

**AGREEMENT WITH THE PUN GROUP LLP
FOR PROFESSIONAL CONSULTANT SERVICES
FOR
INDEPENDENT AUDIT SERVICES**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and THE PUN GROUP LLP, a limited liability partnership ("CONSULTANT"), whose address is 2121 North California Blvd. Suite 290, Walnut Creek, CA 94596.

RECITALS:

- A. CITY desires certain independent audit services hereinafter described.
- B. CITY desires to engage CONSULTANT to provide these independent audit services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONSULTANT under this Agreement is as described in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 2 - DUTIES OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT.

CONSULTANT agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on May 1, 2021 and be completed on or about December 31, 2025.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee in an amount of \$67,000 for FY 2020-21, \$68,340 for FY 2021-22, \$69,706.80 for FY 2022-23, \$71,100.93 for FY 2023-24, and \$72,522.95 for FY 2024-25, pursuant to rates stated in Exhibit B to this Agreement, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Upon termination and upon CITY's payment of the amount required to be paid, documents become the property of CITY, and CONSULTANT shall transfer them to CITY upon request without additional compensation.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement are confidential until released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONSULTANT's performance of this Agreement, except those claims arising out of CITY's sole negligence or willful misconduct. CONSULTANT agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter (five years for building or major improvements) the insurance specified in Exhibit C to this Agreement.

SECTION 13 - NON-ASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

SECTION 17 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5,000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5,000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 18 - NON-DISCRIMINATION

CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 19 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once

commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 20 - LITIGATION

CONSULTANT shall testify at CITY'S request if litigation is brought against CITY in connection with CONSULTANT's services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT's wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT's standard hourly rates at the time of actual testimony.

SECTION 21 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY:	Rich Lee City of San Mateo 330 W 20 th Ave San Mateo, CA 94403
To CONSULTANT:	The Pun Group LLP Attn: Kenneth Pun 2121 North California Blvd., Suite 290 Walnut Creek, CA 94596

SECTION 22 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 23 - AUTHORITY TO ENTER INTO AGREEMENT

CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

SECTION 24 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and THE PUN GROUP LLP have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Rich Lee
Finance Director

Kenneth Pun
Its Authorized Agent
Founder & Managing Partner

If a Corporation, can be either 1) President or 2) Vice President plus an additional corporate officer (i.e., Secretary, Treasurer) who shall sign below.

APPROVED AS TO FORM

ADDITIONAL CORPORATE OFFICER
(if necessary per the above)

Linh Nguyen
Assistant City Attorney

Attachments:

Exhibit A: Scope of Services
Exhibit B: Fee Rates
Exhibit C: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

The Firm will perform **Error! Reference source not found.** and issue opinions on the **Error! Reference source not found.**'s financial statements. These audits are to be completed in accordance with all applicable and generally accepted auditing standards, including, but not limited to, the following:

- Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants (AICPA).
- US General Accounting Office's (GAO) Standard for Audit of Governmental Organizations, Programs, Activities, and Functions.
- Local Governments and Governmental Accounting Standards Board (GASB) Pronouncements.
- The standards applicable to financial audits contained in the most current version of the Generally Accepted *Government Auditing Standards* (Yellow Book), issued by the Comptroller General of the United States.
- The provisions of the Single Audit Act as amended in 1996.
- The provisions of the US Office of Management and Budget (OMB) Uniform Guidance (formerly known as Circular A-133), Audits of State and Local Governments and Non-profit Organizations, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Firm will perform the following services:

- City's Comprehensive Annual Financial Report;
- Successor Agency to the City of San Mateo Redevelopment Agency (Successor Agency) financial statements;
- Component unit audit of the San Mateo Joint Powers Public Financing Authority;
- Single audit and report in conformance with OMB Circular A-133;
- South Bayfront Levy Assessment District audit and report;
- Agreed-Upon Procedures applied to Gann Appropriations Limit Schedule;
- Measure A Funds for Local Transportation Purposes audit and compliance report;
- Measure W Fund Schedule of Receipts and Disbursement audit and compliance report;
- Transportation Development Act (TDA) Fund Financial Statements and Independent Auditor's Report;

GFOA Award Program: The Pun Group LLP realizes the importance of maintaining the Certificate for Excellence in Financial Reporting from the GFOA. Our professionals are exceptionally well qualified in assisting governments with obtaining and maintaining their certificates.

The Firm's commitment and involvement in the development of auditing and accounting standards can be shown in our active participation in the GFOA's financial statements certificate programs. 100% of our current clients who submitted their Comprehensive Annual Financial Report (CAFR) to the GFOA received these awards. Also, two of our senior partners, Mr. Gary Caporicci and Mr. John F. Georger, are members of the Government Finance Officers Association and participate on the GFOA Special Review Committee.

