

**AMENDMENT NO. 4
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BATES GROUP LLC**

PREAMBLE

This agreement (“Amendment No. 4”) is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Bates Group LLC, an Oregon limited liability company (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 Bates Group LLC”, effective May 1, 2019 (Agreement); and
- B. The Agreement was previously amended by Amendment No. 1, dated November 13, 2019, Amendment No. 2, dated June 30, 2020, Amendment No. 3, dated December 16, 2020, and is again amended by this 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 for the purpose of having Contractor provide services related to the calculation and review of Fair Labor Standards Act compensation to City employees, and the Parties now wish to amend the Agreement as Amended to extend the term through April 30, 2024 and increase compensation by \$189,450 for a revised not-to-exceed amount of \$289,450.

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 May 1, 2019 and terminate on April 30, 2024.

2. Exhibit A of the Agreement as Amended, entitled "Scope of Services", is hereby amended to read as shown in First Revised Exhibit A, attached and incorporated into this Amendment No. 4.
3. First Revised Exhibit B of the Agreement as Amended, entitled "Schedule of Fees", is hereby amended to read as shown in Second Revised Exhibit B, attached and incorporated into this Amendment No. 4.
4. 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: _____

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"

BATES GROUP LLC
an Oregon limited liability company

Dated: _____

By (Signature): _____

Name: Benjamin Pappas

Title: President

Principal Place of Business Address: 5005 Meadows Road, Suite 300
Lake Oswego, Oregon 97035

Email Address: BPappas@batesgroup.com

Telephone: (971) 250-4329

Fax: (503) 670-0997

"CONTRACTOR"

FIRST REVISED EXHIBIT A SCOPE OF SERVICES

1. OVERVIEW

- 1.1. The scope for this project is for calculation and review of Fair Labor Standards Act (FLSA) compensation to City employees across various bargaining units. For all the potentially affected employees of the City for the time period requiring analysis, Contractor will perform the following:
 - 1.1.1. Calculate the regular rate of pay pursuant to FLSA rules
 - 1.1.2. Calculate FLSA overtime wages
 - 1.1.3. Compare results of calculations to wages paid as evidenced by the City's payroll records
 - 1.1.4. Calculate unpaid overtime wages, if any.
- 1.2. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, Contractor's proposal response dated April 15, 2019 is hereby incorporated by reference herein, and shall supplement this scope of services and be subject to the terms and conditions of the Agreement.

2. GENERAL STEPS

In performing the calculation and review of the FLSA compensation, Contractor shall follow the following general steps:

- 2.1. Meet or speak with City personnel most knowledgeable about timekeeping and payroll procedures and systems to gain an understanding of the City's processes.
- 2.2. Meet or speak with City personnel most knowledgeable about the City's current methodology and calculation of FLSA overtime wages.
- 2.3. Review and test data and documents received for completeness and to confirm Contractor's overall understanding of the City's processes.
- 2.4. Analyze payroll data and documents to gain an understanding of how all special pays are compensated.
- 2.5. Analyze data and documents to calculate overtime wages and total compensation earned pursuant to the FLSA.
- 2.6. Discuss with the City and the City's designated representatives any assumptions pertaining to the calculation of FLSA overtime wages and apply agreed-upon assumptions.
- 2.7. Compare results of Section 2.5 above to wages actually paid and quantify the differences for each employee (unpaid overtime, if any). For all the potentially affected employees of the City for the time period requiring analysis, Contractor will

calculate retroactive payments due to employees for FLSA overtime wages. The retroactive payments are related to the timing of the implementation of base wage increases and its impact on the calculation of the FLSA regular rate of pay. Contractor shall, where applicable, leverage the work completed to reduce the number of hours required to calculate retroactive payments due to employees.

- 2.8. Keep the City and/or designated representatives apprised of the progress.
- 2.9. Prepare, produce, and review with the City and/or designated representatives the results of the detailed analyses for each employee.
- 2.10. Prepare, produce, and review with the City and/or designated representatives a written summary of procedures performed and findings, if requested.

