

**REINSTATEMENT AGREEMENT BETWEEN
THE CITY OF MILPITAS AND HOPKINS & CARLEY**

THIS AGREEMENT is entered into this ____ day of _____, 2009, by and between the City of Milpitas, hereinafter "City," and Hopkins & Carley, A Law Corporation, hereinafter "H&C."

Recitals:

Whereas, the parties entered into a written agreement for legal services titled Professional Services Agreement, dated July 5, 2007 by H&C and dated April 16, 2008 by City; and

Whereas, the parties amended the Professional Services Agreement on June 17, 2008; and

Whereas, the Professional Services Agreement expired on June 30, 2009 and the parties wish to reinstate the Agreement and redefine the term of the Agreement as set forth below;

NOW, THEREFORE, **IT IS HEREBY AGREED** as follows:

1. The Professional Services Agreement between the parties is hereby reinstated;
2. The reinstated Professional Services Agreement is hereby effective from the date of execution of this Reinstatement Agreement through and including June 30, 2010;
3. All other terms and conditions of the Professional Services Agreement remain unchanged.

APPROVED BY:

CITY OF MILPITAS

HOPKINS & CARLEY, A Law Corporation

Thomas C. Williams, City Manager

By: _____
Ernest M. Malaspina, Its Officer

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ATTESTED BY:

Mary Lavelle, City Clerk

HOPKINS & CARLEY
A Law Corporation

PROFESSIONAL SERVICES AGREEMENT

By this Professional Services Agreement (the "Agreement") Hopkins & Carley, a Law Corporation, ("H&C") and City of Milpitas (individually and collectively referred to herein as "Client"), agree as follows:

1. Effective Date. This Agreement shall become effective upon receipt by H&C of a fully executed original of this Agreement, together with the initial deposit described below (if any) (the "Engagement Date"). H&C shall have no obligation to perform any services on behalf of Client until the Engagement Date; provided, however, that, if H&C does elect to render services to Client prior to the Engagement Date, the terms of this Agreement shall apply to all such services.
2. Initial Services. Initially, the scope of services will relate solely to the following matter(s): General employment matters.
3. Additional Services. Client may request H&C to represent the interests of Client in different or additional matters, although H&C shall be under no obligation to accept such additional engagements. If H&C, in its discretion, elects to undertake any such additional engagements, H&C may confirm such new assignment(s) in writing, including a description of the work to be performed and any special provisions that might apply with respect to that particular engagement, including any additional deposit(s) that might be required. Except as amended by such special provisions, all additional such engagements shall be subject to the general provisions of this Agreement.
4. Obligation of H&C. H&C shall strive to diligently and faithfully represent the legal needs of Client with respect to the matters for which H&C has been retained. In doing so, H&C shall fulfill its professional and ethical obligations to Client in accordance with the laws and regulations promulgated by the California State Bar, the State of California, and the Courts of this State. However, because the law is not certain and involves many intangibles, including the exercise of discretion, the resolution of conflicting viewpoints, and anticipation of future events, H&C does not guarantee any particular result in a given matter. Client acknowledges and agrees that any comments made by H&C about the potential outcome of a particular matter are mere expressions of opinion only. H&C will advise the Client and endeavor to help the Client to understand the legal benefits and risks inherent in a chosen course of action, but H&C cannot and will not decide what benefits the Client should pursue or what level of risk is appropriate for the Client to take in any given situation.

H&C recognizes that clients are concerned with the extent and reasonableness of legal fees and costs. Your promptness in making decisions, responding to request for information, and providing additional documentation are important in completing your project within a reasonable period of time and at a reasonable cost. In most matters, actual fees and costs incurred are subject to a variety of factors that are not necessarily within the control of either H&C or Client, such as the behavior or demands of other parties and their respective attorneys and advisors. For this reason, it is not possible to forecast with certainty the total amount of costs and expenses that

may be incurred in order to complete the engagement. However, H&C is able and willing to relate its best estimates or to provide a written budget.

5. Billing, Fees, and Costs. It is the standard policy of H&C to invoice clients monthly. All invoices are due and payable upon receipt. Client should carefully review each statement and immediately notify H&C of any discrepancy. Interest in the amount of one and one-half percent (1.5%) per month may be charged upon any balance that is not paid within forty-five (45) days following the date of the invoice; however, the foregoing does not constitute an agreement to finance all or any portion of the amounts due from Client hereunder.

Fees for legal services performed by H&C are based upon hourly rates in effect at the time the work is performed. Time is billed in increments of one-tenth (1/10) of an hour with a minimum entry of two-tenths (0.2) of an hour. H&C will charge Client for all efforts undertaken on behalf of the Client, which may include all manner of communications, meetings, and travel. H&C's current hourly rates are listed on the attached schedule. These rates may change periodically. H&C will notify Client in the event of any such changes.

