

**SECOND AMENDMENT TO  
PHASE TWO CONSULTANT AGREEMENT  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
ROSSDRULISCUSENBERY ARCHITECTURE, INC.  
RELATING TO THE PLANNING, DESIGN AND CONSTRUCTION OF  
POLICE SOUTHSIDE SUBSTATION**

This SECOND AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of March, 2009, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and ROSSDRULISCUSENBERY ARCHITECTURE, INC. ("CONSULTANT").

**RECITALS**

WHEREAS, on June 28, 2005, CITY and CONSULTANT entered into an agreement entitled "Phase Two Consultant Agreement Between the City of San José and RossDrulisCusenberry Architecture, Inc. Relating to the Planning, Design and Construction of Police Southside Substation" ("AGREEMENT"); and

WHEREAS, on <sup>MA. 3-12-09</sup> January 29, 2009, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to extend the term through July 31, 2009; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT to extend the term of the AGREEMENT by fourteen months, with no increase in total compensation;

NOW, THEREFORE, the parties agree to further amend the amended 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 June 28, 2005 to September 30, 2010, inclusive, subject to the provisions of Section 11 of this AGREEMENT."

**SECTION 2.** REVISED EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE," is amended to read as shown in SECOND REVISED EXHIBIT C, attached and incorporated into this Second Amendment.

**SECTION 3.** EXHIBIT D, entitled "COMPENSATION," is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this Second Amendment.

**SECTION 4.** All of the terms and conditions of the amended AGREEMENT not modified by this Second Amendment shall remain in full force and effect.

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"

By \_\_\_\_\_  
  
MICHAEL ROSS  
Principal

## SECOND REVISED EXHIBIT C

### SCHEDULE OF PERFORMANCE

CONSULTANT shall complete all work by September 30, 2010.

The following sets forth the distribution of CONSULTANT's Schedule of Performance for each project. The CITY may approve in writing the extension of any milestone date set in this Exhibit.

Task #1:	Program Review and Conceptual Design by:	(NOT USED)
Task #2:	Schematic Design work by:	<b>16 weeks</b> after Notice to Proceed (NTP) for this phase
Task #3:	Design Development work by:	<b>21 weeks</b> after Notice to Proceed (NTP) for this phase
Task #4:	Construction Documents work by:	<b>44 weeks</b> after Notice to Proceed (NTP) for this phase
Task #5:	Bidding and Award work by:	<b>8 weeks</b> after Notice to Proceed (NTP) for this phase
Task #6:	Construction Administration	<b>As need for contractor's completion of work</b>
Task #7:	Record Documents and Project Closeout of work by:	<b>4 weeks</b> after Notice to Proceed (NTP) for this phase
Task #8	Additional Services	<b>As requested by CITY</b>

*A.S. 3-12-09*

**SECOND REVISED EXHIBIT D**

**COMPENSATION**

**A. Maximum Compensation.**

The CITY agrees to compensate CONSULTANT for professional services performed in accordance with the terms and conditions of this AGREEMENT. The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed FOUR MILLION, SEVEN HUNDRED FORTY-EIGHT THOUSAND, SEVEN HUNDRED NINETY-FIVE dollars (\$4,748,795.00). CONSULTANT agrees that it shall perform all of the services set forth in Exhibit B of this AGREEMENT, except for additional services required pursuant to Section 2, Task No. 8 and exclusive of reimburseable expenses, for the lump-sum amount of FOUR MILLION, FOUR HUNDRED FORTY-FIVE THOUSAND, TWO HUNDRED NINETY-FIVE dollars (\$4,445,295.00).

**B. Method of Payment**

For Task Nos. 2 through 4 CONSULTANT shall, during the term of this AGREEMENT, invoice the CITY monthly based upon a percentage of upon the completion of each milestone set forth below in the Payment Schedule (Schedule D below) for services performed, and reimbursable expenses incurred if applicable, in completing that milestone under this AGREEMENT. (Hereinafter "Invoice.") Provided CONSULTANT has completed the services and incurred the reimbursable expenses covered by the Invoice in accordance with the provisions of this AGREEMENT, as determined by the CITY, the CITY shall pay CONSULTANT the amount shown on the Invoice within thirty (30) working days of receipt of the Invoice.

