



City of Palo Alto

City Council Staff Report

(ID # 10733)

Report Type: Consent Calendar

Meeting Date: 12/9/2019

Summary Title: Approval of Contract Extension for Watershed Protection Outreach Services

Title: Approval of Amendment Number 2 to Contract Number S16161854 With Tandem Creative Inc. for Graphic Design and Public Outreach Services to Extend the Contract Term With No Increase in Maximum Compensation

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council approve and authorize the City Manager or his designee to execute Amendment No. 2 to Contract No. S16161854 with Tandem Creative Inc. (Attachment A) for graphic design and public outreach services to extend the contract term to June 2, 2020 with no increase in maximum compensation.

Background

The City is required to implement pollution prevention and outreach programs for residents, businesses, and industry to reduce the quantity of pollutants that enter the sanitary sewer and storm drain systems. Outreach services are required by both the Municipal Regional Stormwater Permit and the National Pollution Discharge Elimination System (NPDES) Permit.

On March 10, 2016, the City executed Contract S16161854 (Attachment B) with Tandem Creative Inc. (Tandem) to provide graphic design and public outreach services for Public Works–Watershed Protection. On February 5, 2019, Amendment No. 1 to the Contract (Attachment C) extended the contract term six months to September 9, 2019. This extension allowed staff to continue progress on the existing workplan using the remaining budget.

Discussion

Staff recommends that Council approve Contract Amendment No. 2 for a second extension with Tandem to June 2, 2020. This extension would use existing budget and would not require additional funds. This extension is essential to avoid disruption to graphic design services that support the daily outreach operations of four workgroups in the Public Works-Watershed Protection division. This extension is also particularly important for the timely completion of the Clean Bay Plan annual report due in early 2020, a requirement of the City's NPDES Permit.

Staff will undertake a competitive solicitation process for graphic design and outreach services that will result in a new three-year contract when the solicitation process is completed, anticipated in early 2020.

Resource Impact

This contract amendment extends the term of the contract only and does not impact funding.

Policy Implications

Authorization of this amendment does not represent a change in existing policies.

Stakeholder Engagement

Stakeholder engagement is not applicable to this contract amendment.

Environmental Review

The adoption of this amendment is not a project and is not subject to environmental review under provisions of the California Environmental Quality Act (CEQA).

Attachments:

- Attachment A-Tandem Creative Inc. Contract Amendment 2
- Attachment B-Tandem Creative Inc. Contract S16161854
- Attachment C-Tandem Creative Inc. Contract Amendment 1

**AMENDMENT NO. TWO TO CONTRACT NO. S16161854
BETWEEN THE CITY OF PALO ALTO AND
TANDEM CREATIVE, INC. FOR PROFESSIONAL SERVICES**

This Amendment No. Two (this "Amendment") to Contract No. S16161854 (the "Contract" as defined below) is entered into as of December 2, 2019, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and Tandem Creative Inc., a California Corporation, located at 4083 24th Street #460609, San Francisco, CA 94246 ("CONSULTANT"). CITY and CONSULTANT are referred to collectively as the "Parties" in this Amendment.

RECITALS

A. The Contract (as defined below) was entered into by and between the Parties hereto in 2016 for the provision of services to assist the CITY's Watershed Protection staff with developing integrated outreach strategies materials, as detailed therein.

B. The Contract was first amended by amendment dated February 5, 2019 to extend the term through September 9, 2019.

C. The Parties now wish to amend the Contract to further extend the term to June 2, 2020 in order to continue progress on existing workplan, with no increase in maximum compensation as sufficient budget is available under the Contract as originally approved.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. Definitions. The following definitions shall apply to this Amendment:

a. **Contract.** The term "Contract" shall mean Contract No. S16161854 between CONSULTANT and CITY, dated March 10, 2016, as amended by:

Amendment No.1, dated February 5, 2019

b. **Other Terms.** Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 2 "TERM" of the Contract is hereby amended to read as follows:

"The term of this Agreement shall be from the date of its full execution through June 2, 2020 unless terminated earlier pursuant to Section 19 of this Agreement."

SECTION 3. Legal Effect. Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 4. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment **effective** as of the date first above written.

CITY OF PALO ALTO

TANDEM CREATIVE, INC.

City Manager or designee

Officer 1

DocuSigned by:

By:

GREGORY HOLZBAUR

APPROVED AS TO FORM:

Name: GREGORY HOLZBAUR

Title: CEO, Executive Director

City Attorney or designee

Attachments:

None

CITY OF PALO ALTO CONTRACT NO. S16161854**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND TANDEM CREATIVE,
INC. FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this 10th day of March, 2016, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and **TANDEM CREATIVE, INC.**, a California corporation, located at 4083 24th Street #460609, San Francisco, CA 94246 (“CONSULTANT”).

