



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

18-846

Agenda Date: 9/18/2018

REPORT TO COUNCIL

SUBJECT

Action on Amended and Restated Agreement with Robert E. Van Heuit for Environmental Consulting Services on the CityPlace Santa Clara Project

BACKGROUND

The CityPlace project site (currently being used as Santa Clara Golf & Tennis), is a former all-purpose landfill site. As a former landfill site, the City and the Developer have been working with local and state agencies with regulatory interests in the project site to secure the necessary approvals for the CityPlace development. One of those agencies is the County of Santa Clara Department of Environmental Health (DEH).

DEH, acting as the Solid Waste Local Enforcement Agency (LEA), required the City, as the owner of the landfill and applicant for the CityPlace development, to retain a qualified independent consultant to provide third party technical advice and assistance to the LEA for its review of the project.

On June 2, 2015, a Professional Services agreement was executed with Robert E. Van Heuit to provide the LEA with assistance in review of all landfill project documents and to coordinate with the LEA's third party geo-technical consultant. The original contract amount was \$25,000. Over the past three years, several amendments to the Agreement have been executed extending the term and increasing the total contract amount. The current agreement expires as of October 31, 2018 and has a total not to exceed limit of \$90,000. Approval of the recommended action would extend the term to December 31, 2019 and increase the total contract amount to \$170,000.

DISCUSSION

Robert Van Heuit has provided important technical advice and services to the LEA in its review of the CityPlace project. Without this technical assistance, it would be extremely difficult for the LEA, City and Related to review and secure necessary approvals for the development.

The scope of services includes environmental review of permit applications; landfill closure plan; site development plans; project documents, including plans, specifications, and geotechnical investigation materials; and other information as necessary for the County LEA's review of the CityPlace project.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

The current contract with Robert E. Van Heit for environmental consulting services related to the City Place project has a total not to exceed amount of \$90,000. The proposed Agreement increases the contract amount by \$80,000, for a maximum amount not to exceed of \$170,000. This contract is funded by the CityPlace developer, Related, through advances provided to the City as required by the CityPlace Development Agreement.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Approve the Amended and Restated Agreement with Robert E. Van Heit for Environmental Review Services Related to the CityPlace Santa Clara project in an amount not to exceed \$170,000.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Amended and Restated Agreement with Robert E. Van Heit

**AMENDED AND RESTATED AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ROBERT E. VAN HEUIT**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Robert E. Van Heuit, an Oregon individual, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for the Professional Services by and between the City of Santa Clara and Robert E. Van Heuit" dated June 2, 2015; Amendment No. 1 dated May 6, 2016; Amendment No. 2 dated October 28, 2016; Amendment No. 3 dated September 5, 2017 and now desire to amend and restate the Agreement; and
- B. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- C. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on June 2, 2015 and terminate on December 31, 2019.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is One Hundred Seventy Thousand Dollars (\$170,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement

shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at manager@santaclaraca.gov

And to Contractor addressed as follows:

Name: Robert E. Van Heuit
Address: 2621 Heritage Way
Medford, OR 97504
(541)499-6132
and by e-mail at: rvanh2000@yahoo.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

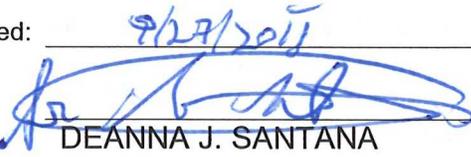
The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: 9/27/2018


BRIAN DOYLE
City Attorney


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ROBERT E. VAN HEUIT
an individual

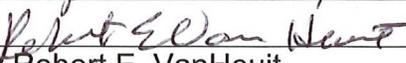
Dated: September 20, 2018
By (Signature): 
Name: Robert E. VanHeuit
Title: Owner
Principal Place of
Business Address: 2621 Heritage Way, Medford OR 97504
Email Address: rvanh2000@yahoo.com
Telephone: (514) 499-6123
Fax: ()
"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

In a letter dated April 2, 2015 ("Letter"), the Santa Clara County Department of Environmental Health ("County" or "DEH"), acting as the Solid Waste Local Enforcement Agency, has required the City of Santa Clara ("City"), as the applicant for the planned development of the mixed-used project located in City, and commonly referred to as City Place Santa Clara ("Project"), to retain a suitably qualified independent consultant(s) to provide third party review to DEH for its review of the Project.