CITY shall pay CONSULTANT for services performed under Task 5 and 6 in accordance with the payment schedule below.

The Invoice shall be based on the percentage of milestone completed, and it shall describe the topics and tasks completed during the Invoice period in accordance with the Budget Schedule and Payment Schedule set forth below. The Invoice shall list work completed and reimbursable expenses if applicable, in accordance with the Budget Schedule and Payment Schedule set forth below. CONSULTANT also shall include supporting documents for any reimbursable expenses. The Invoice shall also show the total to be paid for the Invoice period.

**C. Budget Schedule**

The Budget Schedule for this AGREEMENT shall be as follows:

<u>Task Description</u>	<u>Task Compensation</u>
Task #1: (NOT USED)	-NA-
Task #2: Schematic Design	756,000
Task #3: Design Development	896,925
Task #4: Construction Documents	1,750,380
Task #5: Bidding and Award	84,000
Task #6 Construction Administration/Record Documents/LEED & #7: documentation	957,990
Reimbursable Expenses (See Subsection E below) Not To Exceed	77,500
Task #8: Additional Services at approximately 5% of contract plus reimbursibles (See Subsection G) Not To Exceed	226,000
<b>TOTAL</b>	<b>\$4,748,795</b>

CONSULTANT shall not exceed any of the specified budget amounts for any Task without prior written authorization from the CITY. The CITY may approve in writing the transfer of budget amounts between any of the Tasks listed above provided the total AGREEMENT amount does not exceed FOUR MILLION, SEVEN HUNDRED FORTY EIGHT THOUSAND, SEVEN HUNDRED NINETY FIVE dollars, (\$4,748,795.00).

**D. Payment Schedule**

The Payment Schedule for this AGREEMENT shall be as follows:

<b>TASK</b>	<b>MILESTONE</b>	<b>PERCENT OF TASK COMPENSATION PAID UPON COMPLETION OF MILESTONE</b>
Task #1 – (Not Used)		
Task #2 – Schematic Design		
	a. Submission of Design Submittal No. 2	80%
	b. City signed Schematic Design Approval	20%
Task #3 – Design Development		
	a. Submission of Design Submittal No. 3	80%
	b. City signed Design Development Approval	20%
Task #4 – Construction Documents		
	a. Submission of Design Submittal No. 4a (50%)	40%
	b. Submission of Design Submittal No. 4b (95%)	30%
	c. Submission of Design Submittal No. 5 (100%)	10%
	d. City signed Construction Document Approval	20%
Task #5 – Bidding and Award		
	a. Within 30 days of the City advertising for bids	50%
	b. Within 30 days of the month following the one in which payment was first due	50%
Task #6 & 7 – Construction Administration		
	a. Monthly payments over the construction period commencing with the first month of construction and equal to the percentage completion of construction	90%
	b. Submission of Final Documentation Package to CITY / Record Documents and Project Close-Out	10%

**E. Reimbursable Expenses.**

Travel expenses, express deliveries, printing and plotting charges, photographic expenses, long distance telephone and facsimile expenses, deliverables requested and submitted to the CITY on reproducible and presentation documentation of CONSULTANT work and express deliveries to the CITY and Contractor during the Contract Administration phase of the work are reimbursable expenses under this AGREEMENT. No other expenses are reimburseable except as otherwise approved by the CITY prior to such CONSULTANT incurring such expense. Reimbursable expenses are billed with back-up documentation, plus 10%, and are subject to the maximum budget amount set forth in Section "C" above. Any other expenses are included in CONSULTANT's task compensation. Printing for public distribution will be the responsibility of the CITY. Any expenses related to CONSULTANT's internal plan checks, CAD test prints, 8 1/2" x 11" copies or fax copies are not reimbursable.

**F. Subconsultant Services.**

CONSULTANT is directly responsible for any payment for SUBCONSULTANT work on this PROJECT. SUBCONSULTANT work on this PROJECT is included in the Budget Schedule shown above and shall be billed to the CITY by CONSULTANT as part of the Task completion.

