

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND SMITH & ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Smith & Associates ("Consultant") as of May 15, 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 five-year from that date, or June 30, 2012 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:

Terry S. Larson, MAI  
Smith & Associates, Inc.  
140 Town and Country Drive, Suite # F  
Danville, CA 94526

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

SMITH & ASSOCIATES

REAL  
ESTATE  
VALUATION  
AND  
CONSULTING

Real Property Appraisal Services

City of Milpitas

455 E. Calaveras Blvd.

Milpitas, CA 95035

PREPARED FOR

Ms. Cindy Maxwell

Principal Analyst

Planning & Neighborhood Services

City of Milpitas

455 E. Calaveras Blvd.

Milpitas, CA 95035

PREPARED BY

Terry S. Larson, MAI

AG007041

**RECEIVED**

FEB 26 2007

CITY OF MILPITAS  
PLANNING DIVISION

Smith & Associates

140 Town and Country Drive, Suite F

Danville, California 94526

(925) 855-4950 FAX (925)855-4951



February 20, 2007

Ms. Cindy Maxwell  
Principal Analyst  
Planning & Neighborhood Services  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Re: ***Real Property Appraisal Services for determining the Average Fair Market Value of Residential Land in the City of Milpitas***

Dear Ms. Maxwell:

Smith & Associates is pleased to provide you with this Proposal regarding Real Property Appraisal Services for the City of Milpitas.

Smith & Associates provides professional Real Property Appraisal and Consulting Services to the Greater Bay Area and Sacramento Region and employs 18 full-time California Certified General Real Estate Appraisers. We also employ 4 market researchers and 4 support personnel. We have offices in Danville, Sacramento and Silicon Valley.

Mr. Terry Larson, Project Manager, and Mr. Dennis Smith, Co-Project Manager, are members of the Appraisal Institute and hold the prestigious MAI designation. Mr. Larson is also a member of the International Right of Way Association and has a Real Estate Sales License in Santa Clara County.

The City of Milpitas would like to establish an average per acre market value for residential land to determine park in-lieu fees for new residential development. The per acre value will apply throughout the fiscal year. Four annual updates will be required as part of a five-year appraisal contract. Additionally, there may be a need for independent reviews of appraisals submitted by residential developers.

Smith & Associates was selected as the City appraiser for the last five year contract and we are currently finishing our final appraisal under that engagement. We completed all of the annual appraisals within the promised time frame and within budget.

Our methodology (**Scope of Work**) for the assignment includes the research and analysis of all residential land sales within the City of Milpitas within a reasonable time frame. These sales will be investigated and confirmed regarding the details of the transaction, including; grantor and grantee, sale price, date, terms and conditions, development potential, number of residential units, etc. A complete investigation of all sales will be made. The most recent sales will be given the most weight. If there are not adequate sales within a given time period, say 12-months, we will also investigate older sales.

An attempt will be made to only use sales within Milpitas. If there are not enough sales within Milpitas to draw reasonable conclusions, consideration will be given to sales in

Ms. Cindy Maxwell  
City of Milpitas  
Page 2

surrounding communities like San Jose and Fremont, although this would not be the preferred method. We will investigate sales that reflect all potential residential land uses, including low, medium, and high-density residential projects.

Once a complete sample of sales is identified and verified, the sales will be adjusted for the following characteristics; time (market conditions), financing, and physical condition. A market conditions adjustment is important as the market can change over time and older sales may need to be adjusted to reflect upward or downward trends to the current appraisal date.

Physical conditions are important as parcels are in different stages of improvement and need to be adjusted to a similar base condition. We recommend setting a base value assuming a level site with all street improvements including curbs, gutters, sidewalks, utilities, and street lights, but no development entitlements. All of the sales will then be adjusted to this standard. Alternatively, the base site value will reflect a raw land parcel with no street frontage improvements and all sales will be adjusted to this base condition.

Other adjustments for size, location, density, etc. should not be made as the aim is to represent an average per acre value in Milpitas. These adjustments would be property specific and should not be made in estimating an average market value.

Once the sales have been adjusted, we will then calculate a mathematical average per acre market value.

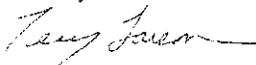
Because we are not appraising a specific property, this service will be identified as a Consulting Assignment. We will prepare a Summary Report that will provide all of the necessary information to fully document the comparable sales and adjustments and explain the appraisal process leading to the final per acre determination of market value.

Our fee for the first year of this assignment is \$5,500. Annual updates to the original report will be made for four consecutive years at a cost of \$5,500 per year. The cost to review an appraisal will be based on our hourly rates, with the cost estimated at between \$500 and \$1,000, depending on the amount of time involved. This considers a desktop review. If a field review and verification of sales is required, the fee will be more. An approximate delivery for review appraisal services is two weeks. Our hourly rates follow:

|                 |       |                |       |
|-----------------|-------|----------------|-------|
| Project Manager | \$225 | Administration | \$ 35 |
| Staff Appraiser | \$175 | Processing     | \$ 25 |
| Researcher      | \$ 50 |                |       |

If you have any questions after reviewing this proposal please feel free to call. I look forward to continuing to provide professional real property appraisal services to the City of Milpitas.

