

PROJECT NAME:

CITY COUNCIL APPROVAL

* 23

PROJECT NO.:

DATE:

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND LAMPHIER-GREGORY**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and ("Consultant") as of April 17, 2007 in Milpitas, California.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end one year from that date, or April 17, 2008 and Consultant shall complete all work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the currently prevailing professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the highest and best professional standards of quality observed by a person practicing in Consultant's profession.

1.3 Professional Skill. It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the highest and best professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the highest and best standards of accuracy, completeness and coordination.

1.4 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit B shall name the specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant and Consultant's employees shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder. Consultant must request at least a week in advance in writing City's approval for any changes to this Agreement's performance schedule and/or dates for deliverables.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed Ninety Three Thousand Dollars (\$93,000), for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:
- Serial identification of bills ("Invoice #");
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
 - Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit D for invoice tracking and shall submit the form with each invoice.
 - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant

performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed. Satisfactory performance shall be defined and identified according to the discretion of the Interim Planning Director. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each contract billing until the completion of the contract unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Reserved

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.6 Reimbursable Expenses. There shall be no reimbursable expenses related to this Agreement. All monies due Consultant shall be included in this Agreement's not to exceed amount.

- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and information in the City's possession. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability

Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision

of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except for ten (10) days for non-payment of premium.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except for ten (10) days for non-payment of premium.
- 4.3.3** Reserved
- 4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Reserved
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured

retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778

of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3 and the attached scope of work. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Limited as Agent.** Except as City may specify in writing, including by email or other electronic communication, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant and Consultant's employees shall confer with and receive written confirmation from the Planning Director prior to representing or binding the City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses,

permits, qualifications, and approvals of whatsoever nature legally required to practice their respective professions. Consultant represents and warrants to City that Consultant, its employees, agents and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

City and Contractor agree that City may allow an extension, at Consultant's written request, in the following limited circumstances: (1) Where City and Consultant mutually agree a reasonable extension is necessary; or (2) City and Contractor

agree that circumstances and factors beyond Consultant's control require a reasonable extension.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will

not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire." Upon submission of any work for hire pursuant to this Agreement and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright. Consultants and sub-consultants retain the right to use any project records, documents and materials for marketing of their professional services.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Felix Reliford, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:
Felix Reliford, Interim Director of Planning and Neighborhood Services
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Reserved**

10.12 **Reserved**

10.13 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.14 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

By: _____

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Compensation Schedule, personnel and rates
- Exhibit C: Insurance Coverage Documents
- Exhibit D: Sample Progress Payment form

Exhibit "A" – Scope of Work

Milpitas Transit Area Specific Plan – Contract Planner, Scope of Services

Introduction

Our Understanding of the Milpitas Transit Area Planning Program

The City of Milpitas and their team of consultants have been working for some time on development of a new Specific Plan and associated Environmental Impact Report for the Milpitas Transit Area. This is an approximately 440-acre planning area in the vicinity of the proposed new Milpitas BART station and the Valley Transit Authority Light Rail Transit line, centered on the Montague Expressway and Great Mall Parkway. A draft Preferred Plan has been prepared by the firm Dyett & Bhatai and reviewed by City decision-makers, work has begun on the environmental analysis, meetings have been held with stakeholders and property owners, and a market analysis has been reviewed in light of recent softening of the housing market. Adjustments have been made to the Preferred Plan as it progresses through the planning process.

As it currently stands, the Milpitas Transit Area Specific Plan proposes slightly more than 7,000 new dwelling units, nearly 1 million square feet of office space, a hotel and more than ¼ million square feet of retail space. Tasks to be undertaken during preparation of the Milpitas Transit Area Specific Plan include:

- Preparation of the Specific Plan document
- Amending the General Plan
- Amending the current Midtown Milpitas Specific Plan
- Zoning Ordinance text amendments
- Zoning Ordinance map amendments
- Preparation of the Environmental Impact Report (Draft and Final)
- Conducting detailed analyses on Fiscal issues, infrastructure, water and sewer capacity and traffic impacts
- Preparation of a Streetscape Master Plan

Our Understanding of Scope of Services

The following scope of services identifies the tasks that Lamphier-Gregory anticipates to be provided to the City of Milpitas to assist the City with review and processing of the Transit Area Specific Plan. These tasks fall within four basic types of services including

1) project start-up/catch-up; 2) attendance, participation and coordination of City/planning team meetings; 3) reviewing and commenting on various documents prepared by others; and 4) additional project management and coordination services as may arise at the request of the City. These services will be performed to support and assist City staff in the processing of the Specific Plan.

