



## CITYWIDE DEFICIENCY PLAN

### REQUEST FOR QUALIFICATIONS (RFQ)

#### INTRODUCTION AND BACKGROUND

Due to regional growth and ongoing development within the City, Milpitas will be required to prepare a Deficiency Plan in accordance with the Santa Clara Valley Transportation Authority (VTA) guidelines. The City is in the process of completing the Milpitas Transit Area Specific Plan, which will include the potential development of up to 7,200 dwelling units, and 1.3 million square feet of commercial and employment uses in the southern portion of the City.

In addition to the Milpitas Transit Area Specific Plan, there has been recent development applications received west of Interstate 880. The City Council recently rezoned 22 acres of Industrial zoned land to residential to allow the construction of 659 Apartments and Condominiums on the west side of Murphy Ranch Road. Also, there are several other projects in the development pipeline including:

- McCarthy Ranch FAR Increase
- The Campus at McCarthy Ranch
- Landmark Mixed-Use Project
- Milpitas Square Redevelopment
- The Campus at Murphy Ranch

Given the fairly strong economy in Silicon Valley, many of these projects will come “on line” within the next three to five years. The City’s two Congestion Management Program (CMP) intersections Calaveras Boulevard/Milpitas Boulevard and Calaveras Boulevard/Abel Street are projected to fall into non-conformance (LOS “E” or better to LOS “F”) and require a Deficiency Plan. Also, many of the City’s other intersections are projected to operate at unacceptable levels (LOS ‘E’ or ‘F’).

**Note: The consultant will assist City Staff in the completion of the scope of work below. Staff is expecting the majority of consultant “As Needed” task orders will be for assistance in travel demand forecasting and TRAFFIX network development. However, the consultant should prepare qualifications to satisfy all tasks listed below.**

#### SCOPE OF WORK

Prior to the preparation of the Citywide Deficiency Plan, a Comprehensive Citywide Transportation Study will be required. This study will address both short-term and long-range transportation needs of the City. Prior planning efforts such as the Milpitas Midtown Milpitas Specific Plan, Transit Area Specific Plan and ongoing development review west of Interstate 880 will be incorporated into the Study. This Comprehensive Citywide Transportation Study will be the primary basis for the preparation of the Citywide Deficiency Plan.

## CITYWIDE COMPREHENSIVE TRANSPORTATION STUDY

### Task 1 – Data Collection/Documentation of Existing Conditions

The consultant shall meet with City Staff to determine data collection requirements for roadways and intersections within the City. Twenty four hour roadway segment counts and AM and PM peak hour manual turning movement counts at intersections should be no older than calendar year 2007. The consultant will also be responsible for collecting existing roadway and intersection geometric including number of lanes, on-street parking, speed limits, ect.

This information shall be collected for all arterial and minor arterial roadways within the City. The California Department of Transportation (Caltrans) and the Santa Clara County Roads and Airports Department shall also be contacted for existing traffic data on their roadways. The consultant will meet with City Staff to review the data collected and to determine if additional data collection is necessary.

The consultants will develop/update a citywide TRAFFIX database for signalized and un-signalized intersections. This TRAFFIX database will then become the City's "baseline" for future studies. Level of Service (LOS) calculations will be performed and tables created summarizing the results. Twenty-Four hour roadway segment volumes will be summarized and traffic flow map created.

Existing public transportation services within the City will be documented. The Santa Clara Valley Transportation Authority (VTA) local and express bus service as well as the Light Rail Transit (LRT) schedules, stops and ridership shall be collected. A map depicting existing transit services within the City will be prepared.

***Task 1 Deliverable – Consultant will prepare a Technical Memorandum documenting Existing Transportation Conditions within the City.***

### Task 2 – Development of a Short Term Cumulative Scenario

City Staff will provide the consultant with a list of approved development projects (and their associated TIA's) as well as a list of funded roadway/intersection improvements. The consultant will input the "background" peak hour traffic volumes from the approved projects in to the TRAFFIX model for analysis. LOS tables will be prepared documenting intersection operations throughout the City. Potential mitigation will be identified, where feasible.

