

**THIRD AMENDMENT TO THE MASTER AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
PORTICO, INC.
FOR THE
HAPPY HOLLOW PARK & ZOO PARKS BOND PROJECT**

This THIRD AMENDMENT to the MASTER AGREEMENT is made and entered into this ____ day of ____, 2009, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and PORTICO, INC., a Washington State corporation doing business in the State of California as The Portico Group Inc. (hereinafter "CONSULTANT").

RECITALS

WHEREAS, on the 22nd of January, 2002, the CITY entered into an agreement with CONSULTANT entitled, "MASTER AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE CITY OF SAN JOSE AND PORTICO INC. FOR THE HAPPY HOLLOW PARK & ZOO PARKS BOND PROJECT" (hereinafter referred to as "AGREEMENT"), wherein CONSULTANT is to provide a range of professional services described in said AGREEMENT; and

WHEREAS, on August 31, 2004, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to increase the amount of total compensation allowed and to make various other changes; and

WHEREAS, on August 8, 2006, CITY and CONSULTANT entered into a Second Amendment to the AGREEMENT to increase the amount of total compensation allowed; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT to increase the amount of total compensation by \$150,000 from \$7,750,000 to \$7,900,000 and to extend the term of the AGREEMENT from April 30, 2010 to December 31, 2010;

NOW, THEREFORE, for and in consideration of their mutual promises and subject to the terms, provisions and conditions hereinafter set forth, the parties do hereby agree to further amend the amended AGREEMENT as follows:

1. SECTION 2 of the Agreement, entitled "TERM OF AGREEMENT", is amended to read as follows:

"The term of this AGREEMENT shall be from June 22, 2002 through December 31, 2010, inclusive, subject to the provisions of Section 12 of this AGREEMENT. The CONSULTANT understands and agrees that the terms of this AGREEMENT beyond June 30th of each year is contingent upon the City Council's appropriation of funds for such expense for the subsequent fiscal year. If such funds are not appropriated for such expenditure for such expense for the next fiscal year, the AGREEMENT shall terminate effective June 30th of the last fiscal year in which funds were so appropriated.

2. SECTION 4 of the AGREEMENT, entitled "COMPENSATION", is amended to read as

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follows:

"The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Seven Million Nine Hundred Thousand Dollars (\$7,900,000). The rate and schedule of payment is set out in THIRD REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

- 3. EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this Third Amendment.
- 4. EXHIBIT D, entitled "SCOPE OF SERVICES", is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this Third Amendment.
- 5. All of the terms and conditions of the amended AGREEMENT not modified by this Third Amendment shall remain in full force and effect.

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

"CITY"

APPROVED AS TO FORM:

THE CITY OF SAN JOSE, a municipal corporation

GLENN SCHWARZBACH
Senior Deputy City Attorney

By _____
LEE PRICE, MMC
City Clerk

200 E. Santa Clara Street.
San Jose, CA 95113

The Portico Group Inc.
217 Pine Street Second Floor
Seattle, WA 98101-1500

"CONSULTANT"

PORTICO, INC., a Washington State corporation dba THE PORTICO GROUP INC.

Phone: (206) 621-2196
Fax: (206) 621-2199

By *Dennis E. Meyer* Date *6/2/09*

Employer I.D. 91-1577875

Dennis E. Meyer Date
Vice President
CA License #: 4908 expires 6/30/10

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REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

All work under this agreement shall be completed on or before December 31, 2010. Work shall be initiated at the request of the CITY, and work shall be performed according to the terms defined in each authorized Service Order.

The term and/or schedule of performance of this AGREEMENT may, at the sole discretion of the CITY, be extended up to six months in order to complete specific project work that is authorized by any Service Order prior to December 31, 2010. Extension of the term and/or schedule of performance of the AGREEMENT shall be accomplished only by written authorization of the Director of Public Works or the Director's designated agent, and only in the event that no other provision of this AGREEMENT is modified.