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to develop and administer a series of pollution prevention and outreach programs (“Project”) and desires to engage a consultant to assist in connection with the Project (“Services”).
- B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described at Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

Optional On-Call Provision (This provision only applies if checked and only applies to on-call agreements.)

Services will be authorized by CITY, as needed, with a Task Order assigned and approved by CITY’s Project Manager. Each Task Order shall be in substantially the same form as Exhibit A-1. Each Task Order shall designate a CITY Project Manager and shall contain a specific scope of work, a specific schedule of performance and a specific compensation amount. The total price of all Task Orders issued under this Agreement shall not exceed the amount of Compensation set forth in Section 4 of this Agreement. CONSULTANT shall only be compensated for work performed under an authorized Task Order and CITY may elect, but is not required, to authorize work up to the maximum compensation amount set forth in Section 4.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through March 9, 2019 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A” (“Basic Services”), and reimbursable expenses, shall not exceed eighty four thousand Dollars (\$84,000.00) per contract year. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event Additional Services are authorized, the total compensation for Basic Services, Additional Services and reimbursable expenses shall not exceed eighty four thousand Dollars (\$84,000.00) per contract year. The applicable rates and schedule of payment are set out at Exhibit “C-1”, entitled “SCHEDULE OF RATES,” which is attached to and made a part of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and

subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of CITY's stated construction budget, CONSULTANT shall make recommendations to CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

Option A: No Subcontractor: CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

Option B: Subcontracts Authorized: Notwithstanding Section 11 above, CITY agrees that

subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are:

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Gregory Holzbaaur as the Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

CITY's project manager is Julie Weiss, Public Works Department, Environmental Compliance Division, 2501 Embarcadero Way, Palo Alto, CA 94303, Telephone: 650-329-2117. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed

professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming

CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY's Environmentally

Preferred Purchasing policies which are available at CITY's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONSULTANT shall comply with the following zero waste requirements:

- (a) All printed materials provided by CCONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.
- (c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.

CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 25. NON-APPROPRIATION

25.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 26. MISCELLANEOUS PROVISIONS.

26.1. This Agreement will be governed by the laws of the State of California.

26.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara,

State of California.

26.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

26.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

26.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

26.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

26.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

26.8. In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT's proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT's proposal, the exhibits shall control.

26.9. If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

26.10. All unchecked boxes do not apply to this agreement.

26.11. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

26.12. This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

DocuSigned by:
John Montenero

2584ACDB03DA480...
Purchasing Manager (Required on contracts
over \$25,000)

TANDEM CREATIVE, INC.

DocuSigned by:
GREGORY HOLZBAUR

By: 6488B220264E49A...
GREGORY HOLZBAUR

Name: _____
Title: CEO, Executive Director

APPROVED AS TO FORM:

DocuSigned by:
Albert S Yang

15B6C45220134DC...
Deputy City Attorney
(Required on Contracts over \$25,000)

Attachments:

- EXHIBIT "A": SCOPE OF SERVICES
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "C-1": SCHEDULE OF RATES
- EXHIBIT "D": INSURANCE REQUIREMENTS

EXHIBIT “A” SCOPE OF SERVICES

BACKGROUND:

To fulfill its responsibilities as an operator of the Regional Water Quality Control Plant (RWQCP), and as a co-permittee in the Santa Clara Valley Nonpoint Source Pollution Control Program, the City of Palo Alto is required to develop and administer a series of pollution prevention and outreach programs targeting residents, businesses and industry to reduce the quantity of pollutants entering the sewer and storm drain systems. Outreach is directed by City of Palo Alto staff within the Public Works Environmental Services Division/Watershed Protection for the RWQCP. The RWQCP is owned and operated by the City of Palo Alto, but is funded by and provides service to its six partner agencies: East Palo Alto Sanitary District, Los Altos, Los Altos Hills, Mountain View, Palo Alto, and Stanford.

Because lower South San Francisco Bay has been listed as an impaired water body, the RWQCP public outreach program must be effective and search for new opportunities to inspire behavior change in target groups.

I. Scope of Services

Task 1—Develop Integrated Outreach Strategies and Materials

Examples of RWQCP audiences include: **residents** regarding less-toxic pest control and correct disposal of pesticides, pharmaceuticals, mercury-containing products, vehicle fluids and other potential water pollutants; **businesses and industry** regarding plastics elimination, expanded use of recycled water for irrigation and toilet flushing and environmental compliance requirements; other **government agencies** that the City collaborates with to achieve water pollution prevention goals.