Sincerely,



Mr. Terry S. Larson, MAI  
Partner  
SMITH & ASSOCIATES, INC.  
925-855-4950 Ext. 226

## COMPANY PROFILE

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### Name and Location of Firm

#### **Smith & Associates, Inc.**

Real Estate Appraisal and Consulting  
East Bay Office/Corporate Headquarters  
140 Town & Country Drive, Suite F  
Danville, CA 94526  
Phone (925) 855-4950, ext. 226  
Fax (925) 855-4951

#### **Contact - Mr. Terry S. Larson, MAI – Partner**

Email [tlarson@smithassociatesinc.com](mailto:tlarson@smithassociatesinc.com)  
Web Site [www.SmithAssociatesInc.com](http://www.SmithAssociatesInc.com)

Silicon Valley Office - East Campbell Avenue, Campbell, CA 95008  
Sacramento Office - 111 Woodmere Road, Suite 140, Folsom, CA 95630

### Size of Firm

Smith & Associates currently employees 18 full time appraisers, 4 researches, and 4 support personnel. All appraisers are state licensed.

| <u>Project Managers</u>   | <u>Experience</u> | <u>Location</u> | <u>Responsibilities</u>            |
|---------------------------|-------------------|-----------------|------------------------------------|
| Terry Larson, MAI         | 25 Years          | Danville        | Review, Analysis, Testimony        |
| Dennis Smith, MAI         | 35 Years          | Danville        | Review, Analysis, Testimony        |
| <u>Staff Appraisers</u>   |                   |                 |                                    |
| William C. Schnitzer, ASA | 15 Years          | Danville        | Research, Analysis, Report Writing |
| Paul Urvinitka, MAI       | 15 Years          | Danville        | Research, Analysis, Report Writing |
| Tom Tucker                | 35 Years          | Danville        | Research, Analysis, Report Writing |
| Jackie Lawrence           | 30 Years          | Danville        | Research, Analysis, Report Writing |
| Matt Bentkowski           | 15 Years          | Danville        | Research, Analysis, Report Writing |
| Lisa Wright               | 5 Years           | Danville        | Research, Analysis, Report Writing |
| Lisa Federico             | 10 Years          | Sacramento      | Research, Analysis, Report Writing |
| John Carrothers           | 12 Years          | Sacramento      | Research, Analysis, Report Writing |
| Greg Hansen               | 6 Years           | Danville        | Research, Analysis, Report Writing |
| Robin Cunningham          | 2 Years           | Danville        | Research, Analysis, Report Writing |
| Gary Larsen               | 2 Years           | Danville        | Research, Analysis, Report Writing |
| Tiffani Power             | 2 Years           | Danville        | Research, Analysis, Report Writing |
| Jake Johnson              | 5 Years           | Sacramento      | Research, Analysis, Report Writing |
| Chris Howell              | 1 Year            | Sacramento      | Research, Analysis, Report Writing |
| Bill Hurd                 | 1 Year            | Danville        | Research, Analysis, Report Writing |
| Thomas Venuti             | 10 Years          | Danville        | Research, Analysis, Report Writing |
| <u>Researchers</u>        |                   |                 |                                    |
| Doug Hogendorn            | 2 Years           | Danville        | Market Research                    |
| Jennifer Patton           | 2 Years           | Sacramento      | Market Research                    |
| Oliver Gibbons            | 1 Year            | Danville        | Market Research                    |
| Brian Kennedy             | 1 Years           | Danville        | Market Research                    |
| <u>Administration</u>     |                   |                 |                                    |
| Trish Baron               | 12 Years          | Danville        | Accounts Receivable/Payable        |
| <u>Processors</u>         |                   |                 |                                    |
| Vanessa Wilson            | 3 Years           | Danville        | Report Processing                  |
| Janice Nakaji             | 5 Years           | Sacramento      | Report Processing                  |
| Jolie Jeffrey             | 1 Year            | Danville        | Report Processing                  |

## **COMPANY PROFILE - CONTINUED**

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### **Firm's History**

Smith & Associates is an independent Real Estate Appraisal and Consulting firm specializing in Commercial Real Estate Appraisal and Valuation Services in the Greater Bay Area and Sacramento Regions. Smith & Associates, Inc. was formed in 1998, formerly known as Smith Denton Associates, Inc. Smith Denton Associates, Inc. was originally formed in 1985. Prior to that Mr. Dennis L. Smith, MAI had been an employed by Bank of America in 1972 and became an independent fee appraiser in 1980.

Mr. Terry S. Larson, MAI joined Smith & Associates in 1997. Prior to that Mr. Larson had 18 years of appraisal experience including 8-years with American Appraisal Associates in Oakland, 8-years with Hulberg & Associates in San Jose, and 2 years with Cornish & Carey Commercial Investment Services Group in Santa Clara.

### **Internal Organizational Structure**

Smith & Associates is Incorporated and wholly owned by Mr. Dennis L. Smith, MAI. Mr. Smith oversees the entire operation of the company and is directly responsible for appraisal assignments in the San Francisco East Bay and Sacramento regions.

