

**FIRST AMENDMENT TO
MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
GILBANE BUILDING COMPANY
FOR PEER REVIEW AND IMPLEMENTATION SUPPORT SERVICES FOR THE
POLICE SOUTHSIDE SUBSTATION**

This FIRST AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2009, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and GILBANE BUILDING COMPANY, a Rhode Island corporation authorized to do business in California ("CONSULTANT").

RECITALS

WHEREAS, on October 31, 2006, CITY and CONSULTANT entered into an agreement entitled "Master Agreement for Consultant Services Between the City of San José and Gilbane Building Company for Peer Review and Implementation Support Services for the Police Southside Substation" ("AGREEMENT"); and

WHEREAS, CITY and CONSULTANT desire to amend the AGREEMENT to extend the term from December 31, 2009 to September 30, 2010, increase the total compensation from \$1,000,000 to \$1,500,000, and modify the insurance requirements;

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

SECTION 1. SECTION 2, entitled "TERM OF AGREEMENT," is amended to read as follows:

"The term of this AGREEMENT shall be from October 31, 2006 to September 30, 2010, inclusive, subject to the provisions of Section 12 of this AGREEMENT."

SECTION 2. SECTION 4, entitled "COMPENSATION," is amended to read as follows:

"The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed (\$1,500,000). The rate and schedule of payment is set out in REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

SECTION 3. EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE," is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

SECTION 4. EXHIBIT D, entitled "COMPENSATION," is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this First Amendment.

SECTION 5. EXHIBIT E, entitled "INSURANCE," is amended to read as shown in REVISED EXHIBIT E, attached and incorporated into this First Amendment.

SECTION 6. All of the terms and conditions of the original AGREEMENT not modified by this First Amendment shall remain in full force and effect.

RD:GDS:ERD
2/12/09

WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

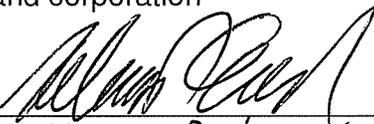
CITY OF SAN JOSE, a municipal
corporation

GLENN SCHWARZBACH
Senior Deputy City Attorney

By _____
LEE PRICE, MMC
City Clerk

"CONSULTANT"

GILBANE BUILDING COMPANY, a Rhode
Island corporation

By 
Name: Robert Crowder
Title: V.P., District Mgr

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara }

On Feb. 25, 2009 before me, Stacy Kraft, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Bob Crowder
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Stacy Kraft
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: First Amendment to Master Agreement

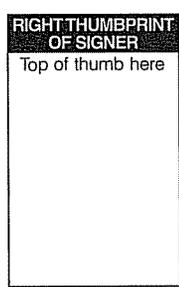
Document Date: 2.12.09 Number of Pages: 10

Signer(s) Other Than Named Above: n/a

Capacity(ies) Claimed by Signer(s)

Signer's Name: Bob Crowder

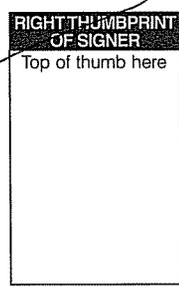
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before September 30, 2010. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT B of this AGREEMENT.

At the discretion of CITY, the term of this AGREEMENT may be extended up to six months in order to complete specific project work that is authorized by Service Order prior to expiration of this AGREEMENT. Extension of the term of the AGREEMENT shall be accomplished only by written authorization of the City Manager or the City Manager's designee, and only in the event that no other provision of this AGREEMENT is modified.

REVISED EXHIBIT D

COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

- 1.1 Maximum Amount:** The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION FIVE HUNDRED THOUSAND Dollars (\$1,500,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.
- 1.2 Manner of Payment:** Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on an hourly basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on an hourly basis for the work performed.

Section 2. Lump Sum Payment.

- 2.1 Lump Sum Amount:** The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.
- 2.2 Progress Payments:** The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the DIRECTOR's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the appropriate progress payment to the CONSULTANT within thirty (30) days of the DIRECTOR'S approval of the CONSULTANT's invoice.
- 2.3 Lump-Sum Payment:** If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the DIRECTOR's satisfaction. Upon completion of the work to the DIRECTOR's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the DIRECTOR's approval of the CONSULTANT's invoice.

Section 3. **Payment on an Hourly Basis.**

- 3.1 Maximum Compensation:** The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional services and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.
- 3.2 Budget:** If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the DIRECTOR's prior written authorization. The DIRECTOR may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.
- 3.3 Hourly Rates:** CITY will compensate CONSULTANT at the hourly rates in Exhibit D-1 of this Master Agreement. Notwithstanding anything to the contrary, these hourly rates are valid for the term of this Master Agreement unless changed by written amendment.
- 3.4 Reimbursable Expenses:** The CITY will reimburse for expenses subject to the following:
- 3.4.1** Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses at actual cost plus ten percent (10%). Any expenses the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.
- 3.4.2** The following expenses are reimbursable to the extent the CONSULTANT documents to the DIRECTOR's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the subconsultant, provided the DIRECTOR has preapproved, in writing, the use and cost of the subconsultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the DIRECTOR has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the DIRECTOR has preapproved, in writing, such expense.
- 3.5 Invoice:** Each month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed,

RD:GDS:ERD
2/12/09

the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

REVISED EXHIBIT E

INSURANCE

CONSULTANT, at CONSULTANT'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. **Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

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

1. **Commercial General Liability and Automobile Liability Coverages**

- a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

- b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

- d. Coverage shall state that 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.

- e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

2. **Workers' Compensation and Employers' Liability**

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose – Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

G. Subcontractors

CONSULTANT shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.