

First

Amendment to Standard City of San José Consultant Agreement

(Non-Capital Projects)

Second

Consultant's Name: Witt O'Brien's, LLC

Third

(Standard Agreement AC No. 30750)

This Amendment is made and entered into this 7th day of February, 2022. The City and Consultant amend the above-reference 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:** Subsection 2 is amended to extend the expiration date from December 31, 2020 to December 31, 2022.
 5. **Maximum Total Compensation:** Subsection 10.1 is amended to Increase Decrease the Maximum Total Compensation from \$_____ to \$_____.
 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:

Sarah Zarate

Email: sarah.zarate@sanjoseca.gov

jhoyes@wittobriens.com

Email: jhoyes@wittobriens.com

By _____

Name: Sarah Zarate **Date**
Title: Director, Office of Administration, Policy and
Intergovernmental Relations

By _____

Name: Jonathan Hoyes **Date**
Title: Senior Managing Director

Approval as to Form (City Attorney):



Form Approved by the Office of the City Attorney

(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

cjoiner@wittobriens.com

Email: cjoiner@wittobriens.com

By _____

Name: Cheryl Joiner **Date**
Title: Director of Contracts & Compliance

Memorandum

TO: Sarah Zarate
Director, Office of Administration,
Policy and Intergovernmental Relations

FROM: Raymond Riordan
Director, Office of
Emergency Management

SUBJECT: **Approval of Retroactivity** **DATE:** February 2, 2022

Sarah Zarate

Date

Email: sarah.zarate@sanjoseca.gov

SUBJECT: APPROVAL OF RETROACTIVITY IN THE AGREEMENT WITH WITT O'BRIEN'S, LLC

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Office of Emergency Management is seeking authorization for the retroactive provision to pay for services in the following agreement.

The justification for the requests detailed below that are to include a retroactivity provision is that the agreements were competitively procured and either:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:

February 2, 2022

Subject: Approval of Retroactivity in the Agreement with Witt O'Brien's, LLC

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This is a contract for professional services which was originally entered into on November 25, 2019 for a term ending on December 31, 2020. Witt O'Brien's, LLC is providing emergency management planning services to the Office of Emergency Management. The remaining work includes delivery of a City of San Jose Multi-Year Training and Exercise Plan and a five-year calendar program. Given the City's focus on addressing COVID-19, the Office of Emergency Management (OEM) wishes to extend the term of this agreement to December 31, 2022. Many City staff members whose feedback is critical to the Shelter Management Plan have been focused on the City's activated Emergency Operations Center, and were unavailable to provide the necessary feedback to the plan.

The OEM understands that retroactive agreements are to be avoided. However, in this instance the contract amendment could not be processed by December 31, 2020 due to the COVID-19 situation. The OEM requests an exception be made and the amendment detailed in this memorandum be allowed to proceed with retroactive clauses. The Office of Emergency Management acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.

/s/

RAYMOND RIORDAN

Director of Emergency Management

For questions please contact Nancy Ta at (408) 495-1425.

