

**SECOND AMENDMENT TO THE CONSULTANT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
DON DOMMER ASSOCIATES, INC.
RELATING TO THE PLANNING, DESIGN AND CONSTRUCTION OF
FIRE STATION NO. 19**

This SECOND AMENDMENT TO THE AGREEMENT is made and entered into this _____ day of _____, 2010 by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and DON DOMMER ASSOCIATES, INC., a California corporation (hereinafter "CONSULTANT").

RECITALS

WHEREAS, on June 7, 2007, CITY and CONSULTANT entered into an agreement entitled "Consultant Agreement Between The City of San José and Don Dommer Associates, Inc. Relating to the Planning, Design and Construction of Fire Station No. 19 ("AGREEMENT"), and

WHEREAS, on May 19, 2009, the CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to extend the term through March 31, 2010, modify the scope of services, and increase and reallocate compensation, and

WHEREAS, the CITY and CONSULTANT desire to further amend the amended AGREEMENT to extend the term by nine (9) months to December 31, 2010, and increase the total compensation by \$52,000 to include additional compensation for basic services during the extended construction administration and project close-out period, as well as to increase available compensation for additional services which may be needed during the extended construction period, and

NOW, THEREFORE, for and in consideration of their mutual promises and subject to the terms, provisions and conditions hereinafter set forth, the amended AGREEMENT is further amended as follows:

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

The term of this AGREEMENT shall be from June 7, 2007 to December 31, 2010, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 2. SECTION 4 of the amended AGREEMENT, entitled "COMPENSATION," is hereby amended to read as follows:

The compensation to be paid to CONSULTANT, including both payments for professional services and reimbursable expenses, shall not exceed FOUR HUNDRED TWELVE THOUSAND AND NO DOLLARS (\$412,000.00). The rate and schedule of payment is set out in SECOND REVISED EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

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

SECTION 4. REVISED EXHIBIT D of the amended AGREEMENT, entitled "COMPENSATION," is hereby amended to read as shown in SECOND REVISED EXHIBIT D, attached hereto and incorporated into this Second Amendment.

SECTION 5. All the terms and conditions of the amended AGREEMENT, except those specifically amended herein, shall remain in full force and effect.

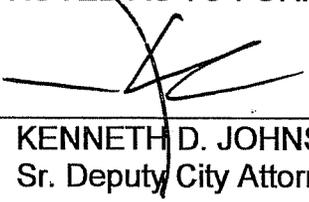
WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By



KENNETH D. JOHNSON
Sr. Deputy City Attorney

By

LEE PRICE, MMC
City Clerk
200 East Santa Clara Street,
San Jose, CA 95113

"CONSULTANT"

DON DOMMER ASSOCIATES, INC., a California
corporation

By



DON DOMMER, AIA
Principal
1144 65th Street
Oakland, CA 94608

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Alameda

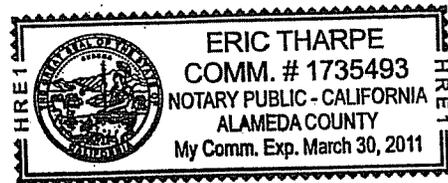
On Feb 15 2010 before me, Eric Tharpe Notary Public,
personally appeared

Donald Duane Dornanen

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/hers/their authorized capacity(ies), and that by his/hers/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 of Notary Public



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: _____

Document Date: _____ Number of Pages: _____

signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

SECOND REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT shall complete all work by December 31, 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:	Schematic Design work by:	6 weeks after Notice to Proceed (NTP) for this phase
Task #2:	Design Development work by:	6 weeks after (NTP) for this phase
Task #3:	Construction Documents	22 weeks after (NTP) for this phase
Task #5:	Bidding and Award w/conforming set work by:	9 weeks after (NTP) for this phase
Task #6:	Construction Administration Services/project close out and record documents	As needed during term of AGREEMENT for contractor's completion of work and close-out

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 HUNDRED TWELVE THOUSAND DOLLARS (\$412,000). CONSULTANT agrees that it shall perform all of the services set forth in REVISED EXHIBIT B of this AGREEMENT, except for Additional Services required pursuant to Section 2, Task No. 6, for the lump-sum amount of THREE HUNDRED EIGHTY THOUSAND FOUR HUNDRED EIGHTEEN DOLLARS (\$380,418). Additional Services must be authorized pursuant to Section G of this SECOND REVISED EXHIBIT D; the maximum amount of Additional Services authorized under this AGREEMENT is THIRTY ONE THOUSAND FIVE HUNDRED AND EIGHTY TWO DOLLARS (\$31,582).

