

SECOND AMENDMENT TO AGREEMENT

This SECOND AMENDMENT to AGREEMENT for SERVICES is dated for identification this 3rd day of June 2024 and amends that certain First Amendment to Agreement for Consultant Services dated February 1, 2022, made by and between the Town of Los Gatos, ("Town,") and H.A. Bowen Electrical Inc. ("Service Provider") and whose address is 2055 Williams Street, San Leandro, CA 94577.

RECITALS

- A. Town and Service Provider entered into an Agreement for Services for On-call Electrical Services on August 10, 2021, ("Agreement"), a First Amendment to Agreement for Consultant Services on February 1, 2022, copies of which are attached hereto and incorporated by reference as Exhibit A to this Agreement.
- B. Town desires to amend the Agreement to extend the term and time of performance and adjust the compensation.

AMENDMENT

- 1. 2.2 Term and Time of Performance is amended to read as follows:

This contract will remain in effect from August 10, 2021, and extend to June 30, 2026.

- 2. 2.6 Compensation is amended to read as follows:

Additional compensation for Service Provider's professional services shall be increased as follows:

FY 2024/25 = \$20,000 + \$4,000 for unanticipated services = \$24,000

FY 2025/26 = \$20,000 + \$4,000 for unanticipated services = \$24,000

For a total agreement amount **not to exceed \$145,335** inclusive of all costs. Payment shall be based upon Town approval of each task as described in Exhibit B.

- 3. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos:

DocuSigned by:

Laurel Prevetti

6/26/2024

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Laurel Prevetti, Town Manager

Approved as to Consent:

DocuSigned by:

Rich Gillespie

6/21/2024

C8A865D1FE47489...

Rich Gillespie, Superintendent

Department Approval:

DocuSigned by:

Nicolle Burnham

6/21/2024

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Nicolle Burnham

Director of Parks and Public Works

Approved as to Form:

DocuSigned by:

Gabrielle Whelan

6/25/2024

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Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:

Wendy Wood

6/26/2024

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Wendy Wood, CMC, Town Clerk

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This AMENDMENT TO AGREEMENT is dated for identification this 1st day of February 2022 and amends that certain Agreement for Services dated August 10, 2021, made by and between the Town of Los Gatos, ("Town,") and the H.A. Bowen Electrical, Inc. ("Service Provider").

RECITALS

- A. Town and Consultant entered into an Agreement for Services on August 10, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement for Services for on-call electrical services to increase compensation for the Scope of Services for Fiscal Years: 2021/22, 2022/23, 2023/24.

AMENDMENT

2.6 Compensation is amended as described below:

1. Compensation shall amend to read.
FY 21/22: Not to exceed \$11,100, plus \$21,235 for unanticipated services = \$32,335
FY 22/23: Not to exceed \$11,100, plus \$21,400 for unanticipated services = \$32,500
FY 23/24: Not to exceed \$11,100, plus \$21,400 for unanticipated services = \$32,500

Total agreement not to exceed \$97,335)
(Prior agreement = \$49,500 + Amendment = \$97,335)

2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos

By: DocuSigned by:
Laurel Prevetti 2/14/2022
853FEFA2EB39470...
Laurel Prevetti, Town Manager

Service Provider, by:

By: DocuSigned by:
Rich Gillespie
C8A965D1FE47489...

Recommended by:

DocuSigned by:
Matt Morley 2/9/2022
BBA0B3B0D8F4484...
Matt Morley, Director of Parks and Public Works

Approved as to Form:

DocuSigned by:
Robert W. Schultz 2/11/2022
2FE0936555B744C...
Robert Schultz, Town Attorney

Attest:

DocuSigned by:
Shelley Neis 2/14/2022
B9060F05B1F34F6...
Shelley Neis, MMC, CPMC, Town Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 10th day of August 2021, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and H.A. Bowen Electrical whose address is 2055 Williams Street, San Leandro, CA 94577. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town sought quotations for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to provide On-call Electrical Services.
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on July 15, 2021, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin upon execution and will continue through June 30, 2024 subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

2.6 Compensation. Compensation for services shall be:

FY 21/22: Not to exceed \$11,100, plus \$5,400 for unanticipated services = \$16,500

FY 22/23: Not to exceed \$11,100, plus \$5,400 for unanticipated services = \$16,500

FY 23/24: Not to exceed \$11,100, plus \$5,400 for unanticipated services = \$16,500

For a total agreement amount not to exceed \$49,500, inclusive of all costs. Payment shall be based upon Town approval of each task.

2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

2.8 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.

- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Service Provider agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

- 3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Prevailing Wages. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.

- 4.4.1 The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
- 4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
- 4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
- 4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a

registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.

- 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.
- 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.
- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 4.6 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:
- | | |
|--|---|
| Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030 | H.A. Bowen Electrical
2055 Williams Street,
San Leandro, CA 94577 |
|--|---|
- or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.
- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.