Mr. Terry S. Larson is a Partner of the firm and manages all public agency and eminent domain work, litigation support services, arbitration and mediation services, and airport appraisals and is responsible for these appraisal assignments throughout the Bay Area and Sacramento. Mr. Larson also oversees other appraisal assignments throughout the Bay Area, where he has over 25 years of appraisal experience.

Ms. Trish Baron is the Office Manager and is responsible for administrative issues including accounts payable and accounts receivable.

### **Capacity and Resources**

Mr. Larson's group specializes in public agency and eminent domain appraisals with well over 50% of their work in this specialized area. Their remaining work is for financial institutions and private property owners. Mr. Larson has a California Department of Real Estate Salesperson license currently being held at the commercial brokerage firm of Portfolio Commercial Realty. He regularly attends monthly brokerage meetings where market data is shared with many Bay Area commercial brokers.

Smith & Associates is a full service appraisal firm with all of the necessary tools and knowledge to perform the needed services in a competent and timely manner. The Greater Bay Area and Sacramento are within the Smith & Associates, Inc. defined service area. Smith & Associates has the required resources for the project, including zoning information, County Assessor's records, Multiple Listing Service, Brokers Flyer Distribution Service, MetroScan, CoStar, and COMPS, Inc. Over the years, the appraisers affiliated with Smith & Associates, Inc. have appraised numerous properties throughout these areas.

## COMPANY EXPERIENCE

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### Eminent Domain Appraisals

Smith & Associates provides eminent domain and expert witness appraisal services for the City of San Jose Public Works Department, Finance Department, San Jose International Airport, and Redevelopment Agency. We have completed appraisals of vacant land and improved properties, both full and part-takes, for projects including a road widening, a police station, a library, and disposition of surplus land.

We have appraised several land parcels for the City of Pleasanton for public improvement projects for eminent domain and expert witness testimony.

Smith & Associates provides eminent domain and expert witness appraisal services for the Santa Clara Valley Transportation Authority (VTA) for the Light Rail Project in Santa Clara County. We have completed over 75 assignments that include full takes, part takes and easements.

We provide eminent domain and expert witness appraisal services for the State of California Department of Transportation, Caltrans. We recently appraised a big-box retail property and industrial building in Oakland for a project involving seismic work to an overhead freeway. Both are part-takes with significant damages to an existing structure.

Smith & Associates recently completed appraisals of 25 parcels for the Solano County Public Works Department for a road widening project. All were part takes.

We are approved to provide appraisal and expert witness services for the San Mateo County Transit District/Peninsula Corridor Joint Powers Board in San Mateo County. Projects may include railroad systems, grade separation projects, utility relocation projects, bus maintenance facilities, park & ride facilities, bus stops, and tenant improvement projects.

### Expert Witness Testimony

Mr. Larson was retained by the law firm of Wendel Rosen Black & Dean in Oakland representing the Santa Clara Valley Transportation Authority (VTA) who condemned land from a 500,000 s.f. corporate campus in Mountain View for a highway off-ramp project. Mr. Larson was deposed three times and testified in Santa Clara County Superior Court of California. The jury decided the verdict in our favor.

Mr. Larson was retained by the law firm of Brisco Ivester & Bazel in San Francisco to represent Braddock & Logan when a school district condemned land from a 300 unit residential subdivision. Mr. Larson was deposed and testified in Contra Costa County Superior Court of California. The jury decided the verdict in our favor.

Mr. Larson has also testified in front of the San Mateo County Tax Board for ad valorem tax appraisals for the Redwood Shores Special Assessment District. Mr. Larson prepared tax assessments for the district with an estimated value of 1 Billion Dollars. The appraisal involved vacant land; office, retail and medical buildings; and single family homes, condominiums, townhouses, and apartments. There were several million square

## COMPANY EXPERIENCE - CONTINUED

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feet of commercial buildings and over 3,000 residential units. The yearly appraisal distributed the assessment based on property value.

Mr. Larson has also testified in Santa Clara County as a factual witness and he has been deposed for many other court cases.

### **Rent Arbitration Appraisals**

Mr. Larson served as an arbitrator in a Fair Market Rental Value dispute over a 15,000 square foot office building in San Mateo County. The three arbitrators collectively arrived at an agreeable Fair Market Rental Value.

Mr. Larson served as an arbitrator in a Fair Market Rental Value dispute regarding a 34,000 square foot R&D building in Santa Clara County. Mr. Larson's conclusion of market rent prevailed in the arbitration process.

Mr. Larson served as an arbitrator in a Fair Market Rental Value dispute over two acres of commercial land improved with a retail shopping center located in Santa Clara County. Mr. Larson's conclusion of market rent was selected by the third arbitrator.

Mr. Larson was retained as an arbitrator in a Fair Market Rental Value dispute between landlord and tenant over a 65,000 square foot, one story office building located in Contra Costa County.

### **Asset Acquisition Appraisals**

We recently appraised two land parcels for possible condemnation that the City of Oakley wishes to buy to build new elementary and middle schools.