Contractor shall provide technical advice and assistance to the County for its review of the Project on behalf of the City. The Consultant will coordinate efforts with the City and the County.

The work involves environmental review of permit applications, landfill closure plan, site development plans, and other information as necessary to evaluate and prepare plan review documents for submission to the County. The review will be performed in collaboration with Barry Milstone, who will be reviewing the geotechnical aspects of the Project. The scope of services for the review will include the following:

- Review of project documents, including plans, specifications, and geotechnical investigation materials;
- Site reconnaissance to observe current site conditions;
- Direct communications, on an as-needed basis, with the project design team to request any materials required for clarification and to convey items to be addressed by the design team;
- Participation in required meetings with design team and regulatory personnel;
- Coordination of review efforts with Barry Milstone;
- Telephone consultation with County representatives and CalRecycle representatives; and
- Preparation, with Barry Milstone, of plan review documents for submission to County.

The Contractor recognizes that the City has contracted for the services described above to assist the County with the preparation of environmental review documents. The Contractor may be directed or ordered by the County without invalidating this agreement.

The Contractor agrees to keep confidential, and not to misappropriate, disclose or make available, any and all information concerning the plans, operations or activities of the City, its parent, affiliates, divisions and subsidiaries which the Contractor may learn or discover from any source whatsoever in the performance of the services under this agreement, and Contractor shall not use the name of the Developer or the Developer logo on any division or project of Developer or otherwise without the prior written consent of City, which consent may be withheld in the City's sole and absolute discretion. Upon termination of this agreement, upon request of the City, the Contractor shall promptly return to the City's possession all copies of any writings, drawings or other confidential information which are then in the possession or control of the Contractor. The Contractor further agrees that, upon the request of the City at any time under this agreement, the Contractor shall promptly return to the City all such copies of writings, drawings or other confidential information which are then in the possession or control of the Contractor.

EXHIBIT B
SCHEDULE OF FEES

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

Consultant shall submit a monthly invoice to the City based on costs incurred on a time and materials basis. The 2018 schedule of fees are as follows:

Hourly rate: \$175 per hour

Non-productive travel time: \$50 per hour

Per Diem when traveling: \$65 per day

Other expenses to be billed at cost

Vehicle miles: \$0.575 per mile

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:

Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

WORKERS' COMPENSATION

Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.

The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.

Cancellation.

Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes

Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

19-1096

Agenda Date: 10/22/2019

REPORT TO COUNCIL

SUBJECT

Action on Amendment No. 1 to the Amended and Restated Agreement for Services with Robert E. Van Heuit, for consulting services associated with the Related Santa Clara Development Project

BACKGROUND

The Related Santa Clara project (formerly known as City Place) is a 9.1 million square foot development on a former all-purpose landfill site. There are various local and state agencies that are charged with the oversight of a closed landfill. City staff and Related Santa Clara (Developer) have been working closely with these agencies in order to secure necessary approvals and permits to allow for the future construction of the project.

As a former landfill site, agencies lack the technical expertise necessary to review a complex project like Related Santa Clara. On June 2, 2015, the City entered into an Agreement for Services with Robert E. Van Heuit (Contractor) to provide technical advice and assistance to the Santa Clara County Department of Environmental Health (County) for its review of the project on behalf of the City. Over the years, several amendments to the Agreement have been executed extending the term and increasing the total contract amount. The various amendments necessitated the current Amended and Restated Agreement, approved by City Council on September 18, 2018, which restated the agreement to capture the previous amendments, extended the term through December 31, 2019 and increased the maximum not-to-exceed amount from \$90,000 to \$170,000.

DISCUSSION

Contractor has been providing technical advice and assistance to the County as the Local Enforcement Agency with oversight of the landfill for its review of the Related Santa Clara project. The scope of work includes environmental review of permit applications, landfill closure plan, site development plans, and other information as necessary to evaluate and prepare plan review documents for submission to the County.