All services will be performed on a time and materials basis according to the billing rate schedule attached to the contract. These services may be further refined during the planning process, in which case Lamphier-Gregory will prepare an addendum to this scope outlining the specific tasks and corresponding fees if needed to address changes in the scope.

Scope of Work

TASK 1: Start-up / Catch-up and Review of Background Material

These tasks enable Lamphier-Gregory to quickly become familiar with the Transit Area Specific Plan and its progress to date. The following items will be completed under this task:

1. Attend a catch-up meeting with City staff and the Specific Plan consultant team. At this meeting the issues to be discussed and resolved include developing lines of coordination and communication, defining procedures and milestones, and reviewing preliminary schedule expectations.
2. Review background information about the Transit Area Plan planning process as well as all project-related plans, maps, applications and supporting documents and reports.
3. Visit the project site and surrounding area.

TASK 2: Meetings, Coordination and Project Management

Lamphier-Gregory will assist the City of Milpitas with coordination and project management services for the Transit Area Specific Plan project. Specific coordination and management services may include:

1. Establish and maintain a project schedule
2. Attend team meetings, provide early agendas as requested, and prepare summaries of the conclusions reached during the meetings
3. Facilitate and coordinate resolution of major project issues as may arise during the planning process. At the City's request Lamphier-Gregory may assist City staff in promoting City objectives for the project, potentially in regard to such issues as integrated circulation patterns, community design and character and other public service and infrastructure needs for the site.

4. Coordinate with the Specific Plan preparers, EIR authors and other technical consultants

TASK 3: Review and Comment on Specific Plan and Supporting Documents

Lamphier-Gregory will assist City staff in the review of all project-related documents, maps, applications and entitlements pursuant to the Specific Plan. The primary purpose of this review will be to assist the City and ensure that all documents are thorough, accurate and adequate and that they are in conformance with City policy and expectations. Specific items associated with this task include, but are not limited to review and comment on the following:

1. Draft and revised Specific Plan documents
2. Administrative Draft EIR, Draft EIR and Final EIR for the project
3. Traffic and other technical studies

TASK 4: Additional Project Management Tasks

At the City's request, Lamphier-Gregory will be prepared to provide the City with the following types of additional staff support services:

1. Preparation of CEQA Finding and potentially Statements of Overriding Consideration
2. Prepare related discretionary approval documents (e.g. General Plan and Specific Plan amendments, re-zoning, conditions of approval, etc.).
3. Prepare and/or assist in preparation of staff reports
4. Assisting or coordinate preparation of City conditions of approval for tentative maps and other implementing documents
5. Attend Planning Commission and City Council hearings
6. Provide input to the City website for the Specific Plan project
7. other tasks as may arise, at the City of Milpitas' request

L A M P H I E R - G R E G O R Y

INTRODUCTION TO LAMPHIER-GREGORY

Established in Oakland in 1979, Lamphier-Gregory is a consulting firm specializing in urban planning, environmental analysis and project management. Our services include preparation of Environmental Impact Reports (EIRs) and other environmental review documents; project review and permit processing; and assistance to local agencies in managing large complex, and controversial projects.

Lamphier-Gregory's goal is to provide clear, concise, technical information and to help communities use that information in their decision-making processes. The firm is noted for its enthusiasm and for its ability to solve problems and achieve consensus. Our experience in urban planning and environmental review allows us to focus on significant issues and synthesize information from a variety of technical disciplines. Our problem-solving skills then enable us to help communities establish priorities, seek solutions and arrive at informed decisions.

Lamphier-Gregory prides itself on maintaining long term relationships with its clients, primarily local government agencies. We believe these long-term relationships are a testimony to the quality of our work, and also enhance our ability to serve the client agency and represent its interests most effectively. In many instances, our accumulated knowledge of a community and its regulatory environment has been useful in expediting review of development proposals, highlighting key issues, resolving conflicts, and developing workable solutions.

As a small firm, we are unusually attentive and responsive to client needs. We keep pace with demanding project schedules and prepare products in a timely manner. Our central location in Oakland affords easy access to clients throughout the Bay Area.

Lamphier-Gregory maintains ongoing relationships with firms specializing in traffic engineering, air quality analysis, environmental noise and acoustics, biology, hydrology, sanitary sewer engineering, fiscal analysis, landscape architecture, urban design, visual impact analysis, historic design, archaeology and other fields. When a project calls for technical analyses, we "hand pick" subconsultants from various disciplines, assembling an experienced team appropriate to the project's demands.

Lamphier-Gregory is certified as a Small Local Business Enterprise (SLBE) and as a Woman-owned business enterprise (WBE) by Caltrans, City of Oakland, Alameda County Transportation Authority, the Office of Small and Minority Business of the State of California, City and County of San Francisco and the East Bay Municipal District.

