

Project No's.: 7076 and 2005
Project Name: Well Upgrade, McCandless Well
Lower Penitencia Creek Pedestrian Bridge

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of May 1, 2018 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and David J. Powers & Associates, Inc., a corporation with its principal place of business at 1871 The Alameda, Suite 200, San Jose, California 95126 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following projects:

Well Upgrade Project, McCandless Well, Project No. 7076 and the Lower Penitencia Creek Pedestrian Bridge Project, Project No. 2005 (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$68,843.00. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required as set forth in Exhibit C. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. Additional Indemnity Obligations. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be

entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Demetri Loukas as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Steve Erickson, Engineering
Engineering Director/City Engineer

CONSULTANT:

David J. Powers & Associates
1871 The Alameda, Suite 200
San Jose, California 95126
Demetri Loukas, Principal Project Manager

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to

initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.


[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND DAVID J. POWERS & ASSOCIATES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:




Julie Edmonds-Mares
City Manager

Date

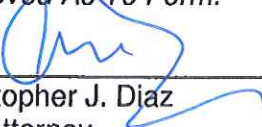
5/21/18

Approved As To Content:



Steven P. Erickson
Engineering Director / City Engineer

Approved As To Form:



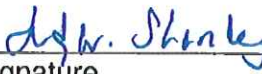
Christopher J. Diaz
City Attorney

Approved As to Form:



Will Fuentes
Director of Financial Services

DAVID J. POWERS & ASSOCIATES



Signature

Judy Shanley

Name

President

Title

Date

5/2/18

EXHIBIT A
Scope of Services



March 22, 2018

Maren G. Schram, P.E.
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

RE: Request for Proposals CEQA Compliance for New Pedestrian Bridge, Park and Water Well

Dear Ms. Schram:

David J. Powers & Associates, Inc. (DJP&A) is pleased to submit this proposal for the preparation of the Initial Study Checklist to support an Addendum to the Milpitas Transit Area Specific Plan Environmental Impact Report for the New Pedestrian Bridge, Park, and Water Well projects.

DJP&A has provided professional consulting services for compliance with the California Environmental Quality Act (CEQA) for many public facilities and infrastructure projects throughout the Bay Area. We are expert at environmental review for public projects including fire and police service facilities, parks and recreational facilities, civic centers, community centers, infrastructure and solid waste, and medical facilities. DJP&A has a reputation for preparing clear, easy to understand documents that are legally defensible and informative to both the Lead Agency and public, strong project management skills and a proven track record of delivering projects in a timely and cost-effective manner. DJP&A is also experienced in successfully coordinating with regulatory agencies and navigating various permit application processes.

Please do not hesitate to contact me should you have any questions regarding this proposal. My contact information is provided below.

Best Regards,

Demetri Loukas, Principal Project Manager
Direct: (408) 454-3422
Email: dloukas@davidjpowers.com

Attachment: Scope of Work



Scope of Services

Milpitas Transit Area Specific Plan: Pedestrian Bridge, Park and Water Well Projects Initial Study/Addendum

March 22, 2018

Primary Contact

The primary David J. Powers & Associates, Inc. (DJP&A) contact for this project will be Julie Wright. Ms. Wright's contact information is provided below.

Julie Wright

Direct: (408) 454-3434

Email: jwright@davidjpowers.com

Project Understanding

It is our understanding the City of Milpitas is requesting a proposal for the environmental clearance for three City-initiated projects located within the Milpitas Transit Area Specific Plan.

The first project is the construction of a new pedestrian bridge over Penitencia Creek East Channel. The bridge has been designed to place all footings outside the top of bank of Penitencia Creek. It is assumed the bridge will include minimal security lighting.

