

**AMENDMENT NO. 3  
TO THE AGREEMENT BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
SHUMS CODA ASSOCIATES, INC.**

**PREAMBLE**

This agreement (“Amendment No. 3”) is by and between Shums Coda Associates, Inc., a California corporation, with its principal place of business located at 5776 Stoneridge Mall Road, Suite 150, Pleasanton, California 94588 (“Contractor”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Amendment No. 3.”

**RECITALS**

- A. The Parties previously entered into an agreement entitled “Agreement for Professional Services by and between the City of Santa Clara, California and Shums Coda Associates, Inc.” dated June 23, 2015 (the “Original Agreement”); and
- B. The Original Agreement was previously amended by Amendment No. 1, dated June 6, 2016, Amendment No. 2, dated September 26, 2017, and is again amended by this Amendment No. 3. The Original Agreement, Amendment No. 1, and Amendment No. 2 are collectively referred to herein as the “Original Agreement as Amended”; and
- C. The Parties entered into the Original Agreement as Amended for the purpose of having Contractor provide qualified contract personnel, technical and professional services, and the Parties now wish to amend the Original Agreement as Amended to extend the termination date, to increase the amount billed under the Agreement by three hundred and fifty thousand dollars (\$350,000.00) for a new total not-to exceed amount of one million two hundred fifty thousand dollars (\$1,250,000.00), and to update the indemnification provisions.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. AMENDMENT PROVISIONS**

That Section 2, entitled “Term of Agreement” of the Original Agreement as Amended, is hereby amended by deleting the existing Section termination date of June 30, 2018, and replacing it with the following:

“December 31, 2021”

**2. AMENDMENT PROVISIONS**

That the first paragraph of Exhibit B, Fee Schedule of the Original Agreement as Amended, is hereby amended to read as follows:

“In no event shall the amount billed to City by Contractor for services under this Agreement exceed one million two hundred fifty thousand dollars (\$1,250,000.00), subject to budget appropriations.”

**3. AMENDMENT PROVISIONS**

That Section 22 of the Original Agreement as Amended, “Hold Harmless/Indemnification,” is hereby amended to read as follows:

- “A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney’s fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor’s employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor’s obligation to protect, defend, indemnify, and hold harmless in full City and City’s employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act (“Act”) and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor’s responsibilities under the Act.”

**4. TERMS**

All other terms of the Original Agreement as Amended which are not in conflict with the provisions of this Amendment No. 3 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 3, the provisions of this Amendment No. 3 shall control.

**5. COUNTERPART/FACSIMILE SIGNATURE**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 3 as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Amendment No. 3 shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

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BRIAN DOYLE  
City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

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**SHUMS CODA ASSOCIATES, INC.**  
**a California corporation**

Dated: 7.25.19  
By:   
(Signature of Person executing the Agreement on behalf of Contractor)  
Name: David Basinger  
Title: President  
Local Address: 5776 Stoneridge Mall Road, Suite 150  
Pleasanton, CA 94588  
Email Address: David.basinger@shumscoda.com  
Telephone: (925) 463-0651  
Fax: (925) 463-0691

“CONTRACTOR”

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