR AND RATES****BILLABLE TIME POLICY**

The following are Sierra-Cedar's policies with respect to consultant time billable to Client:

**Hours Worked:**

Unless otherwise specified in a SOW, Consulting support is billed on a time and expense basis, based on the actual hours worked on Client matters, whether performed onsite or offsite. Client matters exclude time devoted to submission of time and expense reports and similar internal administrative functions.

Consultants maintain a daily timesheet of all hours worked with a brief designation of the nature of work performed for that day. Hours are logged to the nearest quarter of an hour.

For ad hoc consulting engagements, in which a consultant is brought in for a one- or two-day assignment, a minimum of eight hours per day will be charged unless prior arrangements have been made for part time work.

**International Travel:**

For assignments in North America, including Canada and Mexico, Sierra-Cedar will bill Client a minimum of eight hours when travel is required. For assignments to South America and Europe, Sierra-Cedar will bill Client a minimum of 40 hours. For assignments to Asia, Africa, Antarctica, Australia, and New Zealand, Sierra-Cedar will bill Client a minimum of 65 hours.

**Lunch or Travel Time:**

Client will not be billed for consultants' lunch or travel time, unless work or business is conducted during that time.

**SIERRA-CEDAR STANDARD RATES & PAYMENT**

Payment of any invoice sent by Sierra-Cedar shall be due 30 days after the invoice date. Invoices shall issue twice monthly. Remittance shall be made to the address designated on the invoice or to the following lockbox address:

Sierra-Cedar, Inc.  
PO Box 402521  
Atlanta, GA 30384-2521

**EXHIBIT B**

**Compensatory Tax** – If a Sierra-Cedar employee works at a client site for longer than one year, the assignment may be deemed permanent by taxing authorities such that reimbursement for living expenses is treated as taxable income to the employee. Consultant and Client will work together to arrange project schedules to avoid this result. If Client's needs are such that Client cannot agree to an arrangement which will avoid taxation to the employee for living expenses required by the Client project, Client agrees to pay Sierra-Cedar the amount of additional compensation Sierra-Cedar pays to its employee to compensate for such additional taxes.

**Travel Inflation Adjustment (applicable only to engagements with travel-inclusive rates)** – On each anniversary of this Agreement, Consultant will review the Consumer Price Index published by the U.S. Department of Labor ("CPI") to determine whether adjustment to the travel component of fees payable under this Agreement is required. If the CPI has increased 5% or more since the last annual adjustment, Consultant shall be entitled to increase the travel component of fees payable under this Agreement by the same percentage as the CPI increase.