END OF EXHIBIT

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THIRD REVISED EXHIBIT D

COMPENSATION

A. Compensation

The CITY agrees to compensate the CONSULTANT for professional services performed according to the terms and conditions of this AGREEMENT. The maximum amount of compensation payable to the CONSULTANT under this AGREEMENT, including payment for professional services and reimbursable expenses, shall not exceed seven million nine hundred thousand dollars (\$7,900,000.).

The parties shall negotiate lump sum maximum compensation values representing individual Service Orders based upon the CONSULTANT's detailed cost proposal for each service order. Each CONSULTANT proposal shall identify all project direct and indirect cost elements such as hours, rates, and overhead for all material, labor, other direct costs, overhead, and profit associated with producing the professional services. The final negotiated lump sum shall represent the maximum compensation for all services described in each Service Order.

The compensation for each Service Order shall be based on the labor rates set forth in Exhibit G of this AGREEMENT, entitled "2004 Labor Rate Schedule." ("Labor Rates.") Beginning January 1, 2005, the Labor Rates may be increased annually pursuant to the procedures set forth herein. Each Labor Rate increase shall apply only to new Service Orders executed after the effective date of the Labor Rate. No labor Rate increase shall effect any Service Order executed or finally negotiated prior to the effective date of the Labor Rate Increase.

Labor Rate increases shall be calculated using an escalation factor equal to the annual percentage change in the Consumer Price Index ("CPI") for Urban Wage Earners and Clerical Workers in the West Urban Area Size Class A. The actual calculated percent increase shall be used to determine the Labor Rate increases. However, in no event shall an increase exceed five percent (5%) in a single year. The following Effective Base Indices apply to this AGREEMENT:

<u>Index</u>	<u>Schedule</u>
Base CPU rate index (West Urban Area Size Class A)	185.3 - August 2003

Between September 15th and October 15th, inclusive, of each calendar year, the CONSULTANT shall submit to the CITY a written request for a Labor Rate increase to be effective on January 1st of the immediately following calendar year. The Labor Rates shall not be adjusted during a calendar year unless the CONSULTANT has submitted such a written request in a timely manner.

CONSULTANT shall perform the services authorized by the Service Order for the lump sum compensation stated therein and shall not be entitled to any additional compensation, including increased labor rates. Any services, costs, or expenses in excess of the total lump sum maximum compensation specified in a Service Order shall be at no cost to the CITY. The CITY Director of Public Works may authorize additional service orders for work outside the original scope of services.

The CONSULTANT shall not exceed any itemized budget amounts stated in the Service Order without the prior written authorization from the CITY'S Director of Public Works, or an authorized representative provided the aggregate total compensation for all services authorized does not exceed the maximum compensation identified in a Service Order.

The CONSULTANT shall submit a detailed monthly invoice for all services performed under this AGREEMENT during the previous month. The monthly invoice for each phase or task shall describe the services completed during the invoice period and invoice shall list the percentage or portion of work completed according to the Schedule of Compensation in the Service Order. The invoice shall also show the total to be paid for the invoice period, the aggregate amount of payments received to date under the Service Order and the balance of maximum compensation for remaining services on the Service Order. The CONSULTANT shall submit supporting documents, if requested by the CITY, for any invoiced amount shown.

The CITY shall pay the CONSULTANT the entire amount shown on the invoice after receipt of an invoice submitted in the proper format.

B. Reimbursable Expenses

Reimbursable Expenses: All CONSULTANT and SUBCONSULTANT reimbursable costs, including but not limited to: sub-consultant fees, reproduction, communications, CADD work, photocopying, transportation, lodging, meals, postage, telephone, computer time, laboratory fees, materials and supply charges, are a part of the final, negotiated, lump sum compensation stated in each Service Order. The CITY shall not pay additional compensation over an above the Service Order maximum compensation due to reimbursable or any other expenses.

END OF EXHIBIT

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