

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND ALTA PLANNING + DESIGN**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Alta Planning + Design ("Consultant") as of March 4, 2008 in Milpitas, California.

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, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2009, and Consultant shall complete all the 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 highest and best 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 substantial, first-class 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 A shall name any 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 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.

Section 2 - COMPENSATION.

City hereby agrees to pay Consultant an amount not to exceed eighty thousand dollars (\$80,000.00) 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;
- 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, and for authorized reimbursable costs incurred. 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 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.

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

2.5 Reimbursable Expenses. Reimbursable expenses are shown on Exhibit B, and shall not exceed eighty thousand dollars (\$ 80,000.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.6 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.

2.7 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.

2.8 Retention. When the Work has been accepted by the City Council, there shall be paid to the Contractor a sum equal to the contract price less a (10) percent retention. The final ten (10) percent retention will be paid to the Contractor 35-days after project acceptance by the City Council. The Notice of Completion shall be filed by the City following acceptance by the City Council. The Contractor shall provide Final Unconditional Lien Releases from all subcontractors and suppliers when the retention payment is made.

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 the information in possession of the City. 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.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

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 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 there from, 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.

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.

4.3.3 The policy must contain a cross liability clause.

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. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- 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.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as

well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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. 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 No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind 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 that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, 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. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

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.

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 are 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, other than to the subcontractors listed in the Consultant's proposal, 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; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

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.

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 Ownership of Documents. All documents developed or obtained by Consultant in the performance of the Agreement shall be deemed to be the property of the City.

10.10 Contract Administration. This Agreement shall be administered by Michael Ogaz, City Attorney, 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.

10.11 Notices. Any written notice to Consultant shall be sent to:
Matthew Laskey
Project Manager
Alta Planning + Design
707 C Street
San Rafael, CA 94901

Any written notice to City shall be sent to:
City of Milpitas
Attn: Janice Spuller
455 East Calaveras Boulevard
Milpitas, California 95035-5411

10.12 Professional Seal. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.13 Record Drawing. At the end of construction, the consultant shall prepare a record drawing using the red-lined plans to be provided by the City. The record drawing shall incorporate all changes made during construction in the field to show the actual record of construction.

10.14 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.

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

DRAFT

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

[NAME, TITLE]

Taxpayer Identification Number

APPROVED AS TO FORM:

City of Milpitas Business License Number

Michael Ogaz, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

ATTEST:

Mary Lavelle, City Clerk

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Compensation Schedule, personnel and rates
- Exhibit C: Insurance Coverage Documents

DRAFT

The City of Milpitas (hereinafter “City”) is seeking the services of a qualified traffic engineering or transportation planning consultant or team to prepare an update to the City’s Bikeway Master Plan (hereinafter “Project”) and whereas Alta Planning + Design (hereinafter “Consultant”) has the experience and qualifications to perform such tasks, both the City and the Consultant agree to enter into a contract to complete this Project. The goal of the project is to provide a convenient transportation alternative to motor vehicles for residents, visitors and commuters. To achieve this goal, the Consultant shall develop a plan that:

The goals of the Project are to:

1. Documents and helps increase awareness of existing bicycle infrastructure,
2. Identify and prioritizes the location of bicycle infrastructure improvements, and
3. Provide recommendations for new policies to increase bicycle safety in the City using industry-standard best practices.

The goals of the project shall be achieved by ensuring the following tasks are completed:

TASK 1 - COMMUNITY OUTREACH

The Consultant shall organize and administer a minimum of three (3) community outreach meetings to solicit community input on the condition of existing bicycle facilities and to help identify bicycle facility improvements.

The first community meeting shall include a special meeting of the City’s Bicycle Pedestrian Advisory Commission (BPAC) to solicit their input on the Plan update, preferred projects, and expectations of the Plan. The second meeting shall be a Citywide outreach effort to allow the public an opportunity to provide additional input on the plan. The third meeting shall be with the BPAC to present final recommendations of the report.

In addition to the three community meetings, the Consultant shall be available for an introduction to the BPAC and upon completion of the project provide a presentation to the City Council on project findings & recommendations.

City staff shall coordinate the procurement of all meeting locations, administration of the delivery of postal mail, and advertising of meeting announcements. To prepare for each community meeting, the Consultant shall prepare all presentation announcements and materials including, but not limited to:

- PowerPoint/Slideshow presentations
- Printed handouts and poster boards
- Meeting agenda materials

The Consultant shall also serve a Scribe at all community meetings and be responsible for the development of Draft and Final meeting minutes. The Consultant must be flexible to meeting times that work for the community and project stakeholders to ensure the quick solicitation of data for the project.

Deliverables

Meeting agendas and announcements, handouts, presentations, and Draft and Final Meeting Minutes

TASK 2 - BIKEWAY MASTER PLAN & MAP

The Consultant shall provide the City with a Bikeway Master Plan & Map that identifies all existing bicycle facilities and their sustainability rating by Class and the locations of future bicycle projects identified through the Community Outreach process. The map should interface with the City's GIS system in order for future revisions and to have website posting capability.