An interesting appraisal assignment for the City of Pleasanton involved a former railroad corridor in the downtown area consisting of several abandoned parcels. Pleasanton wishes to buy the land from the county for additional parking.

We prepared budgetary valuations for the Santa Clara Valley Transportation Authority (VTA) for the proposed BART extension from Fremont to Santa Clara. Several hundred properties of all types were involved in Fremont, Milpitas, San Jose and Santa Clara.

### **Asset Disposition Appraisals**

We provide appraiser services to the General Services Administration (GSA). Mr. Smith recently completed an appraisal assignment of various US land holdings in Guam and Mr. Larson appraised various properties at the NASA Ames Research Center (Moffett Air Field) in Silicon Valley for base reuse purposes. Mr. Larson also appraised the Santa Clara Federal Courthouse buildings in San Jose, the Federal Supply Warehouse in South San Francisco, the Social Security Building in Richmond, and a Federal Agency Office Building in Sacramento. Appraisals were requested as part of real estate review process to dispose of unneeded assets.

We recently appraised six parcels of surplus land for the Santa Clara Valley Transportation Authority (VTA) for possible disposal. Uses include high-density

## COMPANY EXPERIENCE - CONTINUED

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residential, commercial, or mixed-use along the light rail system. We appraised these parcels for the sale of the fee simple estate and for possible long-term ground lease.

### **Assessment District Appraisals**

We completed appraisals of land for the City of San Jose Finance Department for the Evergreen Community Facilities District (CFD). This is a 540 acre project proposed for 5,200 residential dwelling units and 195,000 square feet of commercial space, as well as public facilities including schools, parks, a library, roads, and open space. The appraisal is to be used for bond financing in forming an assessment district. Infrastructure costs are estimated at 250 million dollars and the aggregate retail value of the finished lots is estimated to be in excess of 1 billion dollars.

Smith & Associates appraised Windemere Ranch in San Ramon for the ABAG Finance Authority. The purpose of the appraisal was in support of the issuance of bonds under the Mello-Roos Community Facilities Act of 1982. The project consisted of 2,320 acres of land for 5,170 dwelling units with a total appraised value of \$30,000,000.

Mr. Urvinitka appraised the McCarthy Ranch Assessment District Phase I for the City of Milpitas in support of bond financing pursuant to the Improvement Bond Act of 1915, constituting Division 10 of the Streets and Highways Code (the Bond Law). The total market value of the 135 acres of land at full buildout was estimated at 95 million dollars.

### **Utility Line Corridor Appraisals**

Western Area Power Administration was involved in the Los Banos - Gates Transmission Project (Path 15). Western is a Power Marketing Administrator within the Department of Energy who markets and transmits electricity from multi-use water projects in California. The project involved construction of a third transmission line to alleviate the bottleneck of electricity transmissions. We appraised  $\pm$  80 agricultural properties along 85 miles for the condemnation of easements for the project.

The Modesto Irrigation District (MID) operates two electric transmission lines for power needs in Stanislaus County. Electrical Consultants, Inc. was retained by MID to negotiate the needed acquisitions for a new line. We appraised  $\pm$  40 agricultural properties along 17 miles for the condemnation and acquisition of easements for the new Westley-Rosemore 230kv line project. Appraisals included easement acquisitions and consideration of damages.

### **Government Owned Airport Appraisals**

Fair Market Ground Rental appraisal for Hewlett Packard Jet Center at San Jose International Airport. A 30,000 s.f. corporate jet center on 7 acres of leased land and the appraisal was for 5-year rental rate adjustment.

Appraised vacant land parcels and improved F.B.O.'s at Buchanan Field Airport, Concord, including: Navajo Aviation, a 14,720 s.f. hangar on 3.2 acres of leased land; Apex Aviation, a 37,787 s.f. hangar on 2.564 acres of leased land; Pacific States Aviation, a 37,194 s.f. hangar on 2.875 acres of leased land; and prepared land rental studies for proposed hangar development and land lease renewals for existing tenants.

## **COMPANY EXPERIENCE - CONTINUED**

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Appraised the Bud Field Aviation hangar at Hayward Executive Airport. This is a 34,850 s.f. building on 2.0 acres of leased land and the appraisal was for bank financing.

Prepared appraisals at the Livermore Municipal Airport for presentation to the City Council to establish rental rates for an F.B.O., ramp areas, and vacant land.

Appraised Air One Helicopters F.B.O. at the San Jose International Airport for a possible sale, consisting of an 11,560 s.f. hangar building on 2.7 acres of leased land.

Airport related appraisals for the General Services Administration (GSA) include the base closures for Mather and Castle Air Force Bases.

### **In-Lieu Park Fee Appraisals**

We have a five year contract for appraisal services with the City of Milpitas to establish In-Lieu Park Fees for residential developers. We analyze residential land sales within Milpitas to determine the average per acre value of developable residential land.

We also have a five year contract with the City of Oakley to provide similar appraisal services to establish In-Lieu Park Fees (Mitigation Fees).

### **Litigation Support Appraisals**

We appraised two, 40-unit low income senior housing projects for the City of Benicia Housing Authority for settlement negotiations regarding bankruptcy proceedings.