Town of Los Gatos by:

DocuSigned by:

Laurel Prevetti

9/2/2021

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Laurel Prevetti, Town Manager

H.A. Bowen Electrical by:

DocuSigned by:

Rich Gillespie

8/31/2021

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Recommended by:

Matt Morley

9/1/2021

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Matt Morley, Director of Parks and Public Works

Superintendent

Title

Approved as to Form:

DocuSigned by:

Robert W. Schultz

9/2/2021

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Robert Schultz, Town Attorney

Attest:

DocuSigned by:

Shelley Neis

9/2/2021

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Shelley Neis, MMC, CPMC, Town Clerk

July 15, 2021

Request for Quotes:

On call and Electrical Services for the Town of Los Gatos.

The Town of Los Gatos is seeking Electrical Services for both on-call emergency and planned repairs for Town facilities. All work for the Town requires prevailing wage and registration with the State Department of Industrial Relations (DIR).

Please provide hourly rate and cost information below:

Journeyman	Regular time	<u>180</u>	Overtime	<u>290</u>
Apprentice	Regular time	<u>135</u>	Overtime	<u>220</u>
Call – out	minimum charge	<u>2 HR</u>		
Vehicle charge		<u>30</u>		
Materials mark-up		<u>20%</u>		
Rental equipment mark-up		<u>20%</u>		

Company Name H.A. Bowen Electric Inc.

Address 2055 Williams Street

License # 384915

Contact Name Richard Gillespie

Email RichG@BowenElectric.com

Phone (510) 385-1712

Send to:

Dan Keller, Facilities & Environmental Services Manager

Parks & Public Works Dept. - Town of Los Gatos

dkeller@losgatosca.gov

41 Miles Ave, Los Gatos, CA 95030

(408) 395-5310



6/5/2024

Daniel Keller

Facilities & Environmental Services Manager
Town of Los Gatos
41 Miles Ave.
Los Gatos, CA 95030
dkeller@losgatosca.gov

Rich Gillespie

Project Manager
H.A. Bowen Electric, Inc.
2055 Williams St
San Leandro, CA 94577
richg@bowenelectric.com

PROJECT: **2 Year Service Proposal- Town of Los Gatos**

Thank you for the opportunity to provide a price for the electrical portion of work on the above mentioned project. Bowen Electric is a union contractor and a member of the NECA. Our scope of work is based on the following:

Scope of Work:

- ▶ All work is assumed to take place during regular working hours.
- ▶ Proposal is for \$20,000 for each year, for a total of \$40,000. 7/1/2024 to 6/30/26
- ▶ Standard non-emergency service call response 24hrs.
- ▶ Emergency service call response within 4hrs.

Final Price \$ 40,000

Thank you for your time in reviewing this proposal. Please feel free to contact me if you need any further information.

Sincerely,
Richard Gillespie
Project Manager



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/18/2024

ITEM NO: 4

DATE: June 3, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Second Amendment to Agreement for Services with H. A. Bowen Electric Inc. to Extend the Term through June 30, 2026 and Increase the Compensation Amount by \$48,000 for a Total Agreement Amount Not to Exceed \$145,335

RECOMMENDATION:

Authorize the Town Manager to execute a second amendment to Agreement for Services with H. A. Bowen Electric Inc. to extend the term through June 30, 2026 and increase the compensation amount by \$48,000 for a total agreement amount not to exceed \$145,335.

BACKGROUND:

On August 10, 2021, the Town entered into an Agreement for Services with H. A. Bowen Electric Inc. to provide on-call electrical services and repairs for Town facilities, emergencies, unforeseen infrastructure work, and downtown decorative lighting. The agreement was amended on February 1, 2022, and is set to expire on June 30, 2024.

DISCUSSION:

Staff recommends extending the agreement term through June 30, 2026, and adjusting the compensation amount not to exceed \$145,335. This would allow for continued coverage for unforeseen electrical repairs, emergencies, after-hours response, and downtown decorative lighting repairs for the Town. The extension would provide continuous electrical service coverage and allow staff time to evaluate the agreement's scope of work to determine if a formal bid for a larger compensation amount is necessary for future electrical needs.

PREPARED BY: Daniel Keller
Facilities and Environmental Services Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Parks and Public Works Director

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to Agreement for Services with H. A. Bowen Electric Inc., to Extend the Term through June 30, 2026 and Increase the Compensation Amount by \$48,000 for a Total Agreement Amount Not to Exceed \$145,335

DATE: June 3, 2024

CONCLUSION:

Authorize the Town Manager to execute a Second Amendment to Agreement for Services with H. A. Bowen Electric Inc. to extend the term through June 30, 2026 and increase the compensation amount by \$48,000 for a total agreement amount not to exceed \$145,335.

FISCAL IMPACT:

The Adopted Fiscal Year (FY) 2024/25 Parks and Public Works Facilities Program Operating Budget includes sufficient funds to cover the contract amendment in the amount of \$24,000 for FY 2024/25.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA and is Categorically Exempt (Section 15301) as a modification to an existing facility.

Attachment:

1. Second Amendment to Agreement for Services with Exhibit A (First Amendment and Original Agreement) and Exhibit B (New Proposal)