The two-sided map shall be provided in a format that allows for quick reproduction such as Adobe In-Design and for folding into a pocket-size map for distribution to the community. The inside of the Map shall include the map of existing and future bicycle facilities and the location of major bicycle trip generations such as transit facilities (existing and future), major employment centers, schools, and community facilities. The plan shall identify similar bicycle facilities of neighboring agencies such as the County of Santa Clara, City of San Jose, Caltrans – Department of Transportation, and the City of Fremont to help in the promotion of bicycling as a commute alternative.

The outside of the Map shall include safety tips, important rules of the road for bicyclists of all ages and transit connection information for all public transit systems that connect with bicycle infrastructure in the City.

Deliverables

Draft and Final Bicycle Master Plan Update

Draft and Final Bike Map (prepared in graphic design software program)

TASK 3 - ANALYSIS OF EXISTING BICYCLE FACILITIES

The Consultant shall perform a windshield survey of all existing bicycle facilities in the City to identify compliance with signage and roadway markings Best Practices. A summary of bicycle facilities by corridor shall be provided including recommendations, if any, for safety improvements. Locations that require capital improvements shall include street cross-sections for the use in future street design projects.

Deliverables

Detailed memorandum identifying inconsistencies in existing signage and roadway markings against existing Best Practices for inclusion into the Bicycle Master Plan Update.

TASK 4 - ANALYSIS OF SUGGESTED ROUTE TO SCHOOLS

The Consultant shall perform a windshield survey of all existing Suggested Route to Schools in the City to determine if bicycle accommodations are appropriate or whether improvements are required to enhance accessibility or safety. A summary of existing conditions and recommendations, if any, shall be provided by school. Accommodations for bike parking at each school site should also be evaluated.

Deliverables

- *Detailed memorandum identifying the findings of the Suggested Route to Schools windshield survey for inclusion into the Bikeway Master Plan Update.*

TASK 5 - SUMMARY OF BEST PRACTICES

The Consultant shall include a summary of Best Practices used to promote bicycle usage and in the design of bicycle facilities including but not limited to:

- Bike Lane Markings: Appropriate bike lane widths by street classification and roadway speed limit and appropriate bike lane signage
- Bike Route Signage & Markings: Appropriate standards for the use of Sharrow markings and bike route signage for major shopping destinations or employment centers
- Education Materials: Used for educate expert bicyclists about the use of existing facilities for commuting and for students to build a lifelong compliance with Rules of the Road for Bicyclists.
- Benchmark Programs: Used to measure the effectiveness of bicycle improvements.

Deliverables

Detailed memorandum summarizing Best Practices to promote bicyclist usage and in the design of bicycle facilities for inclusion into the Bicycle Master Plan Update.

TASK 6 - DOCUMENT BICYCLE AND PEDESTRIAN SAFETY PROGRAM

For this task, the Consultant shall identify current bicycle and pedestrian safety programs in the City and provide a memorandum documenting how these compare against the industry Best Practices. Where existing practices are not consistent with Best Practices, the Consultant shall include recommendations to improve compliance.

Deliverables

- *Detailed memorandum discussing the City's existing bicycle and pedestrian safety programs and how they compare to industry standards. Where improvement can be provided, the Consultant shall identify recommendations to improve compliance.*

TASK 7 - LAND USE COORDINATION

The Consultant shall identify Land Use changes in the City using the adopted Midtown and Draft Transit Area Specific plans to determine deficiencies in the existing Bicycle network to connect with future development. The VTA Countywide Bicycle Master Plan should be incorporated for regional connectivity.

Deliverables

Detailed memorandum identifying a method of incorporating the City's existing Bikeway Master Plan & Project Map with the Midtown and Draft Transit Area Specific Plans.

TASK 8 - MIDTOWN CORE BIKE ROUTE WAY FINDING PLAN

The Consultant shall prepare a Way Finding Plan to guide bicyclist from adjacent bike lane facilities near the Midtown Core to parking facilities and major public facilities. The Midtown Core includes the portion of N Main St between Weller Lane and Serra Way.

The Consultant shall prepare a plan that identifies the appropriate locations of bike route signage to guide bicyclists onto Bike Routes in the Midtown Core and to bike parking at public facilities including the new Milpitas Library and the new County of Santa Clara Medical Facility. The city shall meet with the consultant during one of the regularly schedule Coordination Meetings for the project to discuss this Way Finding Plan.

Deliverables

Detailed Memorandum and color graphic map of way Bike Route Way-Finding Plan through the Midtown Core

TASK 9 - PROPOSED BICYCLE FACILITY IMPROVEMENTS

Using data collected from the community outreach meetings, surveys of existing facilities, and land use analysis', the Consultant shall identify and prioritize the location of appropriate bicycle improvements in the City, including but not limited to:

- New Bike Routes
- New Bike Lanes
- New Bike Paths
- New Grade-Separated Bike/Pedestrian Paths
- Safety Improvements including
- Safe Routes to Transit if at all applicable
- Roadway over and under crossings
- Across barrier connections
- Roadway Marking Enhancements to Existing Facilities

- Connections to adjacent cities and counties
- Consideration of bicycle boulevards

Where the need for new Grade-separated bike/ped paths are identified, the Consultant shall provide schematic details for Right-of-Row Requirements using City-furnished base maps.