The contract is set to expire on December 31, 2019. The scope of work is not yet complete and additional services are needed. Approval of Amendment No. 1 to the Amended and Restated Agreement would allow the City to continue to access the Contractor's services for the scope by extending the term through December 31, 2020 and by increasing the contract amount by \$80,000.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of a California Environmental Quality Act ("CEQA") pursuant to the CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

The current contract with the Contractor to provide technical advice and assistance to the County for its review of the project on behalf of the City has a total not-to-exceed amount of \$170,000. The proposed Amendment increases the contract amount by \$80,000, for a maximum amount not-to-exceed \$250,000. This contract is funded by the Developer, Related Santa Clara, through advances provided to the City as required by the Related Development Agreement.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Approve and authorize the City Manager to execute Amendment No. 1 to the Amended and Restated Agreement with Robert E. Van Heuit to extend the term to December 31, 2020 and increase compensation by \$80,000 for a revised not-to-exceed compensation amount of \$250,000 for technical advice and assistance to the Santa Clara County Department of Environmental Health (County) for its review of the Related Santa Clara project.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Amendment No. 1 to Amended and Restated Agreement

**AMENDMENT NO. 1
TO THE AMENDED AND RESTATED AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ROBERT E. VAN HEUIT**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Robert E. Van Heuit, an Oregon individual, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Amended and Restated Agreement for Services between the City of Santa Clara, California, and Robert E. Van Heuit, an Oregon individual," dated September 27, 2018 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide certain support activities further outlined in Exhibit A – Scope of Services, for the City Place Santa Clara project, and the Parties now wish to amend the Original Agreement to update the term and compensation and payment.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AMENDMENT TERMS AND CONDITIONS

- A. That Section 2 of the Original Agreement, entitled "TERM OF AGREEMENT" is hereby amended to read as follows:

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on June 2, 2015 and terminate on December 31, 2020.

- B. That Section 6 of the Original Agreement, entitled "COMPENSATION AND PAYMENT" is hereby amended to read as follows:

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Two Hundred and Fifty Thousand Dollars (\$250,000.00), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed, or materials provided in excess of the maximum compensation, shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

2. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

3. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated:

10-31-19



BRIAN DOYLE
City Attorney



DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ROBERT E. VAN HEUIT
an individual

Dated: September 23, 2019

By (Signature): Robert E. Van Heuit

Name: Robert E. VanHeuit

Title: Owner

Principal Place of
Business Address: 2621 Heritage Way, Medford OR 97504

Email Address: rvanh2000@yahoo.com

Telephone: (541) 499-6123

Fax: ()

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

In a letter dated April 2, 2015 ("Letter"), the Santa Clara County Department of Environmental Health ("County" or "DEH"), acting as the Solid Waste Local Enforcement Agency, has required the City of Santa Clara ("City"), as the applicant for the planned development of the mixed-used project located in City, and commonly referred to as City Place Santa Clara ("Project"), to retain a suitably qualified independent consultant(s) to provide third party review to DEH for its review of the Project.

Contractor shall provide technical advice and assistance to the County for its review of the Project on behalf of the City. The Consultant will coordinate efforts with the City and the County.

The work involves environmental review of permit applications, landfill closure plan, site development plans, and other information as necessary to evaluate and prepare plan review documents for submission to the County. The review will be performed in collaboration with Barry Milstone, who will be reviewing the geotechnical aspects of the Project. The scope of services for the review will include the following:

- Review of project documents, including plans, specifications, and geotechnical investigation materials;
- Site reconnaissance to observe current site conditions;
- Direct communications, on an as-needed basis, with the project design team to request any materials required for clarification and to convey items to be addressed by the design team;
- Participation in required meetings with design team and regulatory personnel;
- Coordination of review efforts with Barry Milstone;
- Telephone consultation with County representatives and CalRecycle representatives; and
- Preparation, with Barry Milstone, of plan review documents for submission to County.

The Contractor recognizes that the City has contracted for the services described above to assist the County with the preparation of environmental review documents. The Contractor may be directed or ordered by the County without invalidating this agreement.