We were retained by Ginder Sunderland & Carlson to appraise a 30,000 s.f. building in San Francisco regarding breach of fiduciary responsibilities in a real estate transaction.

## REFERENCES

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**Mr. Peter D. Shirk, MAI**

Associate Real Estate Agent  
Santa Clara Valley Transportation Authority (VTA)  
Real Estate Department  
3331 North First Street  
Bldg. B, 2nd Fl.  
San Jose, California 95134  
Phone 408-321-5815  
Fax 408-955-0896  
Appraisal Assignment: Eminent domain appraisals for VTA.

**Ms. Lisa Taitano**

Financial Analyst  
City of San Jose  
200 East Santa Clara Street  
13<sup>th</sup> Floor  
San Jose, CA 95113  
Phone 408-535-7015  
Fax 408-292-6482  
Appraisal Assignment: Evergreen Community Facilities District (CFD)

**Mr. Neil Stone**

Supervising Real Estate Agent  
City of San Jose  
First Floor  
San Jose, CA 95113  
Phone 408-535-8460  
Fax 408-292-6269  
Appraisal Assignment: Various eminent domain appraisals for the City of San Jose.

**Mr. Dennis Carrington, AICP**

Senior Planner  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5479  
Phone 408-586-3000  
Fax 408-586-3170  
Appraisal Assignment: In-Lieu Park Fee Appraisal.

**Mr. Michael Roush**

City Attorney  
City of Pleasanton  
123 Main Street  
PO Box 520  
Pleasanton, CA 94566-0802  
Phone 925-931-5015  
Fax 925-931-5482  
Appraisal Assignment: Various appraisals for City of Pleasanton.

## REFERENCES - CONTINUED

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**Mr. Steven Webber**

Realty Specialist  
Western Area Power Administration  
12155 W. Alameda Parkway  
PO Box 281213  
Lakewood, CO 80228-8213  
Phone 800-336-7288  
Fax 720-962-7269  
Appraisal Assignment: Utility line corridor appraisal.

**Mr. Jim Cloud**

Right-of-Way Specialist  
Electrical Consultants, Inc.  
c/o The Modesto Irrigation District (MID)  
3521 Gable Road  
Billings, MT 59102  
Phone 406-259-9933  
Fax 406-259-3441  
Appraisal Assignment: Utility line corridor appraisal.

**Ms. Kimberly Scala**

Attorney at Law  
Archer Norris  
2033 North Main Street  
Suite 800  
Walnut Creek, California 94596-3728  
Phone 925-930-6600  
Fax 925-930-6620  
Appraisal Assignment: Condemnation for a school site.

**Mr. Les Housrath**

Attorney at Law  
Wendel Rosen Black & Dean  
1111 Broadway  
24<sup>th</sup> Floor  
Oakland, California 94607  
Phone 510-834-6600  
Fax 510-834-1928  
Appraisal Assignment: Expert witness testimony in court.

**Mr. Paul Wiese**

Engineering Manager  
Solano County  
333 Sunset Avenue  
Suite 230  
Suisun City, CA 94585  
Phone 707-421-6072  
Fax 707-429-2894  
Appraisal Assignment: Eminent domain appraisals for public improvement projects.

## REFERENCES - CONTINUED

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**Mr. Kevin Lally**

Attorney at Law

Greenan, Peffer, Sallander & Lally

6111 Bollinger Canyon Road

Suite 500

San Ramon, California 94583-0100

Phone 925-866-1000

Fax 925-830-8787

Appraisal Assignment: Eminent domain appraisal for VTA project.

**Mr. John Brisco**

Attorney at Law

Briscoe Ivester & Bazel, LLP

155 Sansome Street

7<sup>th</sup> Floor

San Francisco, California 94104

Phone 415-402-2703

Fax 415-398-5630

Appraisal Assignment: Expert witness testimony in court.

**Ms. Barbara Mason**

Redevelopment Director

City of Oakley

3633 Main Street

Oakley, California 94561

Phone 925-625-7016

Fax 925-625-4745

Appraisal Assignment: Various appraisals for City of Oakley.

**Mr. Christopher Morin**

Assistant Vice President

Greater Bay Bank

60 South Market Street, Suite 150

San Jose, California 95113

Phone 408-975-6920

Fax 408-293-1733

Appraisal Assignment: Navajo Aviation, Buchanan Field Airport, Concord.

**Ms. Sandra Oberle**

Supervising Property Manager

Norman Y. Mineta San Jose International Airport

1372 North First Street, Suite 600

San Jose, CA 95112

Phone 408-501-7647

Fax 408-573-1677

Appraisal Assignment: Hewlett Packard Jet Center, San Jose International Airport

## REFERENCES - CONTINUED

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**Mr. Glenn Smith, MAI**

Wells Fargo Bank  
2235 Overlook Drive  
Walnut Creek, California 94597  
Phone 925-944-9374  
Fax 925-944-6420

Appraisal Assignment: Bud Field Aviation, Hayward Executive Airport, Hayward.