Deliverables

Detailed Memorandum identified and prioritizing Bicycle Facility Improvements

TASK 10 FUNDING PROGRAMS

The Consultant shall identify appropriate funding sources to the City implement recommendation in the Plan. This should include, but not limited to, the following funding sources:

- Transportation Development Act (TDA) funds for bicycle projects and programs
- Capital Improvement Program (CIP) projects, including paving, signing and striping.
- New Development fair-share contribution to support the costs of bicycle facilities and programs
- Regional, state and federal grants

Deliverables

Detailed memorandum to be Included in the Draft & Final Bicycle Master Plan Update

TASK 11 CITY COORDINATION MEETINGS

The Consultant shall meet bi-weekly, in-person or via telephone conference, with City staff from the start of the project to ensure timely progression of the project. City staff will coordinate a Kick-Off Meeting with the Consultant within one (1) week of award of the project by City Council to discuss the project schedule including the dates of community outreach meetings and to provide to the Consultant all City-Furnished materials for the project.

Consultant will coordinate with City staff to allow the Consultant opportunities to solicit input from the Bicycle Pedestrian Advisory Commission and the general community.

The Consultant shall be responsible for preparing all City Coordination Meeting materials after the initial Kick-Off meeting including, but not limited to:

- Preparation of meeting agendas
- Preparation of meeting minutes
- Serving as scribe during meetings to document all concerns and input

- Copy of meeting materials including project plans and specifications pertinent to such meetings.

Deliverables

Meeting minutes & progress reports following each meeting on each of the tasks in the Scope of Work

TASK 12 EXECUTIVE SUMMARY

The Bikeway Master Plan shall include an Executive Summary for use by elected officials and the general public. The Executive Summary should discuss the adequacy of existing bicycle facilities and programs and highlight proposed improvements with a cost analysis.

Deliverables

Executive Summary as part of the Draft and Final Bicycle Master Plan Update

TASK 13 GENERAL PLAN AMENDMENT

The Consultant shall prepare goals and policies for inclusion in future updates to the Circulation Element of the General Plan.

Deliverables

Draft and Final General Plan Memorandum to be included in future Milpitas General Plan Update

TASK 14 SCHEDULE

The Consultant shall provide a schedule marking major milestones of completed tasks. The Bikeway Master Plan and System Map shall be completed and ready for presentation to the Milpitas City Council during its regularly scheduled meeting on December 16, 2008

Deliverables

Detailed schedule provided to City Staff

TASK 15 - ADDITIONAL SERVICES

The Consultant shall be available to provide additional design or planning services associated with the development of the Bikeway Master Plan or future Suggested Route to School improvement projects. The City and the Consultant shall negotiate the scope of work and cost for additional services in a Memorandum of Understanding as needed.

Deliverables

To be negotiated and documented in a Memorandum of Understanding as Needed.

City of Milpitas
Bikeways Master Plan



Task	Michael Jones \$ 200	Matt Lasky \$ 95	Adrian Leung \$ 85	Brooke Dubose \$ 85	Arlene De Leon \$ 175	Mike McNeely \$ 255	David Parisi \$ 160	Admin \$ 70	Total Cost by Task
Task 1: Community Outreach	16	24	2		16				\$ 8,450
Task 2: Bikeway Master Plan and Map	4	12	32	4					\$ 5,000
Task 3: Analysis of Existing Bicycle Facilities	8	20	32	14	4				\$ 8,110
Task 4: Analysis of Suggested Routes to Schools	8	10		12			19		\$ 6,610
Task 5: Summary of Best Practices	2	8		4					\$ 1,500
Task 6: Document Bicycle and Pedestrian Safety Program	2	6		6					\$ 1,480
Task 7: Land Use Coordination	2		8	4					\$ 1,420
Task 8: Midtown Core Bike Route Way Finding Plan		40	16	4		20			\$ 10,600
Task 9: Proposed Bicycle Facility Improvements	26	86	28		12	24			\$ 23,970
Task 10: Funding Programs	4	6		4					\$ 1,710
Task 11: City Coordination Meetings	12	20	8			4			\$ 6,000
Task 12: Executive Summary	2	6		4					\$ 1,310
Task 13: General Plan Amendment	2	4		2					\$ 950
Task 14: Schedule	4	8						19	\$ 2,890
Task 15: Additional Services									\$ 10,000
Total Hours	92	250	126	58	32	48	19	19	
	\$ 18,400	\$ 23,750	\$ 10,710	\$ 4,930	\$ 5,600	\$ 12,240	\$ 3,040	\$ 1,330	
									Total Fee \$ 90,000