**G. Additional Services.**

CONSULTANT shall not perform Additional Services without prior written authorization of the CITY. Additional Services shall be separately negotiated to be paid on a lump sum or a time and material basis at the rates set forth herein, as authorized by the CITY. The CITY has set aside the sum of \$226,000.00 for the payment of Additional

Services. The CITY shall not authorize and CONSULTANT shall not perform any Additional Services that result in charges in excess of the above amount.

CONSULTANT shall submit an Invoice to the CITY for payment on a monthly basis for authorized Additional Services rendered during the previous month. In the event Additional Services are authorized on a time and material basis, CONSULTANT shall submit Invoices in accordance with the CONSULTANT hourly rate schedule attached to this Exhibit D. Prior to the expiration of the rates shown in the EXHIBIT D-1, CONSULTANT shall provide the new hourly rate schedule with rates not to exceed 5% of the rate schedule in Exhibit D-1. New rates are subject to CITY approval, once the current schedule expires. The CITY shall pay Additional Services Invoices as provided in this EXHIBIT D.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Sonoma

On 2-17-9 before me, Maria P. Toimil, Notary  
Date Here Insert Name and Title of the Officer

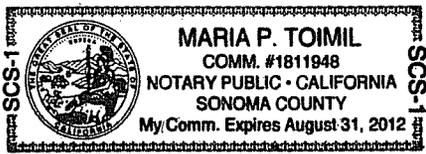
personally appeared Michael B. Ross  
Name(s) of Signer(s)

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 [Handwritten Signature]  
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: 2nd Amendment to Phase two Consultant Agreement

Document Date: 2-17-9 Number of Pages: 8

Signer(s) Other Than Named Above: \_\_\_\_\_

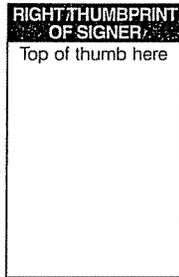
**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- 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.**

**Schwarzbach, Glenn**

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**From:** Printy, David  
**Sent:** Tuesday, March 10, 2009 4:03 PM  
**To:** Schwarzbach, Glenn  
**Cc:** Crutch, Ellen  
**Subject:** FW: Correction to Second Amendment to Substation Agreement...

Glenn,  
Per Michael Ross's e-mail below the revisions to the Second Amendment are accepted.

Regards,

David O'Neill Printy  
*Senior Architect - Public Safety CSA Team*

**City of San José**  
*Department of Public Works*  
*City Facilities Architectural Services Division*  
200 East Santa Clara Street, 6<sup>th</sup> Floor  
San José, CA 95113-1905  
Ph: (408) 535-8313 (front desk)  
Ph: (408) 535-8399 (direct)  
Fx: (408) 292-6288  
Cell: (408) 425-9772

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**From:** Michael Ross [mailto:mross.rdc@gmail.com]  
**Sent:** Tuesday, March 10, 2009 3:38 PM  
**To:** Printy, David  
**Subject:** Re: Correction to Second Amendment to Substation Agreement...

David: Revisions are approved. Thank you. Michael

Sent from my iPhone

On Mar 10, 2009, at 10:00 AM, "Printy, David" <David.Printy@sanjoseca.gov> wrote:

Chuck,  
Please find attached some clerical correction to the signed version of the Second Amendment to RDC's Agreement for the Substation. The highlighted changes in the attached are as follows:

1. On Page 1 the blank is filled in with the execution date of the First Amendment ("January 29, 2009")
2. Exhibit D – the word "Second" is crossed out to correct the title.

To avoid a second re-signature process, please have Michael Ross simply reply to this E-mail consenting to these changes and they will be made by the City on the signed originals.

Thank you for your

Regards,

David O'Neill Printy

**Senior Architect - Public Safety CSA Team**

**City of San José**

**Department of Public Works**

**City Facilities Architectural Services Division**

**200 East Santa Clara Street, 6<sup>th</sup> Floor**

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<Second Amendment-rev4 - clerical corrections.pdf>