

**FIRST AMENDMENT TO THE CONSULTANT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
KRONG DESIGN, INC.
RELATED TO THE PLANNING, DESIGN
AND CONSTRUCTION ADMINISTRATION
OF THE
CALABAZAS BRANCH LIBRARY**

THIS AGREEMENT is made and entered into this _____ day of _____, 2010 by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and **KRONG DESIGN, INC.**, a California corporation (hereinafter "CONSULTANT").

RECITALS

WHEREAS, on January 8, 2008, CITY and CONSULTANT entered into an agreement entitled "Consultant Agreement Between the City of San José and Krong Design, Inc. Related to the Planning, Design and Construction Administration of the Calabazas Branch Library" ("AGREEMENT"); and

WHEREAS, the CITY and CONSULTANT desire to amend the AGREEMENT to extend the term from February 28, 2011 to December 31, 2011, and increase the amount of compensation by \$85,000, for a total amount not to exceed \$943,000.

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

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

The term of this AGREEMENT shall be from January 8, 2008 to December 31, 2011, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

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

The compensation to be paid to CONSULTANT, including both payments for professional services and reimbursable expenses, shall not exceed **NINE HUNDRED FORTY-THREE THOUSAND DOLLARS (\$943,000.00)**. The rate and schedule of payment is set out in REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein.

SECTION 4. EXHIBIT C of the AGREEMENT, entitled "SCHEDULE OF PERFORMANCE", is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

SECTION 5. EXHIBIT D of the AGREEMENT, entitled "COMPENSATION", is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this First Amendment.

SECTION 6. All of the terms and conditions of the original AGREEMENT not modified by this First Amendment shall remain in full force and effect.

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

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By



Kenneth D. Johnson
Sr. Deputy City Attorney

By

Lee Price, MMC
City Clerk
200 E. Santa Clara St., 2nd floor Wing
San Jose, CA 95113-1905

"CONSULTANT"

KRONG DESIGN, INC.

a California corporation

By



Steve Krong, AIA
Principal
1950 Park Ave., Suite 210
San Jose, CA. 95126
Telephone (408) 244-7000

Please see the attachment for Notarisation.

Manjula Kanubekta
Notary Public

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Santa Clara

On 28th January 2010 before me, Manjula Kanukuntla, Notary Public
(Here insert name and title of the officer)

personally appeared Steven Leroy Krong

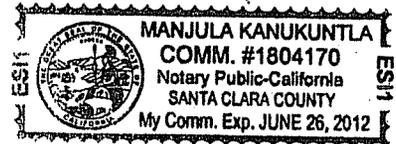
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Manjula Kanukuntla
 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).

DESCRIPTION OF THE ATTACHED DOCUMENT	
<u>First Amendment to the Consultant Agreement Between the City of San Jose and Krong Design, Inc</u>	
<small>(Title or description of attached document)</small>	
<u>and</u>	
<small>(Title or description of attached document continued)</small>	
Number of Pages _____	Document Date _____
<small>(Additional information)</small>	

CAPACITY CLAIMED BY THE SIGNER	
<input type="checkbox"/> Individual (s)	
<input type="checkbox"/> Corporate Officer	
<small>(Title)</small>	
<input type="checkbox"/> Partner(s)	
<input type="checkbox"/> Attorney-in-Fact	
<input type="checkbox"/> Trustee(s)	
<input type="checkbox"/> Other _____	

REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT shall complete all work by **December 31, 2011**.

The following sets forth the distribution of CONSULTANT'S Schedule of Performance. The DIRECTOR may approve in writing the extension of the milestone date set in this EXHIBIT.

Task #1: Program Review & conceptual Design completed by:	02/29/08
Task #2: Schematic Design completed by:	04/30/08
Task #3: Design Development complete by:	06/30/08
Task #4: Construction Documents completed by:	03/31/09
Task #5: Bidding and Award complete by:	02/26/10
Task #6: Construction Administration completed by:	07/30/11
Task #7: Record Documents and PROJECT Close-out completed by:	12/31/11
Task #8: Additional Services (authorized only) completed by:	12/31/11

REVISED EXHIBIT D
COMPENSATION

A. Maximum Compensation:

The CITY agrees to compensate CONSULTANT for professional services performed in accordance with the terms and conditions of this AGREEMENT. The REVISED maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including payments for Basic Services, Additional Services, and Reimbursable Expenses, shall not exceed **NINE HUNDRED FORTY THREE THOUSAND DOLLARS (\$943,000)**. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein, shall be at no cost to the CITY.

Basic Services are all services set forth in EXHIBIT B of this AGREEMENT except for those services described in Task #8 of Section 2 of EXHIBIT "B," entitled Additional Services. CONSULTANT agrees that it shall perform all Basic Services for the lump sum amount of Eight Hundred Eight Thousand Dollars (\$808,000.00). The ORIGINAL maximum amount of Reimbursable Expenses pursuant to PARAGRAPH E of this REVISED EXHIBIT D is **Twenty Thousand Dollars (\$20,000)**, and the maximum amount for Additional Services authorized pursuant to PARAGRAPH F of this REVISED EXHIBIT D is **ONE HUNDRED FIFTEEN Thousand Dollars (\$115,000)**.

