ORIGINAL

SECOND AMENDMENT TO SERVICE PROVIDER AGREEMENT

This Second Amendment to the Service Provider Agreement, entered into this _____ day of February, 2018, by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter "City") and Macks Craic, Inc., (Mack5), a California corporation whose address is 1900 Powell Street, Emeryville, CA 94608, (hereinafter "the Provider"), is made with reference to the following:

RECITALS:

A. On July 5, 2016, an agreement was entered into by and between City and Provider (hereinafter "Agreement") by which Provider would provide Construction Management Services for the construction of several park projects in an amount not to exceed $488,775.

B. On November 15, 2016, the City issued a Notice to Proceed to Provider for the construction management services for the Cross Alameda Trail at Jean Sweeney Open Space Park ("Cross Alameda Trail"), in an amount not to exceed $106,470.

C. On July 18, 2017, the Agreement was first amended to provide additional compensation and a revised scope of work for Construction Management Services for Estuary Park, in an amount not to exceed $100,899, for a total contract amount not to exceed $589,674.

D. City and Provider desire to modify the Agreement as amended, further to provide additional services for construction management services for the Cross Alameda Trail, on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Paragraph 2, **SERVICES TO BE PERFORMED**, of the Agreement is modified to read as follows:

"Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A, in Provider's letter attached as Exhibit A-1, dated June 16, 2017 and in Provider's letter dated January 19, 2018 attached as Exhibit A-2. The Provider acknowledges that the services set forth in Exhibits A, A-1 and A-2 are tentative and do not commit the City to request Provider to perform all tasks included therein."

2. Paragraph 3, **COMPENSATION TO CONSULTANT**, of the Agreement is modified to read as follows:

b. "The total compensation for the scope of services under the Agreement, as amended, for the Cross Alameda Trail is not to exceed $106,470 and the total compensation for the scope of services under this Agreement, as amended, is not to exceed $40,000 for the services in Exhibit A-2. The total compensation for services under this Agreement, as amended, which includes services for the Estuary Park, Cross Alameda Trail, and Jean Sweeney Open Space Park (Phases 1, 2, and 4) is increased from $589,674 to an amount not to exceed $629,674."

3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

Signatures on following page

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

MACKS CRAIC, INC.
A California Corporation

Manil Bajracharya
President

Eve Nelson
Chief Financial Officer

CITY OF ALAMEDA
A Municipal Corporation

Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL:

Amy Wooldridge
Recreation and Parks Director

APPROVED AS TO FORM:
City Attorney

Michael Roush
Assistant City Attorney

mack5

Project: City of Alameda - Estuary Park #16531a
Additional Service Request 01R (Revised)
Date: June 16, 2017
Scope: Construction Management Services

Background

This Additional Service Request consists of additional Construction Management services due to provision of 1) pre-construction phase services that were not part of base scope and 2) construction duration schedule extension.

Pre-construction Phase Services

Our services consisted of the following during July and August 2016:

1. Follow-up to 6/30 Pre-Preconstruction Meeting with Owner Team.
2. Project controls set-up
3. Preparation, execution, and follow-up for 7/13 Preconstruction Meeting
4. Submittals 1-36 and RFIs 1-17 and 26
5. Discussion and participation in decisions on various construction issues
6. Initial OAC meeting on 8/29/16 and follow-up
7. Process and respond to emails

The Add Service Fee below is $15,609, which represents Senior Project Manager - 29 hours @ $165 ($4,785) and Project Engineer - 88 hours @ $123 ($10,824).

Construction Phase Services

The base mack5 fee reflects 7.5 months of Construction Phase services. Due primarily to weather and the contaminated soils issues, the mack5 construction phase duration is now expected to run at least 13 months (5.5 additional months), with construction substantial completion now expected by or before September 29, 2017.

For April-July 2017, the mack^5 staffing requirements and fee will be at the same level as our base proposal ($17,670/mo). For August-September 2017, in consideration of the City's budget restraints, mack^5 will reduce our base fee by $3,000 per month to $14,670 ($6,000 total reduction). In recognition of the fact that substantial completion may occur before September 29, 2017, mack^5 has agreed to bill the September fee ($14,670) on a time-expended basis.

Phase & Month	Base Contract Fee	Add Service Fee
Pre-Construction Phase		
July & Aug 2016		15,609
Construction Phase		
Sept 2016	17,670	
Oct 2016	17,670	
Nov 2016	17,670	
Dec 2016	17,670	
Jan 2017	15,690	
Feb 2017	15,195	
Mar 2017	17,670	
Apr 2017	14,730	2,940
May 2017		17,670
Jun 2017		17,670
Jul 2017		17,670
Aug 2017		14,670
Sep 2017 (as needed)		14,670
Close-Out Phase	9,870	
Total Not-to-Exceed Fee	143,835	100,899

Total Revised Fee: $244,734

Project: City of Alameda – Cross Alameda Trail (CAT) #16531b
Additional Service Request 01
Date: January 19, 2018
Scope: Construction Management Services

Background

This Additional Service Request consists of additional Construction Management services due to provision of 1) pre-construction phase services that were not part of base scope and 2) construction duration schedule extension.

Pre-construction Phase Services

The mack5 contracted fee allowed for 2 months / 70 hours of pre-construction phase services. However, mack5 provided services in 8 months, with a total of 121 hours, on issues including:

- Review of draft plans and specifications
- Bid package consultation, pre-bid meeting, pre-bid site walk
- Documents and LAPM review; bid process consultation, bid communications, bid results analysis
- Caltrans Pre-Construction Oversight Meeting and follow-up, Owner's budget and cost reduction consultation/discussions
- Cost reduction discussions and meetings; Construction Management Phase set-up

Though the duration of our services was substantially longer than our fee allowed, as previously agreed we are asking for additional fee only for our time in June 2017, which is equal to $3,327 (6 PM hours @ $165 and 19 PE hours @ $123).