CONSULTANT shall assist Watershed Protection with developing integrated outreach strategies and materials for audiences primarily within the RWQCP service area. Specifically the consultant shall:

- a) Develop an annual outreach plan with the City’s project manager at the start of each calendar year incorporating traditional and social media. The consultant shall assist City staff in strategizing how to reach RWQCP service area target audiences and leveraging the annual advertising budget of \$25,000;
- b) CONSULTANT shall create traditional outreach materials and provide graphic design services to include:
 - i) Utility bill inserts, print and digital ads, factsheets, newspaper articles, Op-Ed pieces, displays, brochures;
 - ii) Formatting and design for annual reports;
 - iii) Promotional items for schools, special events, and businesses;
 - iv) Customized illustrations and artwork for a variety of formats (displays, brochures);

- v) High-resolution photographs with a regional context (e.g., local wildlife, Bay habitats);
 - vi) Images, charts and graphs clearly explaining complicated information or a compelling call to action;
 - vii) Videos and animated images for theater and online advertising;
 - viii) Movie making including story and script development, animation and graphics;
 - ix) Online games;
- c) CONSULTANT shall coordinate with outside printers and in-house City of Palo Alto copying services.

Any artwork designed for this contract shall become the property of the City of Palo Alto.

Task 2– Advertising Administration

The CONSULTANT shall assume administrative responsibilities for the placement and payment of advertising. The CONSULTANT shall:

- a) Establish \$25,000 of the total contract amount (to be added to the consultants contract service amount) for advertising in local theaters, papers, Facebook, web banners and other venues;
 - b) Receive approval for all ads and ad scheduling by the City’s project manager before placement;
 - c) Interact with advertising venues to schedule and confirm ad placement and duration of run
 - d) Ensure accurate billing and timely payment;
 - e) Provide a balance of the advertising budget and current contract balance with each billing cycle and copies of paid invoices itemizing where ad placement occurred;
 - f) Upon request, the CONSULTANT shall provide a detailed report on ad placement in each outreach venue listing which ads ran, total run dates and cost;
 - g) Upon request, CONSULTANT shall place ads and/or utilize creative materials not designed by the consultant for outreach material production as needed.
Administrative fees for placement of these ads shall not exceed those that are for ads designed by the CONSULTANT.
- g) The cost of printing materials shall be covered by the CITY unless otherwise negotiated between CITY and CONSULTANT.

Task 3–Web Content

CONSULTANT shall assist RWQCP staff as needed in developing and maintaining web content for its website www.cleanbay.org and may include creative elements including photographs (including original photography, if needed), graphics, charts and other elements. These services are applied to www.cleanbay.org which serves the RWQCP service area. Staff maintains the website. Significant design changes for the website may be requested of the consultant who will work with the RWQCP and City of Palo Alto IT staff. www.cleanbay.org.

Task 4– Media Relations

The consultant shall:

work closely with RWQCP staff to cultivate relationships with media within its service area with the goal of increasing local media coverage about water pollution prevention. Because the RWQCP's service area is confined to a small geographic location outreach strategies and media contacts must be appropriately targeted and timed to avoid conflict with other Bay Area agency pollution prevention programs and to complement regional media and outreach efforts.

- a) work with staff to develop and maintain a comprehensive outreach resource list that includes local community newsletters and outreach opportunities specific to the RWQCP service area.

Task 5—Language Translations

The consultant shall provide print and audio language translations for Spanish, Korean, Cantonese and other languages as needed.

III. Environmentally Preferable Practices and Green Business Certification

The City is a Santa Clara County Certified Green Business. The City encourages the businesses it works with to adopt environmentally preferable practices. It is expected that for printing materials the consultant will:

- a) specify at least 30% post consumer recycled content paper and preferably 100% post-consumer content processed chlorine-free.
- b) place the recycled-content logo and paper specifications (e.g., "Printed on 100% post-consumer recycled content, process chlorine free paper") on all printed materials.

**EXHIBIT B
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

<p>Task 1–Develop integrated outreach strategies and materials</p> <p>CONSULTANT shall develop 2016-17 Outreach Plan with City’s Project Manager by May 1, 2016</p>
<p>Task 2– Advertising administration.</p> <p>CONSULTANT shall:</p> <ul style="list-style-type: none"> a) provide an advertising schedule for approval for each campaign within ten days of request by the CITY’s project manager (unless agreed to otherwise); b) Assume monthly administrative responsibilities for the timely placement and payment of advertising.
<p>Task 3–Website content</p> <p>CONSULTANT shall provide technical and creative services for cleanbay.org as needed by the date mutually agreed by CONSULTANT and CITY’S Project Manager for each campaign.</p>
<p>Task 4– Media relations</p> <p>CONSULTANT shall provide media relations services as specified by the RWQCP outreach plan by the date mutually agreed by CONSULTANT and CITY’S Project Manager.</p>
<p>Task 5–Language translations</p> <p>CONSULTANT shall provide print and audio language mutually agreed by CONSULTANT and CITY’S Project Manager at the time of the requested translation.</p>