The second project is the construction of a new 4.2-acre public park on vacant land. The park will be located immediately south of Penitencia Creek and north of the McCandless Drive Elementary School (currently under construction). The park will include a surface parking lot, community garden plots, playgrounds, picnic areas, basketball courts, athletic play fields with field lighting, a restroom building, a trail connection to the proposed Penitencia Creek pedestrian bridge, an existing 50-foot wide PG&E utility easement, and an access road to the proposed water production well (see discussion below). A joint-use agreement includes 1.2 acres of the city park property and 1.2 acres of the adjacent McCandless Drive Elementary school property that will provide a 2.4-acre joint athletic play field, parking lots and access to the joint property. This area will be used by students when school is in session and be open to the public when school is not in session.

The third project is the construction of a water production well located in the southeast corner of the proposed park site. The well will require a small concrete building, above and below ground utilities connections, chlorination chemical storage, and security and task lighting. The facility also includes an access through the park (as mentioned above). Backup power (generator) requirements will be temporarily transported onto the site on an emergency basis only.

Scope of Services

DJP&A will prepare an Initial Study to support an Addendum to the Transit Area Specific Plan for the Pedestrian Bridge, Park and Water Well Projects. The Initial Study/Addendum will meet the requirements of CEQA and the City of Milpitas. Per Sections 15162 and 15164 of the CEQA Guidelines, the Initial Study/Addendum will demonstrate that the proposed project would not result in new or greater impacts than those identified in the Milpitas Transit Area Specific Plan Environmental Impact Report.¹ Our scope includes preparation of the Initial Study/Addendum, meeting attendance, project management, and contract administration, as described below.

Preparation of the Initial Study Checklist to support an Addendum

Project Description

The Initial Study/Addendum will include a detailed description of the proposed project, including maps and graphics to illustrate the text. The project description will be based on project information to be provided by the City. A preliminary list of project information to be provided by the City is included on page 9 of this scope of work. DJP&A will draft the project description and provide it to the City to review for accuracy.

Consistency with Plans and Policies

In relevant sections of the Initial Study, a discussion of the proposed project's consistency with the Transit Area Specific Plan, City's General Plan, City Code, and other applicable plans and policies will be included. As required by CEQA and the CEQA Guidelines, particular attention will be given to inconsistencies, if any are identified.

Environmental Setting, CEQA Checklist, and Mitigations

The Initial Study will be divided into subsections for each environmental resource. The subsections will be formatted to include a description of the existing environmental setting followed by the relevant CEQA checklist section and a discussion of project impacts. The sources of information for determining impacts will be identified. Mitigation measures will be identified to reduce significant impacts as appropriate.

¹ If it is determined that the proposed project would result in a new or substantially greater impact than previously identified in the MTASP EIR, an Initial Study/Mitigated Negative Declaration could be prepared and circulated under a separate scope of work.

Based upon our current understanding of the project, we anticipate the key environmental issues for the project will include the following resources:

- Air Quality (construction)
- Biology
- Cultural Resources
- Noise

Air Quality

Each project component includes separate construction phases. In total, construction of the proposed project could take up to two years to complete. The project is near sensitive receptors (e.g., residences and McCandless Drive Elementary School); thus a community risk assessment is proposed. A construction risk assessment, to be prepared by Illingworth & Rodkin, Inc., as a subconsultant to DJP&A, is included in this scope.

The cancer risks associated with modeled construction-period diesel particulate matter concentrations will be computed following the Bay Area Air Quality Management District (BAAQMD) risk management policy guidance. Mitigation measures that represent “Best Management Practices” to control dust or particulate matter emissions will be identified.

The proposed project size is below the BAAQMD operational criteria pollutant screening level for city parks. Therefore, operational criteria pollutants, such as ROG, NOX and particulate matter, will be addressed qualitatively. Roadside carbon monoxide concentrations will be assessed qualitatively using screening methods acceptable to BAAQMD.

An emergency back-up generator will not be located at the water production well site; therefore, there will be no stationary sources of Toxic Air Contaminants (TAC) on the site.