H&C will incur various costs and expenses in performing legal services on behalf of Client under this Agreement. Client shall pay such costs and expenses in addition to the hourly fees. The types of cost and expense items are identified on the attached Schedule, along with the basis upon which charges are calculated in each category. It may also become necessary to hire contractors, consultants or investigators in connection with the representation established herein. H&C will not hire such persons unless Client agrees to pay for their fees and charges. In consultation with client, H&C will select any third parties to be hired.

6. Advance Payment and Cost Deposit. Concurrently with the return of this Agreement and Hopkins & Carley's commencement of its services pursuant hereto, Client shall pay a deposit in the amount of \$-0- (the "Deposit"). \$-0- of the Deposit shall be held and treated as an advance of funds to be credited against the Client's final invoice (the "Advance Payment"). At the conclusion of our work on this engagement and after application to the final invoice, any unused portion of the Advance Payment shall be returned to the Client. The Advance Payment does not accrue interest. In those instances where it is determined to be necessary, \$-0- of the Deposit will be placed in a client trust account and will be applied to costs incurred on behalf of the Client during the course of the engagement (the "Cost Deposit"). Any unused portion of the Cost Deposit at the conclusion of our work on the engagement may be applied to Client's final invoice. After application to Client's final invoice, any unused portion of the Cost Deposit shall be returned to the Client. Unless Client requests otherwise, Cost Deposit funds will be held, until applied, in a common client trust bank account.

7. Payment by Visa or MasterCard. As a convenience to clients, H&C accepts credit card payments using Visa and MasterCard. A payment by credit card often includes the ability to dispute payments made with that card pursuant to certain dispute resolution rules and procedures provided in the cardholder's agreement with the credit card company. Additionally, H&C's ability to receive payment of its fees and costs via credit card is pursuant to a form of merchant services agreement which contains its own rules and procedures for dispute resolution, including rules and procedures parallel to those associated with the cardholder's agreement. By signing this Agreement, Client waives any and all rights Client might otherwise have to utilize any such dispute resolution rules and procedures available in connection with a credit card

payment. Client agrees to rely exclusively on the dispute resolution procedures set forth in this Agreement.

8. Attorney's Lien. H&C shall have, and by Client's execution of this Agreement Client grants and conveys to H&C, a lien against any sums or other consideration received by Client, either (i) as the direct or indirect result of H&C's representation of Client; or (ii) in connection with the disposition of the subject matter of H&C's representation of Client, which lien shall be in an amount equal to any unpaid balance due and owing to H&C for services rendered and costs advanced by H&C in connection with the legal services provided pursuant to this Agreement.

CLIENT IS ADVISED THAT THE GRANTING OF A LIEN TO H&C MAY BE ADVERSE TO CLIENT'S INTEREST, AND THEREFORE CLIENT MAY WISH TO CONSULT WITH OTHER, INDEPENDENT LEGAL COUNSEL TO REVIEW THIS PROVISION. BY EXECUTING THIS AGREEMENT, CLIENT AGREES THAT IT HAS BEEN GIVEN AN OPPORTUNITY TO OBTAIN SUCH INDEPENDENT LEGAL COUNSEL.

9. Termination of Services. Either Client or H&C may terminate the attorney-client relationship between the parties at any time for any reason. Unless sooner terminated as set forth herein, the attorney-client relationship shall terminate upon conclusion of the matter(s) for which H&C has been engaged. Upon any such termination, H&C will be entitled to receive payment for all work performed and Client shall be entitled to receive copies of all documents and files prepared by H&C for Client (provided that H&C may retain copies, made at H&C's expense, of all such documents). In addition, upon termination (regardless of whether or not the same shall have occurred before or after completion of the matter for which H&C is then engaged), H&C shall have no obligation to render any further services or provide additional advice.

10. Record Retention. At the conclusion of this matter, H&C will return to Client any related valuable property Client has entrusted to H&C and dispose of any and all superfluous documents consistent with maintaining the confidentiality of the contents of those documents. H&C will store the entire balance of the file, at H&C's expense, for at least five (5) years. Following such five (5) year retention period, unless Client notifies H&C and picks up the file from H&C, the file, and all documents therein, may be disposed of, at H&C's expense, in a manner that is reasonably anticipated to maintain the confidentiality of the documents.

11. Governing Law, Jurisdiction, Venue, Joint and Several Obligations of Client. H&C is licensed to perform legal services only in the State of California, and confines its advice to matters of California and federal law. Advice regarding the law of any other jurisdiction or country will be provided by other counsel. Even though H&C or its employees may travel and deal with matters elsewhere, all services are deemed to be performed in Santa Clara County, California. Jurisdiction and venue for resolution of all disputes between Client and H&C will be exclusively in Santa Clara County, California, and will be decided in accordance with the laws of the State of California, and as further set forth immediately below. If Client consists of more than one person or entity, the obligations imposed upon Client hereunder shall be joint and several.

