

**THIRD AMENDMENT TO CONSULTANT AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND HDR ENGINEERING, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2012, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and HDR Engineering, Inc., a Nebraska corporation ("CONSULTANT").

RECITALS

WHEREAS, on December 3, 2009, CITY and CONSULTANT entered into an agreement entitled "AGREEMENT FOR CONSULTANT SERVICES BETWEEN CITY OF SAN JOSE AND HDR ENGINEERING, INC." ("AGREEMENT") whereby CONSULTANT performs services in connection with establishing a waste-to-energy conversion technology project for post-recycled municipal solid waste in San José; and

WHEREAS, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT on June 17, 2010 in order to expand the scope of services to include additional review of various waste-to-energy conversion technology projects, and assessment of the infrastructure required to support these projects; and

WHEREAS, CITY and CONSULTANT entered into a Second Amendment to the AGREEMENT on December 5, 2011 to extend the term to allow CONSULTANT additional time to complete the scope of services; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT to increase the compensation and extend the term to provide the CONSULTANT additional time to complete the scope of services;

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

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

"The term of this AGREEMENT shall be from December 3, 2009 to December 31, 2013, inclusive, subject to the provisions of Section 11 of this AGREEMENT."

SECTION 2. SECTION 4, "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 Four Hundred Thousand Dollars (\$400,000.00). The rate and schedule of payment is set out in AMENDED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

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

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

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SECTION 5. All of the terms and conditions of the amended AGREEMENT not modified by this Third 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

ROSA TSONGTAATARII
Deputy City Attorney

By _____
DENNIS D. HAWKINS, CMC
City Clerk

“CONSULTANT”

HDR ENGINEERING, INC., a Nebraska corporation

By _____
Name:
Title:

AMENDED EXHIBIT C
SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before **December 31, 2013**. 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 Task 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 (6) months in order to complete specific project work that is authorized by Task Order issued prior to the original expiration of this AGREEMENT. Extension of the term of the AGREEMENT shall be accomplished only by written authorization of the Director of Environmental Services Department or the Director's designee, and only in the event that no other provisions of this AGREEMENT is modified.

AMENDED EXHIBIT D
COMPENSATION

SECTION 1. **Maximum Compensation.**

Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Thousand Dollars (\$400,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

Manner of Payment: Each Task Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Task Order on a lump sum basis or on an hourly basis. Section 2 of this Exhibit applies to each Task Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Task 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 Task 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 Task Order for the lump sum amount.

2.2 Progress Payments: The Task Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Task 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 Task 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 Task 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 Task 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 Task 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 Task Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Hourly Rates: CITY will compensate CONSULTANT at the hourly rates as shown below. These hourly rates are valid through December 31 30, 2013.

3.4 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Task Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses at actual cost. Any

expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

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 Task Order. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

- (a) The cost of non-routine mailing, shipping and/or delivery of documents or products to the CITY;
- (b) The cost of photographing, reproducing and/or copying. In-house reproduction can not exceed \$0.15 per page for black and white, and \$0.75 per page for color;
- (c) The cost of the subconsultant, provided the Director has preapproved, in writing, the use and cost of the subconsultant;
- (d) Non-routine telephone and fax charges;
- (e) The rental fee for any specialized equipment to the extent the Director has preapproved this expense in writing;
- (f) Vehicles and Mileage. The mileage charges for personal vehicles used on project assignments will be the current mileage rate established by the Internal Revenue Service for tax purposes, which is currently \$0.555 per mile; and
- (g) Any other expenses expressly identified in the Task Order as reimbursable.

3.5 Invoice: Every 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, 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 Task Order and the balance of maximum compensation for remaining work on the Task Order.

SCHEDULE OF CHARGES
CONSULTANT RATE SCHEDULE

CLASSIFICATION	HOURLY RATE	ASSIGNED TASK
Principal	\$263	Project Manager
Senior Vice President	\$246	Strategic Planning
Vice President	\$202	Strategic Planning
Senior Technical Specialist	\$206	Strategic Planning
Senior Project Manager	\$203	Strategic Planning
Project Manager	\$164	Strategic Planning
Senior Environmental Scientist	\$128	Grants
Staff Engineer	\$105	Strategic Planning
Technical Specialist	\$108	Strategic Planning
Word Processing	\$89	Strategic Planning
Project Controller	\$117	Strategic Planning
Administrative Support	Varies from \$68 to \$106	Grants & Strategic Planning

ENVIRONMENTAL PLANNING CONSULTANTS
SUBCONSULTANT RATE SCHEDULE

CLASSIFICATION	HOURLY RATE	ASSIGNED TASK
Principal	\$180	Strategic Planning
Senior Solid Waste Specialist	\$140	Technical Analysis
Solid Waste Specialist	\$105	Grants
Researcher	\$75	Technical Analysis
Technical/Office Support	\$45	Technical Analysis

HF&H CONSULTANTS, LLC
SUBCONSULTANT RATE SCHEDULE

CLASSIFICATION	HOURLY RATE	ASSIGNED TASK
President	\$245	Strategic Planning
Senior Project Manager	\$210	Strategic Planning
Senior Technical Specialist	\$210	Strategic Planning

END OF AMENDED EXHIBIT D