

**AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
WEST COAST CODE CONSULTANTS, INC. (WC3)**

PREAMBLE

This agreement ("Amendment No. 1") is by and between West Coast Code Consultants, Inc., a California corporation, with its principal place of business located at 2400 Camino Ramon, Suite 240, San Ramon, CA 94583 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Professional Services by and between the City of Santa Clara, California and West Coast Code Consultants, Inc.," dated November 1, 2018 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide qualified contract personnel, technical and professional services, and the Parties now wish to amend the Original Agreement to extend the termination date, to increase the amount billed under the Agreement by two hundred twenty-five thousand dollars (\$225,000) for a new total not-to-exceed amount of two hundred and seventy four thousand dollars (\$274,000), and to update the indemnification provisions.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That Section 2, entitled "Term of Agreement" of the Original Agreement, is hereby amended by deleting the existing termination date of November 1, 2018 and replacing it with the following:

"November 1, 2021"

2. AMENDMENT PROVISIONS

That the first paragraph of Exhibit B, Fee Schedule of the Original Agreement, is hereby amended to include and read as follows:

“In no event shall the total amount billed to City by Contractor for services under this Agreement exceed two hundred and seventy-four thousand dollars (\$274,000), subject to budget appropriations.”

3. AMENDMENT PROVISIONS

That Section 14 of the Original Agreement, entitled “Hold Harmless/Indemnification,” is hereby amended to read as follows:

- “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.”

4. 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.

5. COUNTERPART/FACSIMILE SIGNATURE

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; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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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. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date.

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”

WEST COAST CODE CONSULTANTS, INC. (WC3)
A CALIFORNIA CORPORATION

Dated: 4/24/2019

By: _____

(Signature of Person executing the Agreement on behalf of Contractor)

Name: Giyan Senaratne, PE, SE, LEED AP, CASp

Title: Principal/CEO

Local Address: 2400 Camino Ramon, Ste 240

San Ramon, CA 94583

Email Address: giyan@wc-3.com

Telephone: (925) 275-1700

Fax: _____

“CONTRACTOR”

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