The second step of the Short Term Cumulative analysis will entail City Staff providing the consultant with a "pending" project list. This list will include projects that have submitted applications to the Planning Department. TIA's will be provided for those projects or the consultant will work with City Staff to prepare trip generation, trip distribution and peak hour trip assignments. The "pending" projects peak hour traffic volumes will be input into the TRAFFIX model and then run for LOS analysis. LOS tables will be prepared documenting intersection operations within the City. Potential mitigation will be identified, where feasible.

***Task 2 Deliverable – Consultant shall prepare a Technical Memorandum documenting Near Term Cumulative Transportation conditions within the City.***

Task 3 - Development of a Long-Term (Year 2035) Scenario

The City maintains a Travel Demand Forecast Model with a 2000 base year and a 2030 horizon year. This model has been utilized for previous transportation studies including the Milpitas Transit Area Specific Plan and the McCarthy Ranch FAR Increase Study. A refinement of the Traffic Analysis Zone (TAZ) structure and proposed land use modifications were incorporated into the model as well.

The consultant shall obtain the most recent version of the City's Travel Demand Forecast Model and update the transportation network and land use files to reflect year 2035 conditions, if available. The model will then be run and a Citywide street segment analysis will be performed to identify potential deficiencies on the City's transportation system. Year 2035 intersection turning movements will be generated and evaluated for LOS where two deficient roadway segments intersect. Potential mitigation will be identified, where feasible.

***Task 3 Deliverable – Consultant shall prepare a technical memorandum documenting Long-Term Transportation Conditions within the City. Appropriate documentation will also be prepared for changes made to the City's Travel Demand Forecast Model.***

Task 4 - Preparation of the Citywide Transportation Study Report

The consultant shall prepare a draft Citywide Comprehensive Transportation Study incorporating the three Technical Memorandums and submit five copies to the City. Based on comments received, by the City and VTA, the consultant will prepare a Final Citywide Comprehensive Transportation Study along with Appendices. Fifty (50) bound copies of the study as well as an electronic copy will be delivered to the City.

***Task 4 Deliverable – Consultant shall deliver 50 bound copies and one electronic copy of the Final Citywide Comprehensive Transportation Study to the City.***

Task 1 – Deficiency Plan Scoping and Coordination

The consultant along with City Staff will meet with VTA Staff to review the CMP Technical Standards for preparation of a Deficiency Plan. The Citywide Deficiency Plan should contain the following:

- Description of the Deficiency Plan Area –
  - Preparation of Deficiency Plan objectives
  - Preparation of a map clearly identifying the Deficiency Plan boundaries
  - Provide a map and description of the deficient facilities
  - Documentation of existing transportation conditions
  - Description of future transportation conditions for both short-term and long-term cumulative development scenarios.

- Listing of responsible agencies for participation in the development of the Deficiency Plan.
- The cause of the deficiency
  - An analysis of why roadways and intersections in the Deficiency Plan area are expected to exceed the LOS standards.
  - A quantitative analysis documenting the extent of the LOS accidentence.
  - A description of how development within Milpitas and neighboring cities will impact the transportation system in the Deficiency Plan area,
- List of Transportation Improvements
  - A section describing the planned improvements and planning-level cost estimate for those improvements.
  - Inclusion of existing and planned Impact Fees along key transportation corridors.
  - An examination of why a facility may not operate at acceptable LOS with or without improvements.
- Development of a Deficiency Plan Action List
  - A description of the VTA's Immediate Implementation Action List and how they will be implemented in the Deficiency Plan.
  - Cost estimates to implement and sustain the actions.
  - Provision of a quantitative analysis documenting how each action will improve traffic LOS on the CMP roadway system.
  - Preparation of an air quality analysis or a statement that the action is contained in the Air District's Deficiency Plan Action List or has been approved by the Air District.
- Deployment of an Action Plan
  - A description of how Deficiency Plan actions will be implemented responsibility for implementing individual actions, funding sources for each action and the timing of implementation
- Development of a Deficiency Plan Monitoring Program
  - A section describing how the City will evaluate the implementation of Deficiency Plan actions.
- Compliance with CEQA

