

**AMENDMENT NO. 1
TO THE AMENDED AND RESTATED AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ENVIRONMENTAL RISK SERVICES, INC.**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Environmental Risk Services, Inc., a California corporation, (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 Environmental Risk Services, Inc." dated December 12, 2018 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide environmental risk assessment support activities for the City Place Santa Clara, and the Parties now wish to amend the Original Agreement to include review of environmental documents and permits as identified on the attached Pre-construction schedule, and tasks required by provisions of the WDRs.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AMENDMENT TERMS AND CONDITIONS

- A. That Exhibit A of the Original Agreement, entitled "Amended and Restated Agreement for Services between the City of Santa Clara, California, and Environmental Risk Services, Inc." is hereby amended to include the attached Exhibit A-1.
- 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 Three Hundred Fifty Thousand Dollars (\$350,000.00), 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.

- C. That Exhibit B of the Original Agreement, entitled “Amended and Restated Agreement for Services between the City of Santa Clara, California, and Environmental Risk Services, Inc.” is replaced with the attached Exhibit B.
- D. 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 July 17, 2018 and terminate on January 31, 2020.

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:

Approved as to Form:

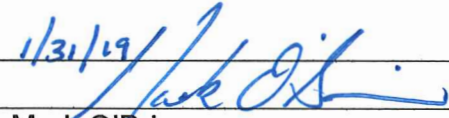
Dated: _____

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"

ENVIRONMENTAL RISK SERVICES, INC.
a California corporation

Dated: 1/31/19
By (Signature): 
Name: Mark O'Brien
Title: CEO
Principal Place of
Business Address: P.O. Box 1209, Alamo, CA 94507
Email Address: mobrien@erscorp.us
Telephone: (925) 878-3771

"CONTRACTOR"

EXHIBIT A-1 SCOPE OF SERVICES

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

Environmental Review - Third-party review of environmental documents and permits as identified on the attached Pre-construction schedule, and tasks required by provisions of the WDRs as detailed below:

Provisions 4 and 5: Supplemental Leachate/Groundwater Evaluation and Landfill Penetration Evaluation

ERS has been actively involved in reviewing and commenting on both of these tasks over the last few months. ERS involvement has highlighted issues of ground water flow that had previously not been considered. These issues include the anomalously low ground water elevations found within the Landfill, as well as the potential for dewatering facilities in the vicinity to have affected the occurrence of ground water in the Landfill. These factors are now being incorporated into the planning done by the consultants who are responsible for completing these ongoing tasks. ERS will continue to assist the City in reviewing and commenting on these tasks to ensure that the interests of the City are protected. We will do this by rigorously reviewing the data for its accuracy and completeness, and not just in terms of whether or not it is acceptable to the reviewing regulatory agencies.

Provisions 6 through 9: Post Closure Maintenance Plan Detection Monitoring Program (DMP) Review; Well Installation or Destruction Report; Phase Investigations and Designs

ERS is well qualified to assist the City in reviewing and commenting on these tasks. ERS' review of the landfill has led to the development of an integrated conceptual model of the site that takes into account all of the landfill features, both natural and engineered. Because of this, we are uniquely positioned to review the many documents and studies that will be required under these Provisions. For example, the groundwater monitor network will need to be protected in the Post-Closure Maintenance Plan; it will be a primary topic in the Detection Monitoring Plan; and any additions or removals from the network will be subject of the applicable report.

Provision 13: Landfill Gas/Vapor System

ERS has reviewed the existing landfill gas/vapor systems at the landfill and have identified a number of areas of concern. The scale of the proposed development will necessitate a complete overhaul of these systems. ERS staff have the expertise to assist in reviewing and optimizing performance of these systems.

Provision 15, 16, and 17: Emergency Response Contingency Plan, Earthquake Inspection Report, Corrective Action Plan

All of these Provisions include a requirement to assess the condition of the groundwater monitor network and other systems after an earthquake or other failure that may lead to a release of contaminants from the Landfill. ERS is able to make these assessments as well as to design and implement corrective actions.

Engineering Design Review

ERS is well qualified to perform design review for the Landfill Gas Collection and Landfill Gas Mitigation System design included in the Post-closure Maintenance Plan.

Development of Risk Management Plan

Environmental Insurance:

- Prepare technical presentations for insurance brokers,
- Prepare brokers' scope of work,
- Design policy parameters and endorsements for environmental insurance program,
- Prepare and present technical information to underwriters, and provide ongoing support and communication to underwriters, and
- Place policy.

Owner-controlled Insurance Program (OCIP):

- Design OCIP Program,
- Present to Insurers,
- Place Policy.

Owner's and Director's Insurance Policy:

- Design Director's Insurance Program
- Present to Insurers,
- Place Policy.

Review Legal Documents

- Coordination of review and legal agreements, insurance policies, work plans, and agency correspondence.

City, Developer, and Regulator Meetings and Other Ongoing Tasks

ERS understands that regular meetings will be held between representatives of the City and regulatory agencies in order to facilitate the review and approval process for the many tasks that will be undertaken as the proposed development proceeds. ERS has been a strong advocate for the City in many meetings with the developer and we would continue that advocacy in meeting with regulators. In that capacity we will defend the interests of the City and ensure that regulatory approvals do not ignore potential City liabilities.

**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.

**TIME AND MATERIALS RATE SHEET
Calendar Year 2019**

Personnel	Rates
Principal Risk Program Manager	\$265 / hour
Senior Engineer	\$270 / hour
Senior Scientist	\$235 / hour
Lead Engineer (incl. GIS / CAD)	\$195 / hour
Lead Scientist	\$170 / hour
Project Engineer	\$180 / hour
Project Scientist	\$170 / hour
Staff Engineer	\$130 / hour
Staff Scientist	\$105 / hour
Junior Engineer	\$100 / hour
Junior Scientist	\$90 / hour
Technical Editor	\$85 / hour
Field Technician	\$80 / hour
Project Assistant	\$70 / hour
Administrator	\$60 / hour
Expenses	Rates
Office supplies, computers, telephones	No charge
Routine copies	10c/page
Plotter copies	\$10/page
Project specific support materials and services	Cost plus 10%

Subcontractors and equipment vendors	Cost plus 15%
Equipment rental from ERS	Varies per item/time
Report Preparation Materials	\$50 / binder
Field Support Vehicles/Sampling Trucks	\$185 / day
Deposition and testimony rate = 1.5 times regular rate	