

- First
- Second
- Third

**Amendment to Clean Energy
City of San José Consultant Agreement**

Consultant's Name: PFM Financial Advisors LLC

(Standard Agreement AC No. 663249)

This Amendment is made and entered into this 24th day of February, 2023. The City and Consultant amend the above-referenced agreement as set forth herein.

1. Capitalized words in this Amendment have the same meaning as in the Agreement.
2. The provisions of this Agreement (including any previous amendments) not modified by this Amendment remain in full force and effect.
3. The provisions of this Amendment are effective upon execution of the Amendment by both parties.
4. **Agreement Term:** January 1, 2018 through June 30, 2023.
5. **Maximum Total Compensation:** Subsection 10.1 is amended to Increase Decrease the Maximum Total Compensation from \$ _____ to \$ _____.
6. **Agreement Section(s):** Section(s) 2.2 is/are amended to read as set forth in Attachment A of the Amendment.
7. **Scope of Basic Services – Exhibit A:** The original First Revised Second Revised Exhibit A is amended to read as set forth in the attached First Second Third Revised Exhibit A, which is incorporated by reference into this Amendment.
8. **Compensation – Exhibit C:** The original First Revised Second Revised Exhibit C is amended to read as set forth in the attached First Second Third Revised Exhibit C, which is incorporated by reference into this Amendment.
9. **Additional Services:** The Consultant is authorized to perform the Additional Services set forth in the attached Additional Services Exhibit, which is incorporated by reference into this Amendment.

This Amendment is executed by the authorized representatives of the City and Consultant as follows:

City of San José

By 
Email: sarah.zarate@sanjoseca.gov
Date: 02/24/2023 GMT

Name: Sarah Zarate
Title: Director, Office of the City Manager

Consultant

By 
Email: berwangerm@pfn.com
Date: 02/24/2023 GMT

Name: Michael Berwanger
Title: Managing Director

Approval as to Form (City Attorney):

Form Approved by the Office of the City Attorney.
(Maximum Total Compensation, as amended, is \$100,000 or less, and the provisions of the form are not altered.)

Approved as to Form:

Attorney
Rosa Tsongtaatarii


Email: rosa.tsongtaatarii@sanjoseca.gov
Date: 02/24/2023 GMT

Name: Rosa Tsongtaatarii
Title: Chief Deputy City Attorney

First

Attachment A

Second

Agreement Provision Amendment(s)

Third

This Attachment A is an attachment to the First Second Third amendment to Agreement.

WHEREAS, City and Consultant agree that the term of the Agreement is hereby extended for the fourth Option Term, for the period of January 1, 2023 through June 30, 2023, in accordance with the provisions of Section 2.2 and Second Revised Exhibit C.

The Section(s) set forth in the original Agreement, or in any previous amendment to the original Agreement, is/are amended as follows:

2.2 **Optional Term:** After the Initial Term, the City reserves the right at its sole discretion, to extend the term of this Agreement for up to two additional one-year terms and two additional six-month terms ("Option Term(s)") up through June 30, 2023.

2.2.1 **Notice:** The City shall provide the Consultant with no less than thirty (30) calendar days' written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit E for Notice of Exercise of Option to Extend Agreement Form.

2.2.2 **Appropriation of Funds Contingency:** The City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. The Consultant acknowledges that the City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that any Option Term(s) is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the City shall pay Consultant for any services performed in accordance with this Agreement up to the date of termination.

First Second Third **Revised Exhibit C: Compensation**

This revised Exhibit C is an attachment to the First Second Third amendment to the Agreement.

I. Manner of Payment

- A. The maximum amount of compensation to be paid to Consultant under this Agreement, for municipal advisory work related to the SJCE program shall not exceed Fifty Thousand Dollars (\$50,000), including both payment for professional services and reimbursable expenses (collectively, "Compensation") for the period of January 1, 2018 through June 30, 2018, unless extended in time and funding by the Director. Additional municipal advisory work done by the Consultant beyond June 30, 2018 related to the SJCE program or other specific projects shall be approved by the Director and subject to sufficient appropriation. Total compensation to the Consultant shall not exceed Two Hundred Ninety Thousand Dollars (\$290,000.00) for the period of January 1, 2018 through June 30, 2023, unless the Director notifies Consultant in writing that the maximum amount of Compensation has been reduced or increased to reflect changes in appropriation.
- B. Compensation will be for time and materials only and connected to the SJCE program and other specific projects as they arise. For financial transactions associated with the SJCE program and other specific projects that occur during the term, there will be a separate contract for each financial transaction that occurs.
- C. Funding for this contract will be paid from revenues generated by the SJCE program.
- D. Any hours worked for which payment would result in a total exceeding the maximum amount of Compensation set forth herein or in the applicable written notification from the Director to Consultant shall be at no cost to City.

II. Schedule of Rates and Charges

- A. City agrees to compensate Consultant at hourly rates as set forth below for professional services performed in accordance with the terms and conditions of this Agreement.

<u>Professional Category</u>	<u>Hourly Rates</u>
Managing Director	\$350.00
Director	\$325.00
Senior Managing Consultant	\$300.00
Consultant	\$225.00

- B. Reimbursable expenses shall include reasonable out-of-pocket expenses related to the performance of Consultant's services under this Agreement, including all travel-related expenses, courier and mailing fees, telephone calls, conference calls and photocopies as approved by City's Contract Manager. Any other expenses must have prior written approval by the Director. Consultant must provide documentation for all reimbursable expenses.

C. **Expenses That Are Reimbursable:** Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's Contract Manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any other expenses approved by the Director.	No Markup unless approved by the Director