

**DRAFT SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND MACIAS GINI & O'CONNELL LLP TO PROVIDE ANNUAL FINANCIAL AUDIT
SERVICES**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and MACIAS GINI & O'CONNELL LLP, ("AUDITOR").

WHEREAS, CITY is in need of specialized services to conduct the annual independent audit of the City's financial transactions and to express an opinion on the fairness of the presentation of the City's financial statements; and

WHEREAS, AUDITOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by AUDITOR

AUDITOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. AUDITOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from April 1, 2020 to March 31, 2023, unless otherwise terminated. AUDITOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

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

4. Compensation

CITY agrees to pay AUDITOR 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 Eighty Two Thousand Two Hundred Forty Three and No/100 Dollars (\$382,243.00).

AUDITOR 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. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

6. Wage Rates

The successful bidder AUDITOR shall comply with the City's the minimum wage set forth in Section 3.80.040 of the Sunnyvale Municipal Code

7. Ownership of Documents

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

8. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AUDITOR shall not accept employment or an obligation which is inconsistent or incompatible with AUDITOR's obligations under this Agreement.

Pursuant to CITY's Standard Conflict of Interest Code CITY has determined that certain any individuals performing services under this Agreement may be is required to file a Statement of Economic Interest (Form 700) depending on the position, which can be found at www.fppc.ca.gov. To facilitate electronic submittal of Form 700, send the following information to cityclerk@sunnyvale.ca.gov: 1. AUDITOR's employee(s) first and last name; 2. AUDITOR's employee(s) email address; 3. Date AUDITOR's employee(s) will begin work under this contract; 4. (if known) Date AUDITOR'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 we do not receive your statement, our AUDITOR is required to refer this matter to the FPPC or other appropriate enforcement AUDITOR.

9. Confidential Information

AUDITOR 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 AUDITOR may become aware in the performance of its services.

10. Compliance with Laws

- A. AUDITOR shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of AUDITOR or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed

service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of AUDITOR's employment practices and to all of AUDITOR's activities as a provider of services to the City.

- B. AUDITOR 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.

11. Independent Contractor

AUDITOR 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 AUDITOR. AUDITOR is responsible for paying all required state and federal taxes.

12. Hold Harmless/Indemnification

AUDITOR 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 AUDITOR, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to AUDITOR's performance under this Agreement. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, 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 design professional 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, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

13. Insurance

AUDITOR 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."

14. CITY Representative

Timothy J. Kirby, Director of Finance as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

15. AUDITOR Representative

David Bullock, CPA, Partner shall represent AUDITOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of AUDITOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the AUDITOR representative.

14. 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 or fax, 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: Timothy J. Kirby, Director of Finance
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To AUDITOR: David Bullock, CPA, Partner
Macias Gini & O'Connell LLP
2121 North California Blvd., Ste 750
Walnut Creek, CA 94596

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 AUDITOR 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 AUDITOR. In the event of such termination, AUDITOR 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. AUDITOR 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 AUDITOR. In the event of such termination, AUDITOR 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. AUDITOR shall present CITY with any work product completed at that point in time.

- C. If CITY fails to pay AUDITOR, AUDITOR 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 signed by all parties.

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. 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.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

MACIAS GINI & O'CONNELL LLP
("AUDITOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

Exhibit A Scope of Work

Macias, Gini and O'Connell LLP (MGO) will audit the financial statements of governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City's Comprehensive Annual Financial report (CAFR). MGO will review management's discussion and analysis - a required supplementary information (RSI) - budgetary comparison schedules, modified approach for the City streets infrastructure capital assets, and required schedules for pension benefits and other post-employment benefits. MGO will report on supplementary information other than RSI, such as combining, and individual fund financial statements and schedules that accompanies the City's basic financial statements. MGO will also assist in preparing the basic financial statements and related footnotes of the City CAFR in conformity with U.S. generally accepted accounting principles.

In addition to conducting the City's annual financial audit and assistance with the CAFR preparation, MGO will audit and issue following reports:

Single Audit –Audit and separately report on the City's compliance with federal award program in accordance Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirement, Cost Principles, and Audit Requirements Federal Awards (Uniform Guidance). MGO will also assist in preparing schedule of expenditures of federal awards.

City of Sunnyvale Financing Authority -Audit and separately report on the financial statements and the fair presentation of the financial statements in conformity with generally accepted accounting principles.

City of Sunnyvale Materials Recovery and Transfer Station (SMART) – Audit and separately report as to whether the allocation of revenues and expenses complies with the provisions of the Second Memorandum of Understanding among cities of Mountain View, Palo Alto, and Sunnyvale.