PROFESSIONAL SERVICES:

Land Use and Policy Planning

Lamphier-Gregory provides short- and long-term staff assistance to local planning and community development agencies in meeting their “current planning” needs for processing land use entitlements for current projects. Our services are always tailored to the needs of the client agency. And typically, we are called upon for our services by client agencies with which we already have good working relationships and a high degree of familiarity with their procedures, urban planning goals and local conditions.

In any case, our first task is to develop a solid understanding of the client agency’s review and approval process as it relates to the current project or projects at hand. We then undertake an evaluation of the proposed projects, particularly in reference to how its site is treated in the City’s or county’s General Plan and zoning ordinance. We focus our effort on the end goal of the process – the public hearings before the local planning commission and/or city councils where decisions on the projects are made. Our work typically includes preparing the staff reports for these hearings and then attending and making the oral presentations at the hearings.

During the project review process, our work frequently involves attending regular weekly staff or project review meetings and coordinating with other local agency departments (e.g., Fire, Police, Public Works, etc.). We also are frequently responsible for the selection, management and coordination of environmental review consultants. Typical projects for which we have provided these services include Use Permits, Variances, Preliminary and Final Subdivision Maps, Development Plans, and Master Plans.

Environmental Analysis

Lamphier-Gregory has extensive experience in conducting environmental analyses in accordance with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) guidelines. Cities and other public agencies throughout the Bay Area have relied on Lamphier-Gregory to prepare environmental documents for a wide range of project types including shopping centers and office buildings, housing developments, transportation improvement projects, electrical systems, schools and public facilities and mixed-use downtown developments. Lamphier-Gregory is capable of preparing the full range of environmental documents including Environmental Impact Reports (EIRs), Environmental Impact Statements (EISs), Environmental Assessments (EAs), Initial Studies, Mitigated Negative Declarations, and Mitigation Monitoring Programs. Our clients also count on us to facilitate or assist in the public review process by making public presentations and explaining our environmental conclusions to the public and public decision-makers. The depth and breadth of qualifications that Lamphier-Gregory brings to environmental review projects includes special conflict resolution and problem-solving skills and the willingness to use these skills to seek resolution through the decision-making process. Our approach to conducting environmental review emphasizes the process as well as the product. Clients can be assured that our staff will be sensitive to their needs during preparation of environmental document, and confident that we will deliver a

defensible, effective and on-time document. Our first priority is to consolidate the full range of relevant technical information, whatever its complexity, into a clear and concise presentation. Based on established standards or thresholds we then examine each environmental issue to identify potential or likely impacts. We then proceed to develop workable and acceptable mitigation measures that are designed to reduce or avoid environmental effects. Our environmental review process is intended to ensure a firm basis for informed decision-making, and resolution of differences of opinion in the public arena.

Project Management & Environmental Peer Review

Lamphier-Gregory frequently provides short-and long-term staff assistance to local governments in both current and advance planning. Our role typically involves providing professional planning services to assist in managing large and complex projects. Frequently, such projects rely on input from numerous technical experts that needs to be verified and fully understood, assembled into CEQA documents, mitigation monitoring programs, conditions of approval and the like, and then disseminated to a planning team for review and consensus. These projects typically have seemingly unrealistic timeframes and are controversial in nature. Our work typically involves coordination with staff, team members, and members of the public and other local agency departments. Our experience in urban planning, environmental review and permit processing allows us to prepare staff reports and other products thoroughly and efficiently, with a minimum of project "start-up" time. This is especially useful for local governments that have an over-loaded staff but need to keep pace with important planning programs.

III. Public and Private Clients – Last Ten Years

The list below identifies the name of the project, the type of services provided (or the type of environmental document prepared), and the name of the client. The list is organized into categories, by type of proposed land use or project.

RESIDENTIAL PROJECTS:

- Boundary Creek EIR, County of Alameda
- Alcorn / Delco builders EIR, County of Alameda
- Avalon at Union Station, City of Union City
- Black Diamond Estates EIR, City of Pittsburg
- Site B Development Project EIR, Port of Oakland
- Napa Oaks Subdivision EIR, City of Napa
- City Lofts/Paper Company Lofts EIR, City of Oakland
- Ventana Ranch EIR, City of Napa
- Ravenswood Villages Residential Development EIR, City of East Palo Alto
- Gillrie Property Subdivision EIR, Alameda County
- One Davey Glen Townhouses and Offices Mitigated Negative Declaration, City of Belmont
- Ross Woods MND, City of Belmont
- CareMeridian Creekside Facility MND, Town of Fairfax
- Bruzzone Residential Development MND, City of Alameda
- “A” Street Senior Housing Project EIR, City of Antioch
- Black Diamond Estates Preliminary Development Plan EIR, City of Antioch
- Oakwood Subdivision EIR, City of Clayton
- Sunnyside Terrace EIR, City of Martinez