**Mr. Justin Powell**

Senior Associate  
Leigh Fisher Associates  
160 Bovet Road, Suite 300  
San Mateo, California 94402  
Phone 650-571-2361  
Fax 650-571-5220

Appraisal Assignment: Buchanan Field Airport, Concord.

**Mr. Keith R. Freitas**

Director of Airports  
Contra Costa County  
Buchanan and Byron Airports  
550 Sally Ride Drive  
Concord, California 94520  
Phone 925-646-5722  
Fax 925-646-5731

Appraisal Assignment: Buchanan Field Airport, Concord.

**Mr. Leander Hauri, A.A.E.**

Airport Manager  
Livermore Municipal Airport  
636 Terminal Circle  
Livermore, California 94550  
Phone 925-373-5280  
Fax 925-373-5042

Appraisal Assignment: Livermore Municipal Airport.

**Mr. James L. Vereeke**

Contracting Officer  
General Services Administration, Region 9 (GSA)  
450 Golden Gate Avenue  
San Francisco, CA 94102-3400  
Phone 415-522-3424  
Fax 415-522-3213

Appraisal Assignment: Mather Air Force Base, Main Base, Mather Housing, Castle Air Force Base, Aero Jet Manufacturing Facility, and various US Government Land Holdings in Guam.

# APPRAISERS QUALIFICATIONS

# Terry S. Larson, MAI

California Certified General Real Estate Appraiser No. AG007041

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## QUALIFICATIONS

Terry Larson has been a professional real estate appraiser and consultant in Northern California since 1981. He concentrates his work in the San Francisco Bay Area, but has also performed national assignments in over twenty states. Terry has been a resident of the Bay Area since starting his career and has a strong knowledge of the local markets.

Terry began his career with American Appraisal Associates, the largest full service valuation firm in the world; providing valuation services for real estate, personal property, and intangible business assets. He advanced to manager of the Northern California Real Estate Valuation Group and managed a staff with a territory that covered California as well as assignments across the country. In 1988 Terry joined Hulberg & Associates as a Senior Real Estate Appraiser in San Jose. Terry then worked as a Commercial Realtor with Cornish & Carey in Santa Clara where he utilized his appraisal knowledge as an Investment Real Estate Specialist.

Upon joining Smith & Associates in 1997, Terry expanded the firm's territory into Santa Clara, San Mateo, and San Francisco Counties and built a group of appraisers that emphasize litigation support, eminent domain and partial interest valuations.

Terry regularly provides litigation support services that include property analysis and valuation, as well as deposition and expert witness testimony. He also provides arbitration & mediation services in disputes regarding real estate values, fair rental rates, and related matters.

Terry has a broad background in real estate appraising that includes the following property types; industrial, R&D, commercial, office, retail, and vacant land. Specialized areas include litigation support, eminent domain, and Fixed Base Operations at airports (FBO's).

## CLIENTS

Terry regularly works with banks and other lenders, developers, attorneys, private property owners, local government agencies including cities and counties, the State of California, and the Federal Government. For a client list see our web page at [www.SmithAssociatesInc.com](http://www.SmithAssociatesInc.com).

## ASSIGNMENTS OF INTEREST

- Expert Witness for a condemnation case representing a public agency taking land, Superior Court of California, Santa Clara County.
- Expert Witness for a condemnation case representing a private property owner having land taken by a public agency, Superior Court of California, Contra Costa County.
- Appraised 80 properties for condemnation and acquisition of easements to construct the new Los Banos – Gates Transmission Project in Central California (Path 15).
- Prepared preliminary budgetary valuation studies for several hundred properties for the proposed BART extension from Fremont to San Jose and Santa Clara.
- Providing on-going appraisal and expert witness services (over 75 appraisals to date) for the VTA in support of the Light Rail Project being constructed in Santa Clara County.
- We provide appraiser services to the Western Region General Services Administration (GSA) of the US Government. Assignments include large office & industrial projects with federal tenants and historical significance.
- Terry has testified at the San Mateo County Tax Board for tax appraisals for the Redwood Shores Special Assessment District. Responsible for annual tax assessments for this entire district with an assessed value of over \$1 Billion. Terry has testified in Santa Clara County as a factual witness and been deposed for several court cases.
- Provider of commercial appraisal services for many local and national lenders, including Wells Fargo Bank and Bank of America, among many others.

# Terry S. Larson, MAI

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## ASSIGNMENTS OF INTEREST

- Appraised several Fixed Base Operations (FBO) at the Concord Buchanan Airfield for lease extension negotiations.
- Appraised 75 acres that the City of San Jose bought from a private owner for off-airport use.

