

First

Amendment to Master City of San José Consultant Agreement

(Capital Projects)

Second

Third

Consultant's Name: Conger Moss Guillard (CMG Landscape Architecture)

Fourth

**(PRNS Contract No.645725)
(Master Agreement AC No. 662484-0)**

This Amendment to the Master Agreement is made and entered into this 10th day of May, 2022. The City and the Consultant amend the above-referenced agreement as set forth herein.

1. Capitalized words in this Amendment have the same meaning as in the Master Agreement.
2. The provisions of this Master Agreement (including any previous amendments) not modified by this Amendment remain in full force and effect.
3. The provisions of this Amendment are effective upon execution of the Amendment by both parties.

4. **Agreement Term:** Section 2 is amended to extend the expiration date from December 31, 2022 to December 31, 2023.
5. **Maximum Total Compensation:** Subsection 10.1 is amended to Increase Decrease the Maximum Total Compensation from \$2,620,878 to \$2,750,000.
6. **Agreement Section(s):** Section(s) _____ is/are amended to read as set forth in Attachment A of the Amendment.
7. **Schedule of Rates and Charges – Exhibit B:** The original First Revised Second Revised Third Revised Exhibit B is amended to read as set forth in the attached First Second Third Fourth Revised Exhibit B, which is incorporated by reference into this Amendment.

This Amendment is executed by the authorized representatives of the City and Consultant as follows:

City of San José

Consultant

By Sarah Zarate 06/17/2022

By Willet Moss 06/17, 2022

Name: Sarah Zarate **Date**
Title: Director, City Manager's Office

Name: Willett Moss **Date**
Title: Partner

Approval as to Form (City Attorney):

Form Approved by the Office of the City Attorney.

(The Maximum Total Compensation, as amended, is \$100,000 or less, and the provisions of the form are not altered.)

Approved as to Form:

[Signature] 6/15/2022
[Sr.] Deputy City Attorney **Date**

First

Revised Exhibit B: Schedule of Rates and Charges

Second

(Capital Project)

Third

Fourth

This revised Exhibit B is an attachment to the First Second Third Fourth amendment to Master Agreement.

The rates and charges set forth in the original Exhibit B, or in any previous amendment to the original Exhibit B, are amended as follows:

RATE SCHEDULE 2022

(All Rates Indicated Shall Be in Effect from January 1, 2022 until December 31, 2022)

PLANNING AND DESIGN SERVICES BILLING RATES

Principal \$240 - \$310
LA-5 Senior Project Manager/ Senior Landscape Architect \$205
LA-4 Project Manager/ Landscape Architect \$180
LA-3 Project Captain \$160
LA-2 Project Designer \$140
LA-1 Designer \$125
CAD Tech/Intern \$80
Project Assistant \$85

MISCELLANEOUS FEES

The following services and fees are billed at cost plus 10%

- Subcontracted Services
- Transportation, meals, and lodging for overnight travel and incidental travel expenses.
- Commercial delivery services, including Federal Express, Express Mail and Messenger Services.
- Printing and Copies

MILEAGE

Unless agreed otherwise in the Professional Services Agreement, Consultant charges all project related mileage at the prevailing IRS rate per mile.

OFFICE REPROGRAPHICS CHARGES

B&W Plot-Bond \$1.65/sf
Color Plot-Bond \$5.50/sf
Color Plot-Presentation Satin \$8.25/sf
Color Laser 8.5x11 \$0.25ea
Color Laser 11x17 \$0.50ea
B&W Laser 8.5x11 \$0.10ea
B&W Laser 11x17 \$0.20ea
Color Photocopies (up to 11"x17") \$0.50ea



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Risk Strategies Company 2040 Main Street, Suite 450 Irvine, CA 92614 www.risk-strategies.com CA DOI License No. 0F06675	CONTACT NAME: Risk Strategies Company PHONE (A/C No. Ext): 949-242-9240 FAX (A/C, No): E-MAIL ADDRESS: syoung@risk-strategies.com																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : The Hanover American Insurance Company</td> <td></td> <td>36064</td> </tr> <tr> <td>INSURER B : Arch Insurance Company</td> <td></td> <td>11150</td> </tr> <tr> <td>INSURER C :</td> <td></td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : The Hanover American Insurance Company		36064	INSURER B : Arch Insurance Company		11150	INSURER C :			INSURER D :			INSURER E :			INSURER F :	
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INSURED Conger Moss Guillard, Inc. dba CMG Landscape Architecture 444 Bryant St. San Francisco CA 94107																					

