

Amendment to Standard City of San José Consultant Agreement
(Non-Capital Projects)

First

Second

Third

Consultant's Name: vanderToolen Associates, Inc.

(Standard Agreement AC No. 30704)

This Amendment is made and entered into this 1st day of March, 2022. The City and Consultant amend the above-referenced agreement as set forth herein.

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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:** Section 2 is amended to extend the expiration date from June 30, 2022 to June 30, 2023.
 5. **Maximum Total Compensation:** Subsection 10.1 is amended to Increase Decrease the Maximum Total Compensation from \$36,200 to \$ 45,000.
 6. **Agreement Section(s):** Section(s) _____ 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 B:** The original First Revised Second Revised Exhibit B is amended to read as set forth in the attached First Second Third Revised Exhibit B, 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.
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This Amendment is executed by the authorized representatives of the City and Consultant as follows:

City of San José

By *Sarah Zarate*
Email: sarah.zarate@sanjoseca.gov

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

Consultant

By *phil@vandertoolen.com*
Email: phil@vandertoolen.com

Name: Phil vanderToolen
Title: President

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:

By *Arlene Silva*
Email: arlene.silva@sanjoseca.gov

Arlene Silva
Deputy City Attorney

By *Douglas Hodge*
Email: doug@vandertoolen.com

Name: Doug Hodge
Title: Chief Financial Officer

- First**
- Second**
- Third**

Revised Exhibit A: Scope of Basic Services

(Non-Capital Project)

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

The tasks set forth in the original Exhibit A, or in any previous amendment to the original Exhibit A, are amended as follows:

Task No 5, entitled "CONSTRUCTION ADMINISTRATION and OBSERVATION PHASE, is added as a new Task to the EXHIBIT A - Scope of Services, as follows:

A. Services:

The Construction Administration/Observation (CA) Phase shall consist of four (4) site visits. Site visits beyond four shall be provided on an hourly time and materials basis as mutually agreed to by Client prior to providing such services. Such services shall include the following:

- a. Respond to Requests for Information (RFI's), review or take other appropriate action upon submittals received from the contractor (i.e. shop drawings, product data and samples), but only for the limited purpose of conformance with the design concept of the work and with the information given in the plans and specifications prepared by Consultant;
- b. Review substitutions and alternatives, as requested by the contractor and make recommendations to same;
- c. Provide sketch drawings (8.5"x11" format) to clarify and resolve construction ambiguities, if needed;
- d. Issue "Bulletins" related to clarifications, plan and detail changes, error, omissions, and Client requested changes;
- e. Provide Change Orders related to substitutions and alternatives, as requested by the Client and contractor, and make recommendations to same;
- f. Review or take appropriate action upon submittals received from the contractor (i.e. shop drawings, product data and, samples), but only for the limited purpose of conformance with the design concept of work and with the information given in the plans and specifications prepared by the Consultant;
- g. Provide periodic site visits including:
 1. Pre-Construction Meeting at onset of landscape installation;
 2. Observe and become generally familiar with the progress of the work to determine if the work is generally proceeding in accordance with the construction documents;

3. Observe the installation of plant material and irrigation materials and equipment for general conformance to contract documents and design intent;
 4. Attend meeting to review landscape installation to initiate plant establishment period and prepare "punch list" of planting and irrigation installation corrections to be completed by the landscape contractor for the installed landscape to comply with the approved landscape construction documents;
 5. Attend meeting to review landscape installation at Final Completion ending the plant establishment period for final acceptance and turnover to HOA, and;
 6. Inform and advise Client via written documents of Consultant's site observation meetings.
- h. Consultant shall not have control over or charge of and shall not be responsible for construction means, contractor' schedules, contractor's errors and omissions, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work since these are solely the contractor's responsibility under the contract for construction. Although Consultant may observe and discuss potential problems, these periodic field visits are not construction inspections or a guarantee that there will not be construction deficiencies.

B. Deliverable: No deliverable.

C. Completion Time: The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: June 30, 2023, in coordination with the base project construction schedule.
- On or before ___ Calendar Days from _____.

First Second Third **Revised Exhibit B: Compensation (Non-Capital Projects)**
 This revised Exhibit B is an attachment to the First Second Third amendment to the Agreement.

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services				Column 4	
Column 1	Column 2	Column 3	Invoice Period	Compensation	
Task Nos.	Basis of Compensation				
1	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$9,600.00	
2	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$20,900.00	
3	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$2,000.00	
5	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input checked="" type="checkbox"/> Completion of Work	<input checked="" type="checkbox"/> Completion of Work	\$6,800.00	
Part 2 – Reimbursable Expenses					
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input checked="" type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of the Agreement. The maximum amount of reimbursable expenses is:			\$700.00
Part 3 – Subconsultant Costs					
<input checked="" type="checkbox"/> The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants. Subconsultant costs are not separately compensable.		<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of the Agreement. The maximum amount of compensation for subconsultant costs is:			\$0
Part 4 – Additional Services					
<input type="checkbox"/> No money is budgeted for Additional Services, and the Director cannot authorize any Additional Services.		<input checked="" type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:			\$5,000.00

Maximum Total Compensation (sum of Parts 1 through 5):	\$ 45,000.00
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Section 2 – Schedule of Rates and Charges

Omitted. No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.

The following is the Schedule of Rates and Charges applicable to this Agreement:

Reimbursable expenses are in addition to compensation for Basic Services and Additional Services. Reimbursable expenses shall include all actual expenditures made by Consultant in the interest of the Project. Reimbursable expenses shall be billed at Consultant's direct cost plus 12% for expenses including, but not limited to the following:

- a. Cost of reproduction of cad plots, blueprints and specifications;
- b. Cost of delivery services and special or express mailing;
- c. Cost of landscape soils lab analysis and;
- c. Expense of project related mileage @.55/mile, and meals.