Biology

A wildlife and plant ecologist, HT Harvey & Associates, as a subconsultant to DJP&A, will assess the three sites for biological resources and potentially significant impacts under CEQA. Because the area for the park and water supply well was formerly ruderal habitat currently being used for construction staging, there is some potential for this area to provide suitable habitat for the rare Congdon’s tarplant and/or burrowing owl. The bridge has been designed to place all footings outside the top of bank of the Penitencia Creek East Channel, but based on review of aerial photographs, there is some potential for wetlands to be shaded by the bridge deck. HT Harvey & Associates will evaluate the sites for these and any other potentially sensitive biological resources and will prepare a memo report detailing potential impacts and, where applicable, likely mitigation measures under CEQA to minimize and mitigate these impacts to a less than significant level.

This scope includes time for a wildlife biologist to visit the site twice, once for the initial site visit, which will include a focused survey for burrowing owl within areas providing suitable habitat, and a second, follow-up site visit specifically for burrowing owl to complete a definitive presence/absence survey for the species. This scope also includes time for a plant ecologist to complete a blooming period survey for Congdon's tarplant, which may be necessary to confirm the plant is not present within the areas affected by the proposed project.

Cultural Resources

The Initial Study will discuss the potential for cultural resources to be present on the site. This discussion will be based on the results of a records search to be completed at the Northwest Information Center of the California Historical Resources Information System (CHRIS) and a field survey. The records search and field survey will be completed by Holman & Associates, as a subconsultant to DJP&A. The Initial Study will identify any significant impacts to cultural resources and mitigation measures, as needed, to reduce those impacts to a less than significant level.

Holman & Associates will also provide assistance to comply with Native American consultation following AB 52 standards, including initiating consultation by contacting the Native American Heritage Commission and sending letters to all those on their contact list.

Noise

Active recreation areas at the proposed park site, including use of the lit athletic at night, would be a new source of community noise. Other potential noise sources include parking areas and increased traffic along roadways serving the site. Illingworth & Rodkin, Inc., a DJP&A subconsultant, will complete noise measurements at the project site to document noise from daily operations, and at additional locations, as necessary, to adequately quantify variations in the noise environment at adjacent receptors. Project-generated noise levels will then be compared to existing ambient noise levels and the guidelines and standards set forth by the City of Milpitas. Mitigation measures for significant noise impacts will be identified, as needed.

Other Potential Environmental Issues

Other environmental issues are identified in the environmental checklist in Appendix G of the CEQA Guidelines. In addition to the key issues described above, the Initial Study will also address the potential for the proposed project to result in aesthetics, agricultural and forestry resources, geology and soils resources, greenhouse gas emissions, hazardous materials, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities impacts, based upon existing available information and DJP&A's experience on similar projects.

Draft Initial Study/Addendum

Upon completion of the Administrative Draft Initial Study/Addendum, DJP&A will submit up to 5 paper copies of the document to the City for review and comment. DJP&A will then revise the Initial Study/Addendum based on comments received from the City and submit an electronic copy of the Screencheck version to the City for final approval. DJP&A will make any final revisions to the Screencheck Initial Study/Addendum and provide the City with up to five hard copies and a PDF of the document for their records.

Attendance of Meetings

This scope of work includes DJP&A attendance at up to 2 project/community meetings. DJP&A can attend additional public hearings or meetings on a time and materials basis.

Project Management and Contract Administration

DJP&A will provide general project management, contract administration, and coordination with the City and project team throughout the Initial Study/Addendum process. The DJP&A Project Manager will coordinate with the City on a regular basis using email and telephone communications.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle in accordance with the cost estimate and charge rate schedule outlined on the following pages. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

Cost Estimate

Based on our understanding of the project and technical reports required, the cost to prepare the Initial Study/Addendum is estimated not to exceed **\$68,843**. Payment will be due on a monthly basis. A breakdown of the cost estimate is provided below. Costs will be charged on a time and materials basis, commensurate with work completed, in accordance with the charge rate schedule outlined on the following page. If DJP&A does not need all the time that has been budgeted, we will only bill for the time actually spent completing the work.

This scope is valid for 90 days and assumes that no issues arise requiring additional technical analysis or documentation. In the event additional technical analysis is required, we can complete that work on a time and materials basis, upon City authorization. Project description changes after notice to proceed is provided may have schedule and budget implications.