Construction Phase Services

The base mack^5 fee, which commenced July 1, 2017, reflects 5 months of Construction Phase services. The mack^5 construction phase duration is now expected to run more than 7 months, with substantial completion now expected early February, 2018.

For December 2017 – January 2018, the mack^5 staffing requirements and fee will be at the same level as our base proposal ($17,262/mo).

For early February 2018, mack^5 will provide an allowance of $2,149 for Construction Phase services, which will be billed on a time-expended basis. Once this allowance is expended, mack^5 will have no further obligation to provide Construction Phase services for the Project.

Additional Service Request Summary

Phase & Month	Base Contract Fee	Add Service Fee
Pre-Construction Phase		
June 2017	10,290	3,327
Construction Phase		
Jul 2017	17,262	
Aug 2017	17,262	
Sep 2017	17,262	
Oct 2017	17,262	
Nov 2017	17,262	
Dec 2017		17,262
Jan 2018		17,262
Feb 2018		2,149
Close-Out Phase	9,870	
Total Not-to-Exceed Fee	**106,470**	**$40,000**

Total Revised Fee: $146,470

MACKCRA-01

BENJAMINM

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/29/2017

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 License # 0E67768
IOA Insurance Services
3875 Hopyard Road
Suite 240
Pleasanton, CA 94588

CONTACT NAME: Cassandra Thompson
PHONE (A/C, No, Ext):
FAX (A/C, No): (925) 416-7869
E-MAIL ADDRESS: Cassandra.Thompson@ioausa.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : RLI Insurance Company	13056
INSURER B : U.S. Specialty Insurance Company	29599
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Macks Craic, Inc. dba Mack5
1900 Powell St., Suite 470
Emeryville, CA 94608

COVERAGES **CERTIFICATE NUMBER:** **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	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:			PSB0001139	07/01/2017	07/01/2018	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			PSA0001031	07/01/2017	07/01/2018	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $			PSE0001054	07/01/2017	07/01/2018	EACH OCCURRENCE AGGREGATE	$ 4,000,000 $ 4,000,000 $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		PSW0001114	07/01/2017	07/01/2018	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
B	Professional Liab.			USS1727607	04/10/2017	04/10/2018	Per Claim	2,000,000
B	Professional Liab.			USS1727607	04/10/2017	04/10/2018	Aggregate	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Alameda Parks
All operations of the Named Insured including project referenced, if any.
General Liability: City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers are included as Additional Insured on Primary & Non-Contributory basis with Waiver of Subrogation included, as required by written contract.
Auto Liability: City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers are included as Additional Insured with Waiver of Subrogation included, as required by written contract.
Workers' Compensation: Waiver of Subrogation is in favor of City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers, as required by written contract.

CITY OF ALAMEDA
Risk Management

CERTIFICATE HOLDER

Date 2-5-18
Lucretia Akil, City Risk Manager

City of Alameda
Attn: Risk Manager
2226 Santa Clara Avenue
Alameda, CA 94501

CANCELLATION

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
Reno Caldwell

CITY OF ALAMEDA
Risk Management

Date

Lucretia Akil, City Risk Manager

Policy Number: PSB0001139
Named Insured: Macks Craic, Inc.

RLI Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RLIPack® FOR PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:
   - **a.** In the performance of your ongoing operations;
   - **b.** In connection with premises owned by or rented to you; or
   - **c.** In connection with "your work" and included within the "product-completed operations hazard".
2. The insurance provided to the additional insured by this endorsement is limited as follows:
   - **a.** This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
   - **b.** This insurance does not apply to the rendering of or failure to render any "professional services".
   - **c.** This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.
3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

   However, if you specifically agree in a contract or agreement that the insurance provided to an additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:
   - **a.** The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
   - **b.** The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.
4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

   We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

CITY OF ALAMEDA
Risk Management
Date 2-5-18
Lucretia Akil, City Risk Manager

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

CITY OF ALAMEDA
Risk Management

Date

Lucretia Aill, City Risk Manager

Policy Number: PSA0001031

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

A. Broad Form Named Insured

The following is added to the **SECTION II – LIABILITY Coverage,** Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

B. Employees As Insureds

The following is added to the **SECTION II – LIABILITY COVERAGE,** Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Blanket Additional Insured

The following is added to the **SECTION II – LIABILITY COVERAGE,** Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

D. Blanket Waiver Of Subrogation

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

E. Employee Hired Autos

1. The following is added to the **SECTION II – LIABILITY COVERAGE,** Paragraph **A.1. Who Is An Insured** Provision:

   An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

   Paragraph **5.b.** of the **Other Insurance** Condition in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

   (1) Any covered "auto" you lease, hire, rent or borrow; and

   (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

F. Fellow Employee Coverage

SECTION II – LIABILITY COVERAGE, Exclusion B.5. does not apply if you have workers compensation insurance in-force covering all of your employees.

G. Auto Loan Lease Gap Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

CITY OF ALAMEDA
Risk Management
Date 2-5-18
Lucretia Akil, City Risk Manager

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT–CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be ____2____% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization	Job Description
All persons or organizations that are party to a contract that requires you to obtain this agreement, provided you executed the contract before the loss.	Jobs performed for any person or organization that you have agreed with in a written contract to provide this agreement.

CITY OF ALAMEDA
Risk Management
Date 2-5-18
Lucretia Akil, City Risk Manager

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No. PSW0001114
Insurance Company
RLI Insurance Company

Endorsement No.

Countersigned By _____

CITY OF ALAMEDA
Risk Management
Date
Lucretia Akil, City Risk Manager