COVERAGES

CERTIFICATE NUMBER: 66360161

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	OZ3D617755	6/26/2021	6/26/2022	EACH OCCURRENCE	\$ \$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ \$1,000,000
							MED EXP (Any one person)	\$ \$10,000
							PERSONAL & ADV INJURY	\$ \$2,000,000
							GENERAL AGGREGATE	\$ \$4,000,000
							PRODUCTS - COMP/OP AGG	\$ \$4,000,000
								\$
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			OZ3D617755	6/26/2021	6/26/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ \$2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input checked="" type="checkbox"/>	WZ3H661249	7/1/2021	7/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	Y/N <input type="checkbox"/> N/A						E.L. EACH ACCIDENT	\$ \$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ \$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ \$1,000,000
B	Professional Liability			PAAEP0014605	6/26/2021	6/26/2022	Per Claim: \$2,000,000 Aggregate: \$4,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Projects as on file with the insured including but not limited to St. James Park.
 The City of San Jose, its officials, employees, agents and contractors are named as additional insureds and primary/non-contributory clause applies to the general liability policy and a waiver of subrogation in favor of the additional insureds applies to the general liability and work comp policies-see attached endorsements.
 The above policies contain a 30-day notice provision for non-renewal and cancellation, 10-day notice for non-payment of premium.

CERTIFICATE HOLDER**CANCELLATION**

City of San Jose - Finance Dept.
 Risk Management
 200 E. Santa Clara St., 14th Fl.
 San Jose CA 95113-1905

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

RSC Insurance Brokerage

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ACORD 25 (2016/03)

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INSTRUCTIONS FOR INSURANCE APPROVAL:

Forward the following to: **RISK & INSURANCE**

200 E. Santa Clara Street 14th Floor

San Jose, CA 95113-1905

Riskmgmt@sanjoseca.gov

1. This form (149-7) completed;
2. Copy of face page of Contract;
3. Copy of insurance requirements included in contract.
4. Copy of Service Provider's certificate of insurance.

NOTIFICATION OF CONTRACT BEING PROCESSED

DATE: 2/3/22

Service Provider:	CMG Landscape Architecture	Phone No.	415-757-2040
Project:	Consultant Services		
		Project Amount:	\$2,620,878
Estimated Start Date	Upon Execution	Estimated Completion Date	12/31/22
Scope of Work: This is the Fourth (4th) Amendment to the Master Agreement, which changes the term end date to 12/31/2022 and adds \$1,595,878 to the agreement.			
Department	PRNS	Division	ASD
Department Contact	Alex Niles	Ph./Ext:	(408) 793-5592
		Fax:	

COMPLIANCE WITH INSURANCE REQUIREMENTS

Comments: The certificate dated 01-21-22 meets the requirements of the agreement. We note that Auto Liability has been added to the General Liability policy where the Additional Insured status has been granted.	
Signature: <u>AN</u> Risk & Insurance	Date: 2-8-22

FOR RISK & INSURANCE USE ONLY

Date Forwarded to City Clerk:

Date forwarded to City Clerk:

COMPLIANCE WITH BOND REQUIREMENTS

Signature: _____ City Clerk	Date: _____
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Certificate of Insurance Checklist

	(Yes)	(No)
A. Insured name on certificate of insurance must match the contract face page	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. Insurance coverages should match those found in the insurance requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C. Limits of insurance should meet or exceed those found in the insurance requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
D. All documented policies must be current and not expired	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E. The City of San José should be an Additional Insured on the Vendor's General and Auto Liability policies	<input checked="" type="checkbox"/>	<input type="checkbox"/>
F. The workers' compensation policy should document a waiver of subrogation in favor of the City of San José	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If any of the following has been marked as a (No) then request an updated Certificate of Insurance from the Vendor before submission		