3. TYPICAL DATA, DOCUMENTS, AND INFORMATION TO BE PROVIDED BY CITY

The City shall be responsible for providing the following information to Contractor as required:

- 3.1. Access in a timely and efficient manner to City personnel necessary and most knowledgeable for Contractor to complete the Services.
- 3.2. All payroll information detail (unfiltered) on a pay period basis in either Microsoft Excel or Access. If possible, City shall include a field identifying which pay period a retroactive payment relates to.
- 3.3. An explanation of each field in the payroll data.
- 3.4. All timekeeping information detail (unfiltered) on a daily basis in either Microsoft Excel or Access.
- 3.5. An explanation of each field in the timekeeping data.
- 3.6. Contracted wage rates (if not already a field in the payroll detail, please provide the base wage rates for each employee over the relevant period).
- 3.7. The position, department and bargaining unit for each employee (including information on any changes in position for any employee over the relevant period), if not already a field in the payroll or timekeeping information detail.
- 3.8. Description and explanation of all hour codes in the timekeeping data
- 3.9. Identification and explanation of which hour codes represent productive hours (i.e., hours actually worked).
- 3.10. Description and explanation of all pay codes in the payroll data.
- 3.11. Identification and explanation of which pay codes correspond to hour codes that represent productive hours.

- 3.12. Identification and explanation of which pay codes represent special pays that are currently included in the regular rate of pay calculation
- 3.13. Identification and explanation of any pay codes that should be included in the regular rate of pay calculation, but are not.
- 3.14. Explanation of the general procedures pertaining to:
 - 3.14.1. how employees record their time
 - 3.14.2. department approval of time entries and corrections
 - 3.14.3. how timekeeping and corrections flow into the payroll system
 - 3.14.4. how retroactive payments and adjustments are reflected in the payroll information detail
- 3.15. Formal written procedure or explanation of how the City currently calculates FLSA overtime wages due to employees at the end of each work period for the affected employees (this might include an example of how the calculation is performed or copies of the actual calculations, if done manually).
- 3.16. Written payroll software procedures for calculating special pays due to employees each pay period.
- 3.17. Examples of paystubs for the affected employees.
- 3.18. An explanation of how compensatory time compensation is calculated when cashed-out.
- 3.19. All Memoranda of Understanding that apply to the relevant employees for the relevant period.

4. ADDITIONAL SERVICES

Upon the request of the City, Contractor shall provide additional services related to retroactive FLSA calculations throughout the duration of this Agreement.

**SECOND REVISED EXHIBIT B
SCHEDULE OF FEES**

Maximum Compensation

The maximum amount payable for all services provided under this Agreement shall not exceed Two Hundred Eighty-Nine Thousand Four Hundred Fifty Dollars (\$289,450) during the term of the Agreement. Any additional services or materials requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

Billing Rate

Contractor shall perform the services specified in Exhibit A on a time and materials basis in accordance with the rates set forth in the table below.

Contract Period	Hourly Billing Rate
May 1, 2019 – April 30, 2021	\$270
May 1, 2021 – April 30, 2022	\$295
May 1, 2022 – April 30, 2023	\$300
May 1, 2023 – April 30, 2024	\$305

Prior to the commencement of work, Contractor shall provide City with a not to exceed cost to perform the work requested by the City. Contractor shall monitor the cost and keep the City fully apprised on actual hours and cost for each project. Contractor shall notify City if it is determined that the estimate will be exceeded.

Contractor estimates an average of 30 hours per MOU unit to calculate unpaid overtime wages. This estimate may change depending on how many employees are relevant to the analysis, how many months the retroactive pays cover, and how many stipends/specials pays are involved.

Contractor may use assisting staff billed at the same or lower billing rate.

Invoicing

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.