

AMENDMENT NO. 3
TO DESIGN SERVICES AGREEMENT BETWEEN CITY OF MILPITAS AND
IBI GROUP ARCHITECTURE PLANNING

This Amendment is entered into this 20th day of April, 2021, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and IBI Group Architecture Planning, a California Corporation (hereafter referred to as "DESIGNER").

RECITALS

WHEREAS, the parties entered into an Agreement on February 21, 2017 entitled "Design Services Agreement between the City of Milpitas and IBI Group Architecture Planning" ("Agreement") for professional services in the total amount of \$544,994.00; and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on May 1, 2018 to increase the compensation by \$163,057.00 to allow DESIGNER to provide additional design services, for a new total amount of \$708,051.00, and to make ministerial changes to the Agreement; and

WHEREAS, the parties now desire to amend the Agreement to increase the compensation by \$69,040.00 to allow DESIGNER to provide additional design services for an all-inclusive playground as described in Exhibit A-2, attached hereto, for a new total amount of \$777,091.00, and to make ministerial changes to the Agreement.

WHEREAS, the parties now desire to amend the Agreement to increase the compensation by \$120,000 to allow DESIGNER to provide additional construction management services as described in Exhibit A-3, for a new total compensation amount of \$897,091.00, and to extend the term of the agreement by 24 months to allow CONSULTANT additional time to complete the design and construction management services.

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

1. Section 3.1.1, entitled "Scope of Services", of the Agreement is amended to read:

"SCOPE OF SERVICES. Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A", A-1, A-2 and A-3 attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and

federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

Specialty services for the topographic survey, utility locating, geotechnical survey and flood/FEMA report are provided for the convenience of the City. Designer will assist in obtaining and coordinate the scheduling of these tasks. The products are the property of the City to be utilized by Designer and its subconsultants solely in the performance of services under the Agreement.”

2. Section 3.1.2, entitled “Term”, of the Agreement is amended to read:

“TERM. The term of this Agreement shall be from February 21, 2017 to December 31, 2024, unless earlier terminated as provided herein. Designer shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3. Section 3.10.1, entitled “Designer’s Compensation for Basic Services”, of the Agreement is amended to read:

“DESIGNER’S COMPENSATION FOR BASIC SERVICES. City shall pay to Designer on a time and materials basis, for the performance of all Services rendered under this Agreement, including the Services set forth in Exhibits A, A-1, A-2 and A-3, the total not to exceed amount of Eight Hundred Ninety Seven Thousand Ninety One Dollars (\$897,091.00) (“Total Compensation”). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit B and B-1 and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

4. Exhibit A-3, attached hereto and incorporated herein by this reference, are hereby added to the Agreement.

5. The Designer agrees to maintain and pay for all insurance policies as stated in Section 3.15, entitled "Insurance" of the Agreement dated February 21, 2017. The Designer 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. 3, all provisions of the Agreement and Amendment No. 2 shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 3, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 3.

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. 3.

8. If any provision of this Amendment No. 3 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. 3 unless elimination of such provision materially alters the rights and obligations set forth herein.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 3
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This Amendment No. 3 is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

DESIGNER
IBI Group Architecture Planning

Steven G. McHarris, City Manager

By: _____
Craig Atkinson,
Director -Sr. Principal, Architecture

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

By : _____
Steve Sowa,
Associate Principal

APPROVED BY:

Lauren Lai, Finance Director/ Risk Manager

APPROVED AS TO CONTENT:

Steven P. Erickson, Engineering Director
/ City Engineer