Deliverables: Upon completion of the services, the following reports will be delivered to the City:

City Financial Statements* – Opinion	electronic copy and 30 printed copies
Authority Financial Statements – Opinion.....	electronic copy and 15 printed copies
Single Audit.....	electronic copy and 5 printed copies
TDA Fund	electronic copy and 5 printed copies
Measure A	electronic copy and 5 printed copies
South Bayfront Levee Assessment District.....	electronic copy and 5 printed copies
GANN Limit.....	electronic copy and 5 printed copies
Measure S	electronic copy and 5 printed copies

*At the option of the City, the Firm may be requested to prepare the financial statements, schedules, and accompanying notes to the financial statements. If prepared by the Firm, an electronic copy and 30 printed copies will be provided.

Attendance at Meetings and Hearings: The engagement team will participate in as many meetings with staff as needed to perform the work scope tasks, to present the audit plan prior to beginning fieldwork, and to discuss the draft audit reports. The team will attend to public meetings to present and discuss its findings and recommendations. Once all issues of discussion are resolved, the completed CAFR, Single Audit report (if applicable), and other reports will be delivered to the **Error! Reference source not found.**, according to agreed-upon schedule. In addition, the engagement team will participate on the required “exit conferences” at the conclusion of interim and fieldwork for each fiscal year of the audit engagement. They will be available for separate exit conferences with the City Manager or designated representatives, if needed/requested.

Proposed Audit Adjustments: All proposed adjusting journal entries by the Firm will be discussed and explained in a timely manner with the designated Finance Department personnel. Such proposed adjustments will be in a format that shows the lowest level of posting detail needed for data entry in the general ledger systems.

Supplemental Reports, Audits, or Agreed-Upon Procedures: Other services, such as agreed-upon procedures, may be deemed necessary. These services will be performed at agreed-upon rates and will be added in a written agreement before commencing audit work. The Firm and the **Error! Reference source not found.** will discuss and approve the scope and associated costs of these tasks.

Advice and Consultation: Will be provided throughout the year on matters relating to accounting and financial reporting. Such services do not include any task that entails significant research or a formal report.

GASB Implementation: The Firm will provide technical assistance and training in the implementation of applicable GASB pronouncements not yet in effect. We have a dedicated partner, Mr. Gary Caporicci, who will be responsible for providing advice and consultation for the implementation of these new standards. The Firm will advise the **Error! Reference source not found.** on the applicability of accounting and reporting standards and other accounting issues and provide guidance on for new note disclosures, GASB implementations, and other reporting requirements. We will also provide training, resources, and information on topics relevant to the **Error! Reference source not found.**'s financial reporting and operations.

Report of all Irregularities and Illegal Acts: The Firm will make an immediate written report of all irregularities and illegal acts or indications of illegal actions of which they become aware of.

The engagement team will also make all communications to the **Error! Reference source not found.** required by the audits standards under which the engagement is performed. Those communications include, but are not limited to:

- a) The auditor's responsibility under generally accepted auditing standards.
- b) Significant accounting policies.
- c) Management judgment and accounting estimates.
- d) Significant audit adjustments.
- e) Other information in documents containing audited financial statements.
- f) Disagreements with management.
- g) Management consultation with other accountants.

- h) Major issues discussed with management prior to retention.
- i) Difficulties encountered in performing the audit.

EXHIBIT B

FEE RATES

The fees for professional auditing services for five (5) fiscal years beginning with fiscal year ending June 30, 2021 are as follows:

	FY 2020-2021	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025
Basic City Audit/CAFR	\$ 50,000.00	51,000.00	52,020.00	53,060.40	54,121.61
Single Audit ¹	5,000.00	5,100.00	5,202.00	5,306.04	5,412.16
TDA Fund	3,000.00	3,060.00	3,121.20	3,183.62	3,247.30
Measure A	2,000.00	2,040.00	2,080.80	2,122.42	2,164.86
S. Bayfront Levee AD	3,000.00	3,060.00	3,121.20	3,183.62	3,247.30
GANN Report	500.00	510.00	520.20	530.60	541.22
Measure S - AUP	1,500.00	1,530.00	1,560.60	1,591.81	1,623.65
Measure W	2,000.00	2,040.00	2,080.80	2,122.42	2,164.86
Printing of All Reports	Included	Included	Included	Included	Included
Total	\$ 67,000.00	\$ 68,340.00	\$ 69,706.80	\$ 71,100.94	\$ 72,522.95

- (1) Single Audit fees based on 1 (one) major program. The fee to audit additional major programs will be \$5,000 each. The number of programs determined to be "major" will be based on OMB Uniform Guidance. The Engagement Team will discuss this with the **Error! Reference source not found.**'s Management before starting Single Audit work.

EXHIBIT C

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONSULTANT’s profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the CONSULTANT maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

Other Insurance Provisions

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

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **CONSULTANT’s insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the CONSULTANT’s insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

CONSULTANT hereby grants to City a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the City by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

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.

Verification of Coverage

CONSULTANT shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.