TRANSPORTATION PROJECTS:

- Ellsworth/Second Avenue Project EIR, City of San Mateo
- Route 101/University Avenue Interchange Improvements EIR, City of East Palo Alto
- Third Avenue/U.S. 101 Interchange Improvements and Humboldt Bridge Replacement Environmental Assessment/EIR, City of San Mateo
- East 18th Street/Bridgehead Road Annexation – Bridgehead Pumping Station and Force Main EIR, City of Antioch

- Patton Way EIR, City of Alameda
- Doolittle Drive Widening Project Negative Declaration, City of Alameda
- Tinker Avenue Extension Mitigated Negative Declaration, City of Alameda
- Bay Farm Island Bicycle Bridge Negative Declaration, City of Alameda
- Traffic Impact Fee (Regional Component) EIR, City of Livermore
- Foothill Boulevard Extension EIR, City of Half Moon Bay

REDEVELOPMENT PROJECTS:

- Oakland Army Base Area Redevelopment Project EIR, Environmental Coordinator, OBRA
- Mission/Foothill Corridor Plan Amendment EIR, City of Hayward Redevelopment Agency
- Redevelopment Plan EIR, City of Union City
- Redevelopment Project No. 4 EIR, City of Antioch/Antioch Development Agency
- West Oakland Redevelopment Plan EIR, City of Oakland
- Central City East Redevelopment Plan EIR, City of Oakland
- Plaza 2 Redevelopment Project EIR, City of San Leandro Redevelopment Agency
- Eden Area Redevelopment Plan EIR, Alameda County Redevelopment Agency

COMMERCIAL / INDUSTRIAL PROJECTS:

- Wind River Project Master Plan General Plan Amendment & MND, City of Alameda
- Marina Village Master Plan Amendment MND, City of Alameda
- Waterfront Plaza Hotel Expansion MND, Port of Oakland
- Galleria Plaza Hotel EIR, City of Walnut Creek
- Milpitas Business Park Subsequent EIR, City of Milpitas
- O'Reilly Business Park EIR, City of Sebastopol
- Oakmont Vistas/Storage USA MND, City of South San Francisco
- San Pablo International Marketplace MND, City of San Pablo
- Office Max at South Shore Center MND, City of Alameda
- Walgreens Retail Center MND, City of Alameda
- 1420 Burlingame Avenue (Saks Fifth Avenue Store) MND, City of Burlingame
- Bon Air Shopping Center Supplemental EIR, City of Larkspur
- Clayton Station Project EIR, City of Clayton

- Clayton Town Center Specific Plan EIR, City of Clayton
- 17th Street Garage EIR, City of Oakland
- Shurgin Shopping Center MND, City of El Cerrito
- 1640 Broadway Project EIR, City of Oakland
- Pacific Commons Supplemental EIR, City of Fremont
- National Gypsum Plant Expansion MND, City of Richmond
- La Vista Quarry EIR Addendum, Alameda County
- Chevron LPG Spheres Project MND, City of Richmond
- Chevron Ethanol Tank Construction Project MND, City of Richmond
- Interim Lease Program, Fleet Industrial Supply Center MND, City of Alameda
- USS-POSCO Industries Pittsburg Facility MND, City of Pittsburg

PUBLIC / QUASI-PUBLIC PROJECTS

- Transbay Cable Project, City of Pittsburg
- Muslim Community Association School Project EIR, City of Santa Clara
- Fremont High School Expansion EIR, Oakland Unified School District
- Elmhurst Elementary School and Middle School EIR, Oakland Unified School District
- Hills Fire Station EIR, City of Berkeley
- Fire Station Facility MND, City of St. Helena
- Union Point Park MND, Port of Oakland
- Novato Civic Center EIR, City of Novato
- Contra Costa S.M.R.T. Facility MND, City of Pittsburg
- URM (Unreinforced Masonry Building) Ordinance MND, City of Alameda
- 115 kV Transmission Line Project MND, City of Alameda
- Public Tree Management Policy MND, City of El Cerrito
- Lakeport General Plan EIR, City of Lakeport
- Redwood Christian School EIR, Castro Valley, Alameda County

SPECIFIC PLANS AND MASTER DEVELOPMENT PLANS:

- Bear Creek West Specific Plan, City of Stockton
- Bear Creek East Specific Plan, City of Stockton
- River Run Specific Plan, South Stockton Implementation Group
- Duck Creek Master Development Plan, Eagle Meadows Development