Transportation Development Act Report –Audit and separately report on the City's financial statements with regard to grant funds received from the Metropolitan Transportation Commission (MTC), and on the City's compliance with prescribed operating procedures as promulgated by the MTC, the State of California Department of Transportation, and the State of California Controller's Office.

Independent Quarterly Agreed Upon Procedures Audit as required by the City Charter 1318- Perform audit that include surprise cash count at 2 -3 locations and a limited review of a subject area related to cash handling.

Gann Appropriation Limitation - Perform agreed-upon procedures to review compliance with appropriations limit requirements of Section 1.5 Article XIII B of the California

Constitution (commonly referred to as the Gann Limit) in accordance with the procedures agreed to by the City and the League of California Cities (as presented in the publication entitled Article XIII B California Constitution Appropriations Limit Procedures Guidelines for California Cities).

Other Post Employment Benefit Trust (OPEB)- Audit and separately report on the financial statements and the fair presentation of the financial statements in conformity with generally accepted accounting principles.

MGO will conduct audits in accordance with all applicable and generally accepted auditing standards, the standards set by the Government Accounting Standards Board, and any other applicable federal state, local reporting or programmatic audit requirements.

MGO will issue a separate "A Report to Council" that includes recommendations and disclosures of material and non-material weakness for improvements in the City's financial operations.

Exhibit B
Compensation Schedule

Standard Deliverables	Total Cost 2019 *	Total Cost 2020	Total Cost 2021	Total Cost 2022	Total Cost 2020 - 2022
General Purpose Financial Statement	\$ 77,168	\$ 79,483	\$ 79,483	\$ 81,867	\$ 240,833
Quarterly Investment AUP	\$ 9,879	\$ 10,175	\$ 10,175	\$ 10,480	\$ 30,830
SMaRT Station Audit Report	\$ 5,540	\$ 5,706	\$ 5,706	\$ 5,877	\$ 17,289
Sunnyvale Financing Authority Audit	\$ 5,111	\$ 5,264	\$ 5,264	\$ 5,422	\$ 15,950
GANN Appropriation Limit AUP	\$ 1,373	\$ 1,414	\$ 1,414	\$ 1,456	\$ 4,284
Transportation Development Act	\$ 3,089	\$ 3,182	\$ 3,182	\$ 3,277	\$ 9,641
Single Audit (Up To Two Major Programs)	\$ 9,963	\$ 10,262	\$ 10,262	\$ 10,570	\$ 31,094
Total not to exceed price	\$ 112,123	\$ 115,486	\$ 115,486	\$ 118,949	\$ 349,921
Optional Deliverables	Total Cost 2019 *	Total Cost 2020	Total Cost 2021	Total Cost 2022	Total Cost 2020 - 2022
Standalone OPEB Report	\$ 2,742	\$ 2,824	\$ 2,824	\$ 2,909	\$ 8,557
OPEB Report Preparation and Editing	\$ 2,320	\$ 2,390	\$ 2,390	\$ 2,462	\$ 7,242
CAFR Report Preparation and Editing	\$ -	\$ 3,000	\$ 3,000	\$ 3,090	\$ 9,090
Cost of Each Additional Major Program	\$ 2,382	\$ 2,453	\$ 2,453	\$ 2,527	\$ 7,433
Total not to exceed price	\$ 7,444	\$ 10,667	\$ 10,667	\$ 10,988	\$ 32,322
Grand Total	Total Cost 2019 *	Total Cost 2020	Total Cost 2021	Total Cost 2022	Total Cost 2020 - 2022
Standard Deliverables	\$ 112,123	\$ 115,486	\$ 115,486	\$ 118,949	\$ 349,921
Optional Deliverables	\$ 7,444	\$ 10,667	\$ 10,667	\$ 10,988	\$ 32,322
Total not to exceed price	\$ 119,567	\$ 126,153	\$ 126,153	\$ 129,937	\$ 382,243

* Cost for 2019 is for reference only.

EXHIBIT C
INSURANCE REQUIREMENTS FOR AUDITORS

Auditor 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 Auditor, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Auditor 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 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
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 Insurance in the minimum amount of \$1,000,000 per occurrence.
- ☐ Errors and Omissions Liability in the minimum amount of \$X,XXX,XXX per occurrence.
- ☐ If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$X,XXX,XXX per occurrence and \$X,XXX,XXX aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five-year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$X,XXX,XXX per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The Auditor 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 (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) 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 respects to liability arising out of activities performed by or on behalf of the Auditor; products and completed operations of the Auditor; premises owned, occupied or used by the Auditor; or automobiles owned, leased, hired or borrowed by the Auditor. 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 Auditor'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 Auditor'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 Auditor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
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.
6. 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 AUDITOR'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 not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Auditor 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.

Subcontractors

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