

**SECOND AMENDMENT TO
MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
TAX CREDIT ASSET MANAGEMENT, LLC.**

This SECOND AMENDMENT TO MASTER AGREEMENT (“SECOND AMENDMENT”) is entered into this ____ day of _____, 2018, by the CITY OF SAN JOSE, a municipal corporation (hereinafter “CITY”), and TAX CREDIT ASSET MANAGEMENT, LLC, a New Hampshire limited liability company authorized to do business in California (hereinafter “CONSULTANT”).

RECITALS

WHEREAS, on September 30, 2015, CITY and CONSULTANT entered into an agreement entitled “Master Agreement for Consultant Services between the City of San José and Tax Credit Asset Management, LLC” (“AGREEMENT”); and

WHEREAS, on June 20, 2016, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to increase the maximum compensation from \$179,000 to \$270,000 and extend the term of the AGREEMENT for the first additional one-year term from July 1, 2016 through June 30, 2017; and

WHEREAS, on May 12, 2017, the CITY exercised its option to extend the term of the AGREEMENT for the second additional one-year term from July 1, 2017 through June 30, 2018, at the existing rates of compensation as set forth in the AGREEMENT; and

WHEREAS, on May 11, 2018, the CITY exercised its option to extend the term of the AGREEMENT for the third additional one-year term from July 1, 2018 through June 30, 2019, at the existing rates of compensation as set forth in the AGREEMENT; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT to increase the maximum compensation allowed;

NOW, THEREFORE, the parties agree to further amend the amended AGREEMENT as follows:

SECTION 1. SECTION 4, "COMPENSATION" is amended to read as follows:

- "A. The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Forty-Five Thousand Dollars (\$445,000). The rate and schedule of payment is set out in SECOND REVISED EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.

- B. The CITY's funding of the AGREEMENT shall be on a fiscal year basis (July 1 to June 30) and the AGREEMENT and any extensions are subject to annual appropriations by the City Council.

- C. CONSULTANT agrees that in the performance of this AGREEMENT, CONSULTANT shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this AGREEMENT:
 - 1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.

 - 2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.

3. CONSULTANT acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this AGREEMENT.”

SECTION 2. REVISED EXHIBIT C, “COMPENSATION” is amended to read as shown in SECOND REVISED EXHIBIT C, attached and incorporated by this reference into this SECOND AMENDMENT.

SECTION 3. All of the terms and conditions of the amended AGREEMENT not modified by this SECOND AMENDMENT shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By _____
CHRISTOPHER ALEXANDER
Deputy City Attorney

By _____
LELAND WILCOX
Chief of Staff
Office of the City Manager

“CONSULTANT”

TAX CREDIT ASSET MANAGEMENT,
LLC, a New Hampshire limited liability
company authorized to do business in
California

By _____
ALLEN FELIZ
Vice President

SECOND REVISED EXHIBIT C COMPENSATION

1. Compensation Rate

- a. CITY agrees to compensate CONSULTANT at the hourly rates set forth in subsection b below for professional services performed in accordance with the terms and conditions of this AGREEMENT and any amendments thereto.
- b. CONSULTANT's Basic Hourly Billing Rates:

Position	Hourly Rate
Project Manager: Jenny Netzer	\$275
Lead Consultant: Allen Feliz	\$250
Supporting Consultant: Tracy McDermott	\$250
Supporting Consultant: Alex Finigan	\$150
Analytical Support: Other TCAM staff	\$150

2. Maximum Compensation

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Forty-Five Thousand Dollars (\$445,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

3. Reimbursable Expenses

Each Service Order will specify the maximum amount of expenses for which CITY will reimburse CONSULTANT. The following expenses are reimbursable to the extent CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to CITY, (b) the cost of photographing, reproducing or copying, (c) the cost of a subconsultant, provided the Director has pre-approved, in writing, the use and the cost of such subconsultant, (d) telephone and fax

charges, (e) the rental of any specialized equipment to the extent that the Director has pre-approved, in writing, the cost of such rental, and (f) mileage at the current mileage rate established by the Internal Revenue Service for income tax purposes and (g) any other expenses expressly identified in the Service Order as reimbursable. No other expenses are reimbursable unless the Director has pre-approved, in writing, such expense. Reimbursable expenses shall be at cost, except for the cost of approved subconsultants for which CONSULTANT may apply an administrative fee not to exceed 15% of the subconsultant cost.

4. Invoice

CONSULTANT shall submit to CITY a monthly invoice within fifteen (15) business days of the last day of each month, in arrears, for payment for services performed pursuant to this AGREEMENT. The monthly invoice shall include a statement of work performed and reimbursable expenses incurred during the month. CONSULTANT shall provide supporting documentation for items on the invoice. CITY shall review the monthly invoice submitted by CONSULTANT and within ten (10) working days of receipt of the invoice, CITY shall notify CONSULTANT of any discrepancies or deficiencies in said invoice.

5. Payment to Consultant

Except as otherwise provided in this AGREEMENT, CITY shall make monthly payments within ten (10) business days of CITY's approval of CONSULTANT's invoice. If CITY makes any payments or incurs any costs for which CITY is entitled to reimbursement from any payment otherwise due to CONSULTANT from CITY, CITY may deduct such reimbursement from any payment otherwise due to CONSULTANT from CITY. CITY shall submit to CONSULTANT written documentation in support of such deduction upon CONSULTANT's request. In the event CITY does not deduct such reimbursement from CONSULTANT's payment but submits to CONSULTANT an invoice for reimbursement, CONSULTANT shall reimburse CITY within thirty (30) days of receipt of such invoice.

6. CPI Adjustment (Option Terms Only)

For any Option Terms, CITY will consider an annual adjustment of the CONSULTANT's compensation rates, which adjustment would be made on the first day of the Option Term ("Adjustment Date") and may be up to but not exceeding the increase in the Consumer Price Index ("CPI"). The maximum adjustment would be calculated as follows:

- A. The base for computing the maximum adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San José area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the applicable Adjustment Date ("Extension Index"), shall be compared with the Index published most immediately preceding the prior year's Adjustment Date or, for the first annual adjustment, the Index published most immediately preceding the commencement date of the initial term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the maximum compensation rates for the Option Term shall be determined by multiplying the then expiring year or term's compensation rates by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the compensation rates, the parties shall immediately execute a written amendment to the AGREEMENT setting forth the new compensation rates, and attach the same as a revised exhibit to the AGREEMENT.
- B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the AGREEMENT's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the AGREEMENT such other government index or computation with which

it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

- C. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the maximum compensation rate that may be paid during the extension term shall be: \$ X (the then expiring term's daily compensation rate) multiplied by $124/115$.