- Mossdale Landing East and South Urban Design Concept Plans, City of Lathrop
- Hillsdale Meadows Specific Plan EIR, City of San Mateo
- San Lorenzo Village Center Specific Plan, County of Alameda
- North Livermore Specific Plan EIR, Alameda County/City of Livermore
- Marina Village Master Plan, City of Alameda
- Bernal Property Specific Plan and EIR, San Francisco Water Department
- Marina Heights Master Plan EIR, City of Marina
- Central Larkspur Specific Plan Draft EIR

GENERAL PLAN AND PUBLIC POLICY PROJECTS:

- El Dorado Hills Annexation Study, El Dorado County LAFCO
- Marin LAFCO Annexation, Environmental Study
- Vasco-Laughlin Specific Plan and EIR, City of Livermore
- Hayward General Plan Update and EIR, City of Hayward
- Marina General Plan EIR, City of Marina
- Metropolitan Transportation Plan Updates, Supplemental EIRs (1999 & 2002), AMBAG

LAND USE PLANNING

- West Oakland Redevelopment Plan and Central City East Redevelopment Plan EIRs, City of Oakland
- Boundary Creek Project EIR, County of Alameda
- *North Livermore Specific Plan EIR*, City of Livermore and Alameda County
- First Presbyterian Church of Berkeley Facility Master Plan EIR, City of Berkeley

WRITING AND EDITING

Policy Plans and Large Scale Land Use Plans

Mr. Gregory has developed or participated in development of numerous comprehensive General Plan updates, Specific Plans, Master Plans and environmental protection plans. Generally, Mr. Gregory's objective in these projects was to prepare plans for new communities that were able to achieve housing and economic goals while simultaneously protecting and enhancing important and sensitive natural resources. He worked with service providers, public agencies, and citizen groups and stakeholders to create strategies and implementation programs necessary to ensure that the plans were compatible with the natural environment, community values, and the capacity of infrastructure and services. He conducted workshops, hearings and community meetings to solicit public input to be used in the preparation of planning programs. Mr. Gregory has also developed policy documents and analyzed proposed public policy pertaining to land use, development, growth management and resource conservation.

Representative Projects:

- Bear Creek West, Bear Creek East, Bear Creek South and River Run Specific Plans, in the City of Stockton
- Mossdale Landing South and East, City of Lathrop
- El Dorado County General Plan, County of El Dorado
- Concord General Plan, City of Concord

EDUCATION:

- Bachelor of Environmental Design, University of Colorado, Boulder - 1980
- Master of Regional Planning and Landscape Architecture, University of Massachusetts, Amherst - 1982

Scott Gregory, Principal

Scott Gregory, Principal, has managed a wide variety of environmental assessments, private land development projects, and public general plans and specific plans during his now 25 years of professional planning experience. Throughout his career, Mr. Gregory has developed a strong interest in working with communities to resolve complex land use and environmental issues.

EXPERIENCE:

Project Management

Mr. Gregory is especially adept at managing large consulting teams to achieve client objectives. His responsibilities at Lamphier-Gregory have included serving as Project Manager on a number of large projects with planning services budgets exceeding \$1 million. As Project Manager, Mr. Gregory's role has included managing overall schedules and budgets to ensure successful completion of planning and environmental projects. He has also coordinated technical input from a variety of disciplines to ensure that these issues are adequately and appropriately addressed. As a Project Manager, Mr. Gregory essentially serves as an extension of the client's staff to advocate and/or represent the client's interests throughout the planning and environmental review process.

Representative Projects:

- Kaiser Oakland Medical Center and Replacement Hospital Project, City of Oakland
- Oakland Army Base Reuse Plan and Redevelopment Plan EIR, City of Oakland and the Oakland Base Reuse Authority
- Stockton Specific Plans and Master Development Plans, Contract Planning Services, City of Stockton

Preparation of Complex Environmental Documents

Mr. Gregory is skilled and experienced in preparing clear and concise environmental documents that communicate to technical audiences as well as public decision-makers and the community. Mr. Gregory has written numerous CEQA documents ranging from initial studies and negative declarations to complex combined EIR/EIS reports. As part of these projects, Mr. Gregory has managed teams of sub-consultants to address complex environmental issues, directing the teams' scope of work, budget, and work products to produce EIR's on time and within budget. His role has also required an ability to interpret technical details into easy to understand, publicly accessible and comprehensive documents that have enabled city councils, county supervisors and planning commissions to make informed decisions on proposed projects.