B. Method of Payment

For Task Nos. 1 through 5 CONSULTANT shall, during the term of this AGREEMENT, invoice the CITY monthly based upon a percentage of completion of each milestone set forth below in the Payment Schedule (Schedule D below) for services performed in completing that milestone under this AGREEMENT. (Hereinafter "Invoice.") Provided CONSULTANT has completed the services 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 Director's approval of the Invoice.

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 in accordance with the Budget Schedule and Payment Schedule set forth below. 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>Lump-Sum Task Compensation</u>
Task #1:	Schematic Design	17,088
Task #2:	Design Development Reallocation of funds approved on 11/28/07 by PW Director.	46,425
Task #3	Contract Documents	187,140
Task #4:	Bidding and Award w/conforming set	3,765
Task #5	Construction Administration Services/ Record Documents and Close-out	126,000
	Total Lump-Sum Compensation for Tasks #1 - #5	\$380,418.
Task #6:	Additional Services not to exceed the following amount	31,582
	TOTAL CONTRACT AMOUNT NOT TO EXCEED	\$412,000

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 HUNDRED TWELVE THOUSAND dollars (\$412,000.00).

D. Payment Schedule

The Payment Schedule for this AGREEMENT shall be as follows:

TASK	MILESTONE	PERCENT OF TASK COMPENSATION PAID UPON COMPLETION OF MILESTONE
Task #1 – Schematic Design		
	a. Submission of Design Submittals No. 1	
	b. City signed final design	100%
Task #2 – Design Development		
	a. Submission of Design Submittal No. 2	80%
	b. City signed Design Development Approval	20%
Task #3 – Construction Documents		
	a. Submission of Design Submittal No. 3a (75%)	75%
	b. Submission of Design Submittal No. 3b (100%)	10%
	c. Submission of Design Submittal No. 3c (Bid Package)	10%
	d. City signed Construction Document Approval	5%
Task #4 – Bidding and Award		
	a. Within 30 days of the City advertising for bids	50%
	b. Receipt of conformed set of drawings	50%
Task #5 – Construction Admin./Record Documents and Close-out		
	a. 30 calendar days after CITY issues Notice to Proceed to the contractor	30%
	b. Substantial completion	50%
	c. Notice of Final Completion (City accepts PROJECT)	16%
	d. Submission of Design Submittal No. 4	4%
Task #6 – Additional Services		Paid pursuant to Subsection G below.

E. 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 Basic Services.

F. Reimbursable expenses.

Reimbursable expenses are included in CONSULTANT's lump sum compensation, including, but not limited to, any expenses related to CONSULTANT's internal plan checks, CAD test prints, 8 1/2" x 11" copies or fax copies. Plotting and Printing for public distribution will be the responsibility of the CITY. There are no separate reimbursable expenses for Basic Services performed under Tasks 1-6 of REVISED EXHIBIT B.

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 \$ 31,582 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, CONSULTANT shall submit Invoices in accordance with the CONSULTANT hourly rate schedule attached to this SECOND REVISED EXHIBIT D. Prior to the expiration of the rates shown in the EXHIBIT DD-1, CONSULTANT shall provide the new hourly rate schedule with rates not to exceed 5% of the rate schedule in EXHIBIT DD-1. New rates are subject to CITY approval, once the current schedule expires. The CITY shall pay Additional Services Invoices as provided in this SECOND REVISED EXHIBIT D.

Second Amendment DDA 02-09-10 KJ 2.doc