12. Mandatory Arbitration and Waiver of Right to Jury. In the event a dispute arises concerning any aspect of the relationship between H&C and Client, including fee disputes or claims of legal malpractice, the parties agree to follow this procedure: (1) discuss and attempt to negotiate a resolution of the matter; and (2) upon failure to resolve the issue according to step (1), submit the dispute to final and binding arbitration in Santa Clara County under the Commercial Rules of the American Arbitration Association then in effect. The parties agree that Expedited Procedures shall apply regardless of the amount of H&C's claims, except the Expedited Procedures shall not apply to the extent the Client asserts a counterclaim(s).

In addition to the foregoing, in the event a dispute arises between H&C and Client regarding fees, Client has the right to submit that dispute under the attorney fee arbitration procedure that exists under California law. Such fee arbitrations are not binding, unless both parties so agree in advance, and do not encompass legal malpractice or other non-fee claims.

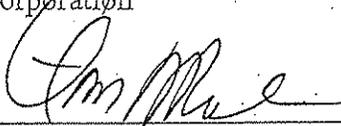
13. Electronic Communications. You have authorized the firm to communicate with you via e-mail and other electronic means such as by fax. You will be responsible for keeping such communications confidential. You also acknowledge that communication by electronic means is subject to interception by others, just as is mail and other forms of communication. By authorizing us to communicate with you via electronic means, you are assuming any risks associated therewith.

EACH PARTY UNDERSTANDS AND ACKNOWLEDGES THAT BY ENTERING INTO THIS AGREEMENT, SUCH PARTY HAS SURRENDERED AND WAIVED THE RIGHT IT WOULD OTHERWISE POSSESS TO SUBMIT A DISPUTE BETWEEN THE PARTIES FOR RESOLUTION BY COURT OR JURY, INCLUDING THE RIGHT OF APPEAL TO A HIGHER COURT.

By signing this Agreement, Client and H&C each acknowledge that such party has read, understood and agreed to the terms hereof, and that this document contains the entire agreement between Client and H&C with respect to the legal representation to be provided to Client by H&C.

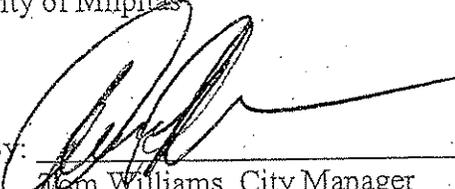
Dated: 7/5/07

H&C:
Hopkins & Carley
A Law Corporation

By: 
Ernest M. Malaspina, Its Officer

Dated: 4/16/08

CLIENT:
City of Milpitas

By: 
Tom Williams, City Manager

Current mailing address:
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Phone: (408) 586-3050
Fax: (408) 586-3056
e-mail : twilliams@ci.milpitas.ca.gov

ADDENDUM TO
PROFESSIONAL SERVICES AGREEMENT
(Hopkins & Carley and City of Milpitas)

Fees and costs for services rendered under this Agreement are not to exceed a total amount of \$19,000.00.

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**FIRST AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF MILPITAS AND HOPKINS & CARLEY**

THIS AMENDMENT is entered into this 17th day of June, 2008, by and between the City of Milpitas, hereinafter "City," and Hopkins & Carley, A Law Corporation, hereinafter "H&C."

Recitals:

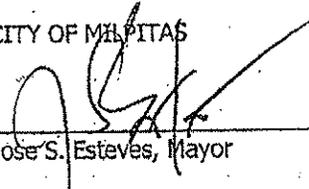
Whereas, the parties entered into a written agreement for legal services dated July 5, 2007 by H&C and dated April 16, 2008 by City, and now wish to amend that agreement as set forth below;

NOW, THEREFORE, **IT IS HEREBY AGREED** as follows:

1. The term of the agreement is extended through and including June 30, 2009.
2. The compensation amount shall be amended by the addition of \$60,000.00 to the current contract amount of \$19,000.00, for a total amount of \$79,000.00.
3. All other terms and conditions remain unchanged.

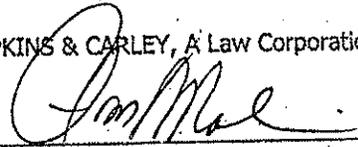
APPROVED BY:

CITY OF MILPITAS



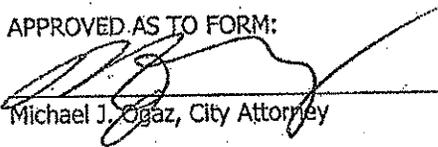
Jose S. Esteves, Mayor

HOPKINS & CARLEY, A Law Corporation

By: 

Ernest M. Malaspina, Its Officer

APPROVED AS TO FORM:



Michael J. Ogaz, City Attorney

ATTESTED BY:



Mary Lavelle, City Clerk