Representative Projects:

- Buena Vista Wind Energy Repowering Project EIR, County of Contra Costa

EXPERTISE:

PROJECT MANAGEMENT

ENVIRONMENTAL ANALYSIS

PROJECT NAME:

CITY COUNCIL APPROVAL

PROJECT NO.:

DATE:

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND METROPOLITAN PLANNING GROUP**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and ("Consultant") as of April 17, 2007 in Milpitas, California.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end nine months from that date, or April 17, 2008 and Consultant shall complete all work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the currently prevailing professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the highest and best professional standards of quality observed by a person practicing in Consultant's profession.

1.3 Professional Skill. It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the highest and best professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the highest and best standards of accuracy, completeness and coordination.

1.4 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit B shall name the specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant and Consultant's employees shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder. Consultant must request at least a week in advance in writing City's approval for any changes to this Agreement's performance schedule and/or dates for deliverables.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed One Hundred Sixty Five Thousand Dollars (\$165,000), for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills ("Invoice #");
- The beginning and ending dates of the billing period;
- A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit D for invoice tracking and shall submit the form with each invoice.
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant

performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed. Satisfactory performance shall be defined and identified according to the discretion of the Interim Planning Director. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each contract billing until the completion of the contract unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Reserved

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.6 Reimbursable Expenses. There shall be no reimbursable expenses related to this Agreement. All monies due Consultant shall be included in this Agreement's not to exceed amount.

- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and information in the City's possession. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability

Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision

of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except for ten (10) days for non-payment of premium.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except for ten (10) days for non-payment of premium.
- 4.3.3** Reserved
- 4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Reserved
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured

retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778

of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3 and the attached scope of work. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Limited as Agent.** Except as City may specify in writing, including by email or other electronic communication, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant and Consultant's employees shall confer with and receive written confirmation from the Planning Director prior to representing or binding the City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses,

permits, qualifications, and approvals of whatsoever nature legally required to practice their respective professions. Consultant represents and warrants to City that Consultant, its employees, agents and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

City and Contractor agree that City may allow an extension, at Consultant's written request, in the following limited circumstances: (1) Where City and Consultant mutually agree a reasonable extension is necessary; or (2) City and Contractor

agree that circumstances and factors beyond Consultant's control require a reasonable extension.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will

not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire." Upon submission of any work for hire pursuant to this Agreement and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright. Consultants and sub-consultants retain the right to use any project records, documents and materials for marketing of their professional services.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by Felix Reliford, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:
Felix Reliford, Interim Director of Planning and Neighborhood Services
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 Reserved

10.12 Reserved

10.13 Integration. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.14 Exhibits. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

By: _____

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Compensation Schedule, personnel and rates
- Exhibit C: Insurance Coverage Documents
- Exhibit D: Sample Progress Payment form

EXHIBIT A

The Metropolitan Planning Group shall provide the following professional planning services:

- **Two Contract Planners**-Total of 50-hours/per week.
- **Development Review**-Review of complex development applications including General Plan and Zone Change Amendments, Tentative Maps, Environmental Review Process, Urban Design Review, Use Permits, Variances, Specific/Precise Plans, and processing other types of planning and development applications.
- **Environmental Impact Reports**-Managing complex environmental analyses and including environmental impact reports.
- **Meeting with Developers/Applicants**-Meeting with developers and applicants to address on-going project issues, site analysis, land use compatibility, conformance with the General Plan and Zone Ordinance, and recommendations to enhance development projects.
- **Working with City Staff**-Routing of development applications, meeting with City Staff to discussion specific projects issues, reviewing other departments special conditions and notes to the applicants, preparing final conditions for staff reports, preparation of letters to developers and applicants after Planning Commission and/or City Council decisions on projects.
- **Attend Planning Commission and City Council Meetings**-Preparation and presentations of Staff Reports and background documentation for Planning Commission and City Council meetings as required.
- **Attend Special Meetings**-Attend Special meetings of Advisory Boards and Commissions as required.



SECTION 1: QUALIFICATIONS

Metropolitan Planning Group proposes to provide on-call urban planning consultant services to the City of Milpitas. Contained herein are the firm's qualifications illustrating how we have provided similar services to other municipalities and private companies.

Metropolitan Planning Group, Inc. (M-Group) was created in order to bring innovative and effective planning solutions to a wide range of public and private clients. We work throughout the Bay Area metropolitan region to bring extremely high caliber professional planning services to the communities where we live and work.

The company brings together experienced city planners under one roof so that we can effectively offer a range of services including:

Urban Design – M-Group provides design services to help plan proposed developments within existing developed settings. Whether it is design for a new infill housing development, or redevelopment of an existing industrial complex, we can help a city with site design and feasibility studies. We also offer streetscape urban design services to bring unique, pedestrian-friendly environments to our communities.

Policy Planning – The planners at M-Group have real world experience crafting general plans, zoning codes, design guidelines, area plans and precise plans that help communities achieve their established goals and projections.