A section describing the reconciliation of CEQA with actions included in the Deficiency Plan

#### Task 2 – Meetings and Technical Support

The consultant shall provide technical support to City Staff as needed. Project Team meetings will occur monthly with key City Staff. Attendance at VTA Technical and Policy meetings is also required. Public meeting attendance in Milpitas will include the City Council Transportation Subcommittee, Planning Commission and City Council.

#### Task 3 – Document Preparation

The consultant shall provide one Administrative Draft plan (5 copies), one Public Review Draft Citywide Deficiency Plan (10 copies) and a final Deficiency Plan (25 copies).

## **PROJECT SCHEDULE**

The project start date is anticipated to be July 1, 2008. The City of Milpitas Comprehensive Transportation Plan will be completed first, with the Citywide Deficiency Plan following. The project should be complete and all approvals secured by June 30, 2009.

## **PROJECT BUDGET**

The project will be funded through the City's Capital Improvement Program (CIP), which is anticipated to be approved in June 2008. The estimated project budget is \$50,000.

## **SAMPLE CONTACT AND INSURANCE REQUIREMENTS**

See Exhibit A "Sample Contract" and Exhibit B the City's "Insurance Requirements".

**PROPOSER'S BACKGROUND.** Proposer must provide a company profile with not more than fifteen (15) pages. Information provided shall include:

- a. Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation.
- b. Location of the company offices.
- c. Location of the office servicing any California account(s).
- d. Number of employees both locally and nationally.
- e. Location(s) from which employees will be assigned.
- f. Name, address, and telephone number of the Proposer's point of contact for a contract resulting from this RFQ.
- g. Company background/history and why Proposer is qualified to provide the services described in the Scope of Work.
- h. Length of time Proposer has been providing similar services. Please provide a brief description.
- i. Proposer's Dun and Bradstreet number.
- j. Resumes for key staff to be responsible for performance of any contract resulting from this RFQ and hourly rate (s) by title or classification.
- k. Proposer's bank of record.

**PROPOSER'S REFERENCES.** Proposers should provide a minimum of three (3) references from similar projects performed for any local government clients within the last three years. Information provided shall include:

- a. Client name
- b. Project description
- c. Project dates (starting and ending)
- d. Technical environment
- e. Staff assigned to reference engagement that will be designated for work per this RFP
- f. Client project manager name and telephone number.

**QUESTIONS AND COMMENTS.** Questions and comments regarding this solicitation must be submitted in writing, either by mail or facsimile to the Buyer, City of Milpitas, 455 E. Calaveras Blvd. Milpitas, California, and 95035, or faxed to (408) 586-3161 no later than four (4) days before the Submittal Deadline. The questioner's company name, address, phone and fax number, and contact person must be included with the questions or comments. Answers, if any, made by the City of Milpitas will be sent in writing to all known proposal holders.

**RULES FOR SUBMITTING PROPOSALS.**

- a. **Submittal Deadline.** Proposals must arrive in the Purchasing Office, 455 E. Calaveras Blvd., Milpitas, CA. 95035, by the Submittal Deadline shown in these specifications or subsequent addenda. Proposals may be submitted by hand, by courier, or any other method specified herein.
- b. **Responsibility.** Proposers are solely responsible for ensuring their proposal is received by the City of Milpitas in accordance with the solicitation requirements, before Submittal Deadline, and at the place specified. The City of Milpitas shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office specified in the Request For Proposals (this solicitation). Deliveries made before the Submittal Deadline but to the wrong City of Milpitas office will be considered non-responsive unless re-delivery is made to the office specified before the Submittal Deadline.
- c. **Extension of Submittal Deadline.** The City of Milpitas reserves the right to extend the Submittal Deadline when it is in the best interest of the City of Milpitas.
- d. **Facsimile Transmissions.** Proposals may NOT be submitted by facsimile, unless otherwise specified herein.