## PROPERTY TYPES APPRAISED

|             |   |
|-------------|---|
| Commercial  | Retail, Office, Apartments, Hotels, & Restaurants.  |
| Industrial  | Warehouse, Industrial, R&D Facilities, Mini-Storage, Manufacturing Plants, Truck Facilities, Cross Docks, and Corporate Campuses.   |
| Vacant Land | Industrial, Commercial, Agricultural, and Residential   |
| Specialty   | Golf Courses, Mixed-Use Projects, Food Processing, Fixed Base Operations, Sr. Housing, RV Parks, Right-of-Way, Easements, Detrimental Conditions, Minority Interests, Eminent Domain, Arbitration, and Mediation. |

## WORK HISTORY

|                |                    |  |
|----------------|--------------------|--|
| 1998 – Present | Partner            | Smith & Associates, Inc.                   |
| 1997 - 1998    | Senior Appraiser   | Smith Denton Associates, Inc.              |
| 1996 - 1997    | Commercial Realtor | Cornish & Carey, Investment Services Group |
| 1988 - 1996    | Senior Appraiser   | Hulberg & Associates, Inc.                 |
| 1981 - 1988    | Appraisal Manager  | American Appraisal Associates, Inc.        |

## EDUCATION

Bachelor of Science, School of Business Finance, University of Oregon, 1980

### Appraisal Institute Courses:

Real Estate Appraisal Principles; Basic Valuation Procedures; Capitalization Theory and Techniques; Standards of Professional Practice; Case Studies in Real Estate Valuation; Valuation Analysis and Report Writing; Uniform Standards of Professional Appraisal Practice (USPAP); Case Studies in California Eminent Domain; Federal and State Laws and Regulations; The Appraisers Workfile; Appraisals for Estate Tax Purposes; Valuations of Partial Interests; Fractional Interest and Business; California's Condemnation Process; Appraisal of Nursing Facilities; Right of Way Acquisitions.

### International Right of Way Association Courses:

Appraisal of Partial Acquisitions; Eminent Domain Law Basics, Basics for Right of Way; Issues in Eminent Domain Valuation; Telecommunications and Rights of Way.

Numerous real estate courses, seminars and continuing education classes.

## PROFESSIONAL AFFILIATIONS

State of California Certified General Real Estate Appraiser, No. AG007041  
Member of the Appraisal Institute, MAI No. 11046  
International Right of Way Association, Member No. 2508  
California Department of Real Estate Salesperson, License No. 01213728

# Dennis L. Smith, MAI

California Certified General Real Estate Appraiser No. AG002792

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## SUMMARY

Over twenty-eight years of appraisal experience in Northern California. Areas of emphasis include Alameda, Contra Costa, Santa Clara, Solano and Sacramento Counties.

Property types valued and analyzed include the following:

- *Single and Multi-Family Residential*
- *Vacant Land (Improved and Unimproved)*
- *Commercial (Retail, Industrial and Office)*
- *Subdivision (Feasibility and Valuation)*
- *Rental and Market Surveys*
- *Base Closure Appraisals*

## WORK HISTORY

|                |                 |                                  |
|----------------|-----------------|----------------------------------|
| 1998 - Present | Owner           | Smith & Associates, Inc.         |
| 1985 - 1998    | Owner/Partner   | Smith Denton Associates, Inc.    |
| 1983 - 1985    | Owner/Partner   | Cypress Valuation Group, Inc.    |
| 1980 - 1983    | Owner           | Smith Associates                 |
| 1979 - 1980    | Staff Appraiser | T.A. Burns Company               |
| 1972 - 1979    | Asst. V.P.      | Bank of America, Appraisal Dept. |

## EDUCATION

*Bachelor of Arts, Industrial Technology Cal. State University, Chico*

*Appraisal Institute / AIREA Courses: Principals and Practice of Real Estate; Capitalization Theory Part B (Exam 1B-B); Case Studies in Real Estate Valuation; Industrial Valuation; Valuation Analysis & Report Writing (Exam 2-2); Demonstration Appraisal Report; Preparation and Use of the UCIAR Form; Valuation of Leases; Subdivision Analysis; Easement Valuation; Appraisal Regulations of the Federal Banking Agencies; Standards of Professional Practice, Parts A & B; Highest and Best Use and Market Analysis - course 520; Appraisal Practices for Litigation; Eminent Domain; Federal and State Laws and Regulations Workshop*

*SREA and College Coursework: Introduction to Appraising Real Property; Principles of Income Property Appraising; Legal Aspects of Real Estate; Real Estate Economics; Real Estate Financing*

## AFFILIATIONS

The Appraisal Institute, MAI #7954  
FNMA Level IV Classification #1131111  
Approved by the Department of Corporation, State of California  
Qualified as Legal Expert Witness - Contra Costa, Alameda, Napa and Sacramento Counties

# William C. Schnitzer, ASA

California Certified General Real Estate Appraiser No. AG006766

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## SUMMARY

Over sixteen years of appraisal experience in Northern California. All nine Bay Area Counties with emphasis in Alameda, Contra Costa, Santa Clara and Solano Counties.