The Contractor agrees to keep confidential, and not to misappropriate, disclose or make available, any and all information concerning the plans, operations or activities of the City, its parent, affiliates, divisions and subsidiaries which the Contractor may learn or

EXHIBIT B
SCHEDULE OF FEES

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

Consultant shall submit a monthly invoice to the City based on costs incurred on a time and materials basis. The 2019 schedule of fees are as follows:

Hourly rate: \$175 per hour

Non-productive travel time: \$50 per hour

Per Diem when traveling: \$65 per day

Other expenses to be billed at cost

Vehicle miles: \$0.575 per mile

discover from any source whatsoever in the performance of the services under this agreement, and Contractor shall not use the name of the Developer or the Developer logo on any division or project of Developer or otherwise without the prior written consent of City, which consent may be withheld in the City's sole and absolute discretion. Upon termination of this agreement, upon request of the City, the Contractor shall promptly return to the City's possession all copies of any writings, drawings or other confidential information which are then in the possession or control of the Contractor. The Contractor further agrees that, upon the request of the City at any time under this agreement, the Contractor shall promptly return to the City all such copies of writings, drawings or other confidential information which are then in the possession or control of the Contractor.

**AMENDMENT NO. 2
TO THE AMENDED AND RESTATED
AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ROBERT E. VAN HEUIT**

PREAMBLE

This agreement ("Amendment No. 2") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Robert E. Van Heuit, an Oregon individual, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Services between the City of Santa Clara, California, and Robert E. Van Heuit", dated June 2, 2015 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated May 6, 2016, Amendment No. 2, dated October 28, 2016, Amendment No. 3, dated September 5, 2017. The parties entered into an Amended and Restated Agreement for Services, dated September 27, 2018. Amendment No. 1 to the Amended and Restated Agreement for Services, dated October 31, 2019, and is again amended by this Amendment No. 2. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide certain support activities further outlined in Exhibit A – Scope of Services, for the City Place Santa Clara project, and the Parties now wish to amend the Agreement to update the term.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 2 of the Agreement as Amended, entitled "TERM OF AGREEMENT" is amended to read as follows:

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the

term of this Agreement shall begin on June 2, 2015 and terminate on December 31, 2021.

2. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.

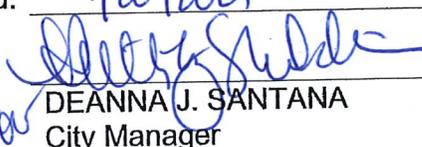
The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:


BRIAN DOYLE
City Attorney

Dated:

1/20/2021

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ROBERT E. VAN HEUIT
an individual

Dated: December 4, 2020
By (Signature): 
Name: Robert E. Van Heuit
Title: Owner
Principal Place of
Business Address: 2621 Heritage Way, Medford, OR 97504
Email Address: rvanh2000@yahoo.com
Telephone: (541) 499-6123
Fax: ()

"CONTRACTOR"

**AMENDMENT NO. 3
TO THE AMENDED AND RESTATED
AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ROBERT E. VAN HEUIT**

PREAMBLE

This agreement ("Amendment No. 3") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Robert E. Van Heuit, an Oregon individual, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Services between the City of Santa Clara, California, and Robert E. Van Heuit", dated June 2, 2015 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated May 6, 2016, Amendment No. 2, dated October 28, 2016, Amendment No. 3, dated September 5, 2017. The parties entered into an Amended and Restated Agreement for Services, dated September 27, 2018, Amendment No. 1 to the Amended and Restated Agreement for Services, dated October 31, 2019, Amendment No. 2 to the Amended and Restated Agreement for Services, and now Amendment No. 3 to the Amended and Restated Agreement for Services. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide certain support activities further outlined in Exhibit A - Scope of Services, for the City Place Santa Clara project, and the Parties now wish to amend the Agreement as Amended to increase the total contract amount by \$50,000 to a total not to exceed contract amount of \$300,000.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 10 of the Agreement as Amended, entitled "Compensation and Payment" is amended to read as follows:
In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in

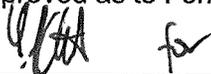
accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Three Hundred Thousand Dollars (\$300,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

2. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 3, the provisions of this Amendment No. 3 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 3 as evidenced by the following signatures of their duly authorized representatives.