B. Method of Payment:

CONSULTANT agrees to perform all the Basic Services for the lump sum amount shown above. CONSULTANT shall, during the term of this AGREEMENT, invoice CITY every month for services performed and reimbursable expenses incurred under this AGREEMENT during the

previous month. Provided services covered by the invoice have been completed in accordance with the provisions of this AGREEMENT, as determined by the CITY, CITY shall pay CONSULTANT the amount shown on the invoice within thirty (30) days of receipt of the invoice.

The monthly invoice shall describe the topics and tasks completed during the invoice period in accordance with the Budget Schedule set forth below.

During the Design phases, task 1 through task 5, and the Record Documents/Project close-out phase, task 7, the CONSULTANT monthly invoice amount shall list the percentage of work completed per phase, and reimbursable expenses in accordance with the Rate Schedule set forth below. During the Construction Administration phase, task 6, the CONSULTANT monthly invoice amount shall not exceed by more than three (3) percent (%) the percentage of construction completion of the PROJECT, based on the contractor’s progress payment of the PROJECT. Supporting documents for reimbursable expenses shall also be included. The invoice shall also show the total to be paid for the invoice period. Schedules are as follows.

C. Budget Schedule:

The Budget Schedule for this AGREEMENT shall be as follows:

	<u>Task Description</u>	<u>Lump-Sum Task Compensation</u>
Task #1:	Program Review & Conceptual Design	\$36,200
Task #2:	Schematic Design	128,700
Task #3:	Design Development	134,600
Task #4:	Construction Documents	330,300
Task #5:	Bidding and Award	13,900
Task #6:	Construction Administration	131,400

Task #7:	Record Documents and Project Close-Out	32,900
	Total Lump Sum:	<u>\$808,000</u>
		Not to Exceed Amounts
Task #8	Additional Services (not to exceed) (See PARAGRAPH F below)	115,000
	Reimbursable Expenses (not to exceed) (See PARAGRAPH D below)	20,000
	TOTAL:	<u>\$943,000</u>

CONSULTANT shall not exceed any of the specified budget amounts for any Task without prior written authorization from the CITY. The CITY may approve in writing the transfer of budget amounts between any of the Tasks and categories listed above provided the total AGREEMENT amount does not exceed **NINE HUNDRED FORTY-THREE THOUSAND DOLLARS (\$943,000.00)**. The CONSULTANT is directly responsible for any payment for SUBCONSULTANT work on this PROJECT. SUBCONSULTANT Work on this PROJECT shall be billed to CITY by the CONSULTANT as Basic Services and shall not be subject to the 15% markup for reimbursable expenses.

D. Reimbursable Expenses:

The cost of express deliveries of deliverables requested and approved by the DIRECTOR, and submitted by CONSULTANT to the CITY and Contractor are reimbursable. Presentation materials in color or black/white, construction documents, printing and plotting charges of CONSULTANT and SUBCONSULTANT work are also reimbursable expenses under this AGREEMENT when produced for a CITY Submittal as identified in the Appendices A through D, including LEED registration fees. Reimbursable expenses are billed with back-up documentation, plus 15%. Any other expenses are included in CONSULTANT'S fee. Printing for public distribution will be the responsibility of the CITY. Any expenses related to CONSULTANT'S internal plan checks, plotting tests, prints in letter or executive size copies, fax

copies, and deliveries between CONSULTANT and SUBCONSULTANTS are not reimbursable.

E. Sub-Consultant Services:

CONSULTANT is directly responsible for any payment for SUBCONSULTANT work related to Basic Services on this PROJECT out of the lump-sum payable to the CONSULTANT for Basic Services. The costs for subconsultant services are not a reimbursable expense.

F. Additional Services:

CONSULTANT shall not perform Additional Services without prior written authorization of the DIRECTOR. Additional Services shall be separately negotiated to be paid on a lump sum or a time and material basis at the rates set forth herein, as authorized by the CITY. The CITY has set aside the sum of **ONE HUNDRED FIFTEEN Thousand Dollars (\$115,000)** for the payment of Additional Services. The CITY shall not authorize and CONSULTANT shall not perform any Additional Services that result in charges in excess of the above amount.

CONSULTANT shall submit an invoice to the CITY for payment on a monthly basis for authorized Additional Services rendered during the previous month. In the event Additional Services are authorized on a time and material basis, CONSULTANT shall submit invoices in accordance with the CONSULTANT hourly rate schedule attached to this REVISED EXHIBIT D. Prior to the expiration of the rates shown in the attached schedule, CONSULTANT may provide a new hourly rate schedule with rates not to exceed 5% of the rate schedule attached to this REVISED EXHIBIT D. New rates are subject to DIRECTOR approval, once the current schedule expires, through an authorization approval letter executed by the DIRECTOR. CONSULTANT current rates expires as noted in exhibit D-1. The CITY shall pay Additional Services invoices as provided in this REVISED EXHIBIT D.