Memorandum

TO: Sarah Zarate, Director
City Manager's Office

FROM: Jon Cicirelli
Director of PRNS

SUBJECT: Approval of Retroactivity

DATE: May 19, 2022

Approved

Sarah zarate

Date

6/17/2022

SUBJECT: APPROVAL OF RETROACTIVITY IN THE AGREEMENT FOR THE FOURTH AMENDMENT TO THE CMG LANDSCAPE ARCHITECT AGREEMENT

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Parks, Recreation, and Neighborhood Services (PRNS) Department is seeking authorization for the retroactive provision to pay for services in the Fourth Amendment to the CMG Landscape Architect agreement.

The justification for the request to include a retroactivity provision is that the agreement:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:

May 19, 2022

Subject: CMG Landscape Architect

Page 2

In this case, project approvals were granted by the City in November 2020. Around January 2021, the City was notified of litigation filed by St. Claire Club regarding the construction of a concert stage in St. James Park. Staff was directed to proceed with the 65% design in Spring 2021 and the work was funded in the FY 2021-22 Capital budget.

Throughout the Summer and Fall of 2021, Mayor San Liccardo worked with the St. Claire Club to negotiate a settlement, including the potential to relocate the pavilion to another area of the park. The consultant began a potential relocation study in September 2021. The negotiations ended in the Fall 2021, and staff notified the consultant on December 3, 2021. The consultant was then directed to commence work on the 65% design on December 17, 2021.

PRNS acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.



On behalf of Jon Cicirelli

Jon Cicirelli

Director

Parks, Recreation and Neighborhood Services

For questions please contact Petra Riguero, Program Manager, at (408) 793-4198 or via e-mail at petra.riguero@sanjoseca.gov.





- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Alex Niles
 EMAIL: Alex.Niles@sanjoseca.gov

SCANNED SIGNATURE AUTHORIZATION

DATE: JUNE 17, 2022
 To: WILVETT MOSS
 EMAIL: WMOSS@CMG SITE.COM
 PHONE: 415-265-4294

TOTAL PAGES:
 (INCLUDING THIS PAGE) 3
 To: N/A
 EMAIL: _____
 PHONE: _____

I agree to use electronic signatures

I agree to use electronic signatures

BY: [Signature]

BY: _____

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE IN COLOR
4. EMAIL THE ENTIRE DOCUMENT TO

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

- TO: City Attorney
 City Manager
 City Clerk **OR** Return to Dept. (circle one)

- Insurance Certificates / Waivers Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: Amendment

Type of Contract: Consulting Services

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 662484-008

Contractor: CMG Landscape Architecture

Address: 444 Bryant Street San Francisco, CA 94107

Phone: (415) 757-2040

Email: wmoss@cmgsite.com

Contract Description: This is the Fourth Amendment to Master Agreement GILES #662484, to change the term end date to 12/31/2023, increase total compensation to \$2.75 million, and change the Consultant's pay rate schedule effective 1/31/2022.

Term Start Date: 1/1/2022 Term End Date: 12/31/2023 Extension: No

Method of Procurement: RFP RFB, RFP or RFQ No.: PRNS052316 Date Conducted: 5/23/2016

Agenda Date (if applicable): 5/10/2022

Agenda Item No.: 2.9

Resolution No.: 80448

Ordinance No.: N/A

Original Contract Amount: \$2,620,878

Amount of Increase/Decrease: \$129,122

Option #: of Option Amount: N/A

NTE/Updated Contract Amount: \$2,750,000

Fund/Appropriation: 375 / 404S

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: 0773360130

Expiration Date: 10/15/2022

Department: PRNS (64)

Department Contact: Alex Niles Customer (Finance Only): _____

Notes:
 PRNS DB# 647203
 PRNSContracts@sanjoseca.gov
 Contract Manager: Han-Lei Wang

Department Director Signature:  On behalf of Jon Cicirelli 6/15/2022
Date

Office of the City Manager Signature: _____
Date