

AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF MILPITAS
AND DAVID J. POWERS & ASSOCIATES

This Amendment is entered into this November 5, 2019 by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and David J. Powers & Associates, a corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on May 1, 2018 entitled "Professional Services Agreement between the City of Milpitas and David J. Powers & Associates" ("Agreement") for professional services in the total amount of \$68,843; and

WHEREAS, the parties now desire to amend the Agreement to increase the compensation by \$55,000 to allow CONSULTANT to provide additional professional services for preconstruction surveys/compliance documentation as described in Exhibit A-1, attached hereto, for a new total amount of \$123,843, to extend the term of service until December 31, 2020 and to make ministerial changes to the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1, entitled "Services", of the Agreement is amended to read as follows:

"1. SERVICES. Consultant shall provide the City with the services described in Exhibit A to the Agreement and Exhibit A-1, attached hereto and incorporated herein by this reference.

2. Section 2, entitled "Compensation", of the Agreement is amended to read as follows:

"2. COMPENSATION.

a. Subject to paragraph 2(b) below, the City shall pay for the services contemplated in Exhibit A in accordance with the Schedule of Charges set forth in Exhibit B to the Agreement, and the services contemplated in Exhibit A-1 in accordance with the Schedule of Charges set forth in Exhibit B-1, attached hereto and incorporated by this reference.

"b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$123,843. 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. Five (5) percent shall be retained by the City from

each Agreement billing until completion of the Agreement unless authorized differently by City.

3. Section 5, entitled "Time of Performance", of the Agreement is amended to read:

"TIME OF PERFORMANCE. The term of this Agreement shall be from May 1, 2018 to December 31, 2020, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

4. Exhibit A-1 and Exhibit B-1, attached hereto and incorporated herein by this reference, are hereby added to the Agreement.
5. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 11, entitled "Insurance" of the Agreement dated May 1, 2018 between the City of Milpitas and David J. Powers & Associates. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policies
6. Except as amended by this Amendment No. 1, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.
7. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.
8. If any provision of this Amendment No. 1 shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment No. 1 unless elimination of such provision materially alters the rights and obligations set forth herein.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS
AND
DAVID J. POWERS & ASSOCIATES**

This Amendment No. 1 is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT
DAVID J. POWERS & ASSOCIATES

Steven McHarris, Interim City Manager

By: _____
Judy Shanley, President

APPROVED AS TO CONTENT:

Steve P. Erickson, Engineering Director
/ City Engineer

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Walter Rossmann, Director of Finance