Transit Oriented Development – M-Group planners have on-the-ground knowledge and experience with Transit Oriented Development to make these dynamic projects a reality. From the cutting edge projects in Mountain View such as the Crossings, Whisman Station, Downtown and Mayfield Mall to smaller, custom tailored projects in Campbell, our people can help implement TOD.

Development Review – With our depth of experience in 12 Bay Area public agencies, we know first hand what the issues are that drive a successful development review process. With a focus on efficient, timely delivery of services, and a commitment to quality results, our experienced staff can plug into any planning department in the Bay Area and provide a seamless extension of staff resources.

Entitlement Services – We offer a full range of entitlement services for all types of projects, including residential, commercial, industrial and mixed-use. We understand the balancing act cities must perform in order to attract new development while minimizing impacts to existing residents and infrastructure. We work with cities to craft high-quality developments that meet the needs and expectations of the City, the community, and the developer. M-Group staff also has experience managing complex environmental analyses including environmental impact reports.

All of the planners in M-Group have a blend of private and public sector experience that adds value and perspective to our work.

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1A. PROJECT STAFFING

Metropolitan Planning Group proposes to provide staff to the City of Milpitas, Metropolitan Planning Group is comprised of the following staff. Resumes are included in the appendix.

The People

- Whitney McNair, AICP – M-Group Principal 2006-present
- Geoff I. Bradley – M-Group Principal 2006-present
- Heather Bradley – M-Group Senior Planner 2006-present
- Judie Soo Gilli – M-Group Associate Planner 2006-present
- Jeanette Warne – M-Group Assistant Planner 2006-present
- Bridgette Carroll – M-Group Feb. 2007

Principals

Whitney McNair, AICP

Ms. McNair has over 12 years of professional planning experience, including over 10 years with the award winning, progressive City of Mountain View Planning Division, where she served as both Zoning Administrator and Planning Manager. Ms. McNair was instrumental in all of the major development projects and award winning planning policy documents produced by the City of Mountain View during her time there. She also has extensive downtown revitalization, complex entitlements, mixed-use, high-density residential infill and citywide economic development experience.

Ms. McNair has established herself as a highly effective consensus builder with very strong interpersonal skills and a solid foundation in implementation of complex planning endeavors.

Education

B.A. Environmental Studies; Emphasis in Planning, Univ. of California, Santa Barbara
Master's of Urban and Regional Planning, San Jose State University

Awards

- 2006 – American Planning Association, Northern Section California Chapter Award – Implementation
Rowhouse Standards and Development Guidelines
- 2006 – American Planning Association, State Award
- 2002 – American Planning Association, National Award – Implementation
Transit Oriented Development
- 2002 – American Association of Planners, Northern Section California Chapter Award – Implementation
Transit Oriented Development

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M

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Geoff I. Bradley

Mr. Bradley has over 14 years of professional public and private experience working with a variety of architectural, planning, development firms and public agencies. This includes over 10 years of public sector experience with Bay Area planning and redevelopment agencies. Most recently, as the Senior Planner for the City of Campbell, Mr. Bradley was very involved in the on-going revitalization of downtown Campbell as well as responsible for major commercial, mixed-use, transit oriented projects through out the city and a comprehensive update of the entire General Plan and Zoning Code.

Mr. Bradley combines creative problem solving with the ability to work with a wide variety of stakeholders on achieving community wide goals.

Education

B.S. City and Regional Planning, Cal Poly, San Luis Obispo
M.S. Architecture, Cal Poly, San Luis Obispo

Awards

1999 – San Jose Mercury News- Design a Monument to Silicon Valley – Grand Prize Winner
1996 – Shop Sunnyvale Logo Design Contest
1987– Pratt Institute National Talent Search

Senior Planner

Heather Bradley

Ms. Bradley has over 10 years of private and public sector planning experience. Her Public agency experience includes the Cities of Saratoga, Sunnyvale and Milpitas where she has gained valuable experience in development and design review, annexation processing and historic preservation. Her private sector experience includes work with the former Crawford, Multari & Starr, where she was involved with zoning code updates and GIS mapping. Areas of expertise include residential and commercial design review, hillside development and public counter service.

Education

B.S. City and Regional Planning, Cal Poly, San Luis Obispo

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M

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Associate Planner

Judie Gilli

Ms. Gilli has over 8 years of professional planning experience, working with a wide range of public agencies and a civil engineering firm. This includes 3 years with the San Jose Redevelopment Agency where she was highly involved with a number of high profile, fast moving downtown redevelopment projects. More recently, she gained 3 years of experience working with the Town of Los Gatos, where she honed her design review and consensus building skills.