EXHIBIT "C" COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement based on the Schedule of rates attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Services") and reimbursable expenses do not exceed the amounts set forth in Section 4 of this Agreement. CONSULTANT agrees to complete all Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed the amounts set forth in Section 4 of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$250 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expenses, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

**EXHIBIT “C-1”
SCHEDULE OF RATES**

description	rate Basis	rate
blended Rate	Per hour	\$110
creative direction	Per hour	\$130
graphic design	Per hour	\$100
Project management	Per hour	\$90
copywriting	Per hour	\$90
Proofreading	Per hour	\$90
branding/identity development	Per hour	\$100
Webdesign/development	Per hour	\$130
Web maintenance	Per hour	\$100
twitter maintenance	Per hour	\$90
app design/development	Per hour	\$130
e-newsletter design	Per hour	\$100
eblast design	Per hour	\$100
eblast campaign management	Per hour	\$100
Facebook advertising design	Per hour	\$100
Online ad design	Per hour	\$100
advertising; media Planning/buy	Per hour	\$100
infographic design	Per hour	\$100
Powerpoint design	Per hour	\$100
custom Photography/art direction	Per hour	\$150
stock Photos (Royalty-free)	Per photo	\$25 each
stock Photos (Rights-managed)	Per photo	tbd
Photo editing	Per hour	\$90
illustration	Per hour	\$100
mechanical Production	Per hour	\$90
Press check/Review Print Proofs	Per hour	\$90
travel/mileage Rate	Per hour	tbd
translation services	Per word (1 hr minimum	\$0.50
Web audit/evaluation	Per hour	\$110
movie development (story/script creation, animation graphics)	Per hour	\$150
multi-cultural marketing (adapting campaigns to address the interested of various community groups)	Per hour	\$93
bill insert creation	Per bill insert	\$1,500

**EXHIBIT “C-1”
SCHEDULE OF RATES CONTINUED**

Campaign		
campaign strategy	Per campaign	\$5,000
multicultural design (tandem to adapt approved campaign concept look and feel to target various community groups)	Per campaign	\$1,500
advertising	Per campaign	\$5,000*
bill insert	Per bill insert	\$1,500
Posters	Per poster	\$2,500
Web design	Per hour	\$130
movie	Per movie	\$10,000–
social media	Per campaign	\$5,500*

other		
Facebook ad development	Per page	\$2,000–\$3,000
clean bay Plan document	approx.34 pages	\$2,500
Program Flyer	Per flyer	\$1,000
Program Pamphlet	Per pamphlet	\$2,000
informational magnet	Per magnet	\$750*

***Final cost to be determined based on individual campaign and project needs**

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES		\$1,000,000
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

**AMENDMENT NO. ONE TO CONTRACT NO. S16161854
BETWEEN THE CITY OF PALO ALTO AND
TANDEM CREATIVE, INC. FOR PROFESSIONAL SERVICES**

This Amendment No. One to Contract No. S16161854 (“Contract”) is entered into February 5, 2019 by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and Tandem Creative Inc., a California Corporation located at 4083 24th Street #460609, San Francisco, CA 94246 (“Consultant”). CITY and CONSULTANT are referred to herein collectively as the “Parties.”

RECITALS

A. The Contract was entered into on March 10, 2016 between the Parties for a three-year term for the provision of services to assist the CITY’s Watershed Protection staff with developing integrated outreach strategies materials.

B. The parties wish to amend the Contract to extend the term to September 9, 2019.

C. There are additional work efforts within the Contract’s scope of services that CITY would like Consultant to perform and sufficient budget is available under the Contract to continue progress on that existing workplan for an additional six months.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 2, “TERM”, of the Contract is hereby amended to read as follows:

“The term of this Agreement shall be from the date of its full execution through September 9, 2019 unless terminated earlier pursuant to Section 19 of this Agreement.”

SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.


CITY OF PALO ALTO

TANDEM CREATIVE, INC.

DocuSigned by:

553B4D7C4A004B0


Clara
Chief Procurement Officer

DocuSigned by:

By: GREGORY HOLZBAUR
6488B220261E49A...

Name: GREGORY HOLZBAUR

APPROVED AS TO FORM:

Title: Executive Director

DocuSigned by:

36C6B9D557AF4E3

Sandra Lee
City Attorney or designee