David J. Powers & Associates, Inc.	
• Preparation of Initial Study/Addendum	\$34,270
• Reimbursables (travel, printing, etc.)*	\$1,800
Subconsultants*	
• Holman & Associates (Cultural)	\$5,060
• HT Harvey & Associates (Biology)	\$12,130
• Illingworth & Rodkin (Air Quality)	\$4,370
• Illingworth & Rodkin (Noise)	\$11,213
Total:	\$68,843

* Subconsultant and reimbursable expenses include our standard 15 percent administrative fee.

Charge Rate Schedule²

Title	Hourly Rate
Senior Principal	\$275
Principal Project Manager	\$250
Senior Environmental Specialist	\$220
Senior Project Manager	\$195
Environmental Specialist	\$180
Biologist	\$170
Project Manager	\$170
Associate Project Manager	\$145
Assistant Project Manager	\$120
Researcher	\$105
Draftsperson/Graphic Artist	\$110
Document Processor/Quality Control	\$100
Administrative Manager	\$100
Office Support	\$85

Notes: Materials, outside services, and subconsultants include a 15 percent administration fee. Mileage will be charged per the current IRS standard mileage rate at the time costs occur.

² David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis. Any fees charged to DJP&A for Client's third-party services related to invoicing, insurance certificate maintenance, or other administrative functions will be billed as a reimbursable expense.

EXHIBIT C
Activity Schedule

Estimated Schedule

DJP&A proposes the following optimum schedule for preparation of the Initial Study/Addendum. DJP&A can commit to maintain the schedule in the areas that are within our control. Completion of the Initial Study/Addendum, as outlined in the schedule below, is based upon receipt of project information listed on the following page in accordance with the schedule. Delays in receiving requested information or responses by others will result in at least day-for-day delays in the overall schedule.

Optimum Initial Study/Addendum Schedule			
Tasks	Duration of Task	Time Elapsed	
1. DJP&A receives authorization to proceed, proposed plan set, and requested project information	---	1 day	
2. Kick-off meeting with City	1 day	1 day	
3. DJP&A drafts project description and submits to City for review	1 week	1 week	
4. City reviews project description and provides comments to DJP&A	1 week	2 weeks	
5. DJP&A subconsultants complete technical reports*	3 weeks	5 weeks	
6. DJP&A completes Administrative Draft Initial Study/Addendum	2 weeks	7 weeks	
7. City reviews Administrative Draft Initial Study/Addendum	2 weeks	9 weeks	
8. DJP&A prepares Screencheck Initial Study/Addendum	1 week	10 weeks	
9. City review of Screencheck Initial Study/Addendum	1 week	11 weeks	
10. DJP&A finalizes and submits Initial Study/Addendum to City	1 week	12 weeks	
Total			+/- 12 weeks

*If necessary, Congdons Tarplant blooming period surveys would need to be completed in June, which could extend project schedule.

Project Information Required from City

Our scope and schedule are based on the assumption that we will receive the below project information concurrent with authorization to proceed.

Plans (in PDF)

- Project plans, including landscaping plan, stormwater control plan, utility plan, grading plan, and parking and circulation plan
- Building elevations/cross-sections
- Lighting plan including heights

Project Details

- Written description of the project, including discretionary approvals and hours of operation
- Construction details, including duration, maximum depth of excavation, and total amount of cut/fill
- Utility improvements, including locations and depth
- Right of way improvements
- Green building measures, LEED or Greenpoint certification details
- List of Best Management Practices to conform to Provisions C.3 of the NPDES permit
- Project objectives

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

X Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

___ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

N/A ___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

N/A Contractor shall provide the following Surety Bonds:

1. Bid Bond

2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

N/A_ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant

shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. 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 Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

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
WHERE REQUIRED PER WRITTEN	CONTRACT

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. WZ3-9816300-05

Endorsement No.
Premium \$

Insurance Company THE HANOVER AMERICAN INSURANCE COMPANY

Countersigned By _____