Education

B.S. City and Regional Planning, Cal Poly San Luis Obispo

Assistant Planner

Jeanette Warne

Ms. Warne has an extensive background in community outreach efforts, development review and policy development. Ms. Warne is currently pursuing her Master's Degree in Urban & Regional Planning and has experience with the Santa Clara Valley Water District. She has a varied skill set that is an asset to any project, including GIS and 3-D computer modeling.

Education

B.A. Economics, University of California, Santa Cruz

M.S. Communications, University of California, Santa Cruz

Master's of Urban and Regional Planning, San Jose State University (in progress)

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SECTION II: CURRENT CLIENTS

We are proud to be working on behalf of a diversified range of clients, in both the public and private sectors. Our clients are committed to quality, customer satisfaction and community benefit.

Public Clients

- City of Fremont
- City of Mountain View
- City of Palo Alto
- City of Saratoga
- City of San Carlos
- City of Sunnyvale
- City of Vallejo

Selected Private Clients

- DBI Construction
- Sand Hill Property Co.
- Taylor Woodrow Homes
- Skip Reed Builders, Inc.
- Trinity Church of Sunnyvale
- SRM Development, LLC
- The Riding Group
- Dollinger Properties

WORK EXAMPLE 1

Project name: Current Planning/Development Review

Clients: **City of Mountain View**

Description of work performed: Principals Geoff Bradley and Whitney McNair perform a wide array of development review and long range planning services to the City. Projects include:

- 1079 Marilyn Drive, 31 single-family homes.
- 333 West Evelyn Avenue – 98 unit condo and rowhouse project near transit station
- South Whisman Area Plan – Rezoning of 48 acres from industrial to residential and development of 1200 new housing units at a variety of densities
- Google Master Plan – Redevelopment of 64 acres of industrial land with approximately 2 million square feet on new industrial buildings.
- Home Depot at San Antonio Center

Period work was completed: Ongoing (Since February 2006)

Client contact information: Aarti Shrivastava, Planning Manager (650) 903-6306

WORK EXAMPLE 2

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Project name: Residential Single Family Design Review

Client: **City of Cupertino**

Description of work performed: Principal Geoff Bradley and Associate Planner Judie Gilli have been responsible for the majority of Administrative Single Family Design Review applications for the City. We work closely with homeowners, architects, engineers and neighbors to facilitate successful implementation of the City's Single-Family Design Review program. We coordinate the work of a consulting architect, arborist and geologist.

Period work was completed: Ongoing (Since January 2006).

Client contact information: Ciddi Wordell, City Planner or Steve Piasecki, Community Development Director (408) 777-3308

WORK EXAMPLE 3

Project name: Residential Single Family Design Review and Public Counter

Client: **City of Sunnyvale**

Description of work performed: Senior Planner Heather Bradley has been responsible for managing all administrative single family design review projects and has staffed the City of Sunnyvale's innovative One-Stop counter for two to three shifts per week.

Principal Whitney McNair has been responsible for processing the Jay Paul Project in Sunnyvale, which comprises a 1.7 million S.F. office complex.

Period work was completed: Ongoing (Since 2002)

Client contact information: Gerri Caruso, Senior Planner (408) 730-7591 or Trudi Ryan Planning Officer (408) 730-7435

WORK EXAMPLE 4

Project name: Palo Alto Zoning Ordinance Update

Clients: **City of Palo Alto**

Description of work performed: Principal, Whitney McNair, has worked with Palo Alto planning staff on the Zoning Ordinance Update (ZOU) of the commercial zones, development of new performance standards and multi-family standards. This work requires coordination of input from a wide range of stakeholders, including homeowners, developers, city staff, planning commissioners and City Councilmembers.

She is also working on the proposed Stanford University Medical Center Expansion and Hospital Redevelopment project and the proposed 240,000 square foot Stanford Shopping Center expansion.

Period work was completed: Ongoing since August 2006

Client contact information: Curtis Williams, Assistant Director, (650) 329-2321

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SECTION III: PREVIOUS CLIENTS/WORK EXPERIENCE

All of the planners in M-Group have a blend of private and public sector experience that adds value and perspective to our work. Taken together, the seven M-Group city planners have worked for the following public agencies in the Bay Area:

Public Agency Experience

City of Campbell
Campbell Redevelopment Agency
City of Cupertino
City of Hayward
City of Milpitas
City of Monte Sereno
City of Mountain View
City of Palo Alto
City of Saratoga
City of Sunnyvale
San Jose Redevelopment Agency
Santa Clara Valley Water District
Town of Los Gatos

This blend of experience creates a dynamic and multifaceted approach that spans the range of city planning experience. This allows us to offer innovative & effective city planning solutions.

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