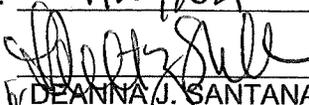
CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:



BRIAN DOYLE
City Attorney

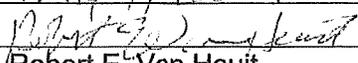
Dated:

7/20/2021


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ROBERT E. VAN HEUIT
INDIVIDUAL

Dated: July 7, 2021
By (Signature): 
Name: Robert E. Van Heuit
Title: Owner
Principal Place of Business Address: 2621 Heritage Way
Medford, OR 97504
Email Address: RVanH2000@yahoo.com
Telephone: (541) 499-6123
Fax: ()

"CONTRACTOR"

Search

- Home
- Insured Tasks
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- Deficiencies

Deficiencies

Insured Name

Robert E. Van Heuit (S200003)

Robert E. Van Heuit (S200003234)

Active Records Only

Advance Search

Insured Tasks Admin Tools

View

- Insured
- Notes
- History
- Deficiencies
- Coverages
- Requirements
- Queue a Call
- Contract Screen

Add

Edit

Help

Video Tutorials

Name:	Robert E. Van Heuit
Account Number:	S200003234
Address:	2621 Heritage Way, Medford, OR, 97504
Status:	<u>Compliant with Waived Deficiencies.</u>

The following deficiencies are according to last validation on :07/13/2021

Deficiencies Information

**AMENDMENT NO. 4
AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ROBERT E. VAN HEUIT**

PREAMBLE

This agreement ("Amendment No. 4") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Robert E. Van Heuit, an Oregon individual, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Services between the City of Santa Clara, California, and Robert E. Van Heuit", dated June 2, 2015 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated May 6, 2016, Amendment No. 2, dated October 28, 2016, Amendment No. 3, dated September 5, 2017. The parties entered into an Amended and Restated Agreement for Services, dated September 27, 2018, Amendment No. 1 to the Amended and Restated Agreement for Services, dated October 31, 2019, Amendment No. 2 to the Amended and Restated Agreement for Services, Amendment No. 3 to the Amended and Restated Agreement for Services, and now Amendment No. 4. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide certain support activities further outlined in Exhibit A - Scope of Services, for the City Place Santa Clara project, and the Parties now wish to amend the Agreement to increase the total contract amount by \$100,000 to a total not to exceed contract amount of \$400,000.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 2 of the Agreement as Amended, entitled "Term of Agreement" is amended to read as follows:

"Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of the Agreement shall begin on July 17, 2018 and terminate on December 31, 2022."

2. Section 10 of the Agreement as Amended, entitled "Compensation and Payment" is amended to read as follows:

"In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Four Hundred Thousand Dollars (\$400,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials, and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance."

3. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 4, the provisions of this Amendment No. 4 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 4 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

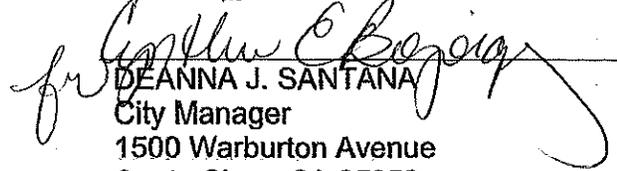
Approved as to Form:

Dated: 2/11/2022



Digitally signed by Elizabeth Klotz
Date: 2022.01.31 15:23:02 -08'00'

Office of the City Attorney


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ROBERT E. VAN HEUIT
INDIVIDUAL

Dated: January 14, 2022

By (Signature): Robert E. Van Heuit

Name: Robert E. Van Heuit

Title: Owner

Principal Place of Business Address: 2621 Heritage Way
Medford, OR 97504

Email Address: RVanH2000@yahoo.com

Telephone: (541) 499-6123

Fax: ()

"CONTRACTOR"