Property types valued and analyzed include the following:

- *Single and Multi-Family Residential*
- *Vacant Land (Improved and Unimproved)*
- *Commercial (Retail, Industrial and Office)*
- *Rental and Market Surveys*
- *Condemnation and Right of Way Appraisals*

## WORK HISTORY

|                |           |   |
|----------------|-----------|---|
| 2000 - Present | Associate | Smith & Associates, Inc., Danville, CA            |
| 1999 - 2000    | Associate | Ashley, Chapman & DeVoe,<br>Hayward, CA           |
| 1998 - 1999    | Associate | Kleczewski & Associates, Oakland, CA              |
| 1987 - 1998    | Associate | Roland Burchard & Associates,<br>Walnut Creek, CA |

## EDUCATION

Bachelor of Arts, Economics & Bellingham, Washington      Western Washington University, Interdisciplinary Studies

Appraisal Institute Courses: *Principals and Practice of Real Estate;* Capitalization Theory Part A & B; Case Studies in Real Estate Valuation; Valuation Analysis & Report Writing; Easement Valuation; Standards of Professional Practice, Parts A & B; Appraisal Practices for Litigation; Eminent Domain; Federal and State Laws and Regulations Workshop,

International Right-of-Way Courses: Course 402 Appraisal of Partial Acquisitions

College-Level Courses

Principles of Appraisal I and II, Diablo Valley College; Real Estate Appraisal Principles, University of California at Berkeley; Financial Planning, Vista College; Small Business Administration, University of California at Berkeley; Environmental Impact Statement Writing, Western Washington State University.

## AFFILIATIONS

The Appraisal Institute, General Associate M88-1584  
International Right of Way Association – Member # 238117  
American Society of Appraisers – ASA, Real Property Urban, #058012

# PAUL M. URVINITKA, MAI

California Certified General Real Estate Appraiser No. AG003424

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## SUMMARY

Over eighteen years of Real Estate appraisal and consulting experience in San Francisco and Monterey Bay Areas, concentrating on the San Francisco Bay Area over the last 12 years.

Property types valued and analyzed include the following:

- *Commercial: (Retail, Office, Motels, Hotels & Restaurants)*
- *Industrial: (Warehouse, Light Industrial &, R&D Facilities)*
- *Vacant Land: (Industrial, Commercial & Multi-Residential)*
- *Multi-family Residential: (Ranging in size from 4 to 600+ units)*
- *Specialty: ( Partial Interest Valuations in Co-tenancies,*
- *Partnerships, and LLC's, Litigation Support, Mixed-Use Properties.*
- *Qualified as an Expert Witness in Santa Cruz and Santa Clara Counties*

Since 1992 Mr. Urvinitka has appraised over \$3.5 billion worth of real estate in the San Francisco Bay Area.

## WORK HISTORY

- Associated with Smith & Associates Inc. (May 2004 to Present)
- Vice President, Hulberg & Associates, Inc. (February 2001 to May 2003)
- Senior Appraiser, Hulberg & Associates, Inc. (2000 to 2004)
- Associated with Hulberg & Associates, Inc. (1992 to 2004)
- Associated with Nicholson & Company, Real Estate Appraisers (1985 – 1992)

After graduating with a Bachelor of Science degree in business administration from California State University, Chico, with a concentration-in accounting, Mr. Urvinitka earned his Certified Public Accountant's license. He spent his career in Public Accounting as an auditor with the firms of Pannell Kerr Forster and Laventhol & Horwath, specializing in the Hotel and Hospitality industries.

## EDUCATION

Bachelor of Science in Business Administration, Concentration in Accounting, from California State University, Chico

## AFFILIATIONS

- MAI Member of the Appraisal Institute, No. 12107
- State of California "Certified-General" Real Estate Appraiser, Certificate No. AG003424

Mr. Urvinitka has held a variety of chapter offices with the Society of Real Estate Appraisers prior to the merger of that organization with what is now the Appraisal Institute. He served on the California Governmental Relations Committee, which was involved in the development of the licensing requirements for appraisers in California.

# William O. Hurd

California Certified General Real Estate Appraiser No. AT034899

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## SUMMARY

Bringing over 20 years of professionalism and attention to detail to the Real Estate appraisal industry. Associate member of Appraisal Institute, pursuing MAI designation. Appraisal experience in the entire San Francisco Bay Area and Sacramento, with focus in the City of San Francisco.

Property types valued and analyzed include the following:

- *Commercial (Office, Medical, Retail, Restaurant)*
- *Industrial (Warehouse, Light Industry, Production)*
- *Vacant Land (Commercial, Industrial, Mixed-Use)*
- *Specialty (Eminent Domain, Arbitration)*

## WORK HISTORY

|                |                        |                          |
|----------------|------------------------|--------------------------|
| 2004 - Present | Commercial Appraiser   | Smith & Associates, Inc. |
| 2003 - 2004    | Owner                  | Twin Oak Properties      |
| 2001 - 2003    | V.P. Bus. Development  | Imperial Technology      |
| 1999 - 2001    | Dir. Field Services    | Provato                  |
| 1988 - 1998    | Dir. Sales Engineering | Sybase                   |
| 1980 - 1988    | Technical Sales        | AT&T                     |

## EDUCATION

*Bachelor of Science, Psychology*                      *University of Dayton, Dayton, Ohio*

*Anthony Schools Courses: Basic Real Estate Appraisal; Legal Considerations in Appraisal; Math and Regulations for Appraisers; Uniform Standards of Professional Appraisal Practice*

## AFFILIATIONS

The Appraisal Institute, Associate Member