**SUBMITTAL DEADLINE.** The Submittal Deadline is 2:00 p.m., June 16, 2008. Proposals must arrive in the Purchasing Office, 455 E. Calaveras Blvd., Milpitas, California, 95035. **The receiving time in the Purchasing Office will be the governing time for acceptability of proposals.**

## TERMS AND CONDITIONS

ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Except as noted hereunder, Successful Proposer may not assign, transfer or sell any rights or obligations resulting from this solicitation without first obtaining the specific written consent of the City of Milpitas.

ATTORNEY FEES. In the event a suit or action is instituted in connection with any controversy arising out of this contract, the prevailing party shall be entitled to receive, in addition to its costs, such sum as the court may adjudge reasonable as to attorney's fees and costs.

AUTHORITY OF THE CITY OF MILPITAS. Subject to the power and authority of the City of Milpitas as provided by law in this contract, the City of Milpitas shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. The City of Milpitas shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

CANCELLATION OF THE CONTRACT. *Without* CAUSE, the City of Milpitas may cancel this contract at any time with thirty- (30) days written notice to the supplier/contractor. *with cause*, the City of Milpitas may cancel this contract at any time with ten- (10) days written notice to the Proposer. Cancellation for cause shall be at the discretion of the City of Milpitas and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful Proposer may not cancel this contract without prior written consent of the City of Milpitas Purchasing Agent.

CHANGES IN WORK. The City of Milpitas may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City of Milpitas may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the City of Milpitas. Changes in work and the amount of compensation to be paid to the Contractor for any extra work as so ordered shall be determined in accordance with the unit prices of contractor's proposal.

COMPLIANCE OR DEVIATION TO SPECIFICATIONS. Proposer hereby agrees that the material, equipment or service offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the Proposer's response. Proposer may submit an attachment entitled "Exceptions to Specifications", which must be signed by Proposer's authorized representative. An explanation must be made for each item in which an exception is taken, giving in detail the extent of the exception and the reason for which it is taken. Proposals failing to comply with this requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but may not be a substitution for this requirement.

### COMPLIANCE WITH FAIR EMPLOYMENT PRACTICE

PRACTICE ACT. Contractor agrees in accordance with Section 1735 and 1777.6 of California Labor Code, and the California Fair Employment Practice Act (Sections 1410-1433) that in the hiring of common or skilled labor for the performance of any work under this contract, or any subcontract hereunder, no Contractor, material supplier or vendor shall, by reason of race, color, national origin or ancestry, or religion, discriminate against any person who is qualified and available to perform the work to which such employment relates.

COMPLIANCE WITH LAWS. All Proposals shall comply with current federal, state, local and other laws relative thereto.

CONTRACT INCORPORATION. This contract embodies the entire contract between the City of Milpitas and the Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties. The complete contract shall include the entire contents of the RFP solicitation, all addenda, all of Proposer's successful submittal, supplemental agreements, change orders, performance bond(s), and any and all written agreements which alter, amend or extend the contract.

FORCE MAJEURE. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City of Milpitas, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to acts of God, war, acts of a public enemy, acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FORMATION OF CONTRACT. Proposer's signed Proposal and the City of Milpitas' written acceptance shall constitute a binding contract.

LAWS GOVERNING CONTRACT. This contract shall be in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the county of Merced, in state of California. The parties further stipulate that the county of Merced, California, is the only appropriate forum for any litigation resulting from a of breach hereof or any questions risen here from.

SEVERABILITY. If any provisions, or portion of any provision, of this contract are held invalid, illegal or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

SPECIFICATIONS, CHANGES TO. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein or by written amendment. No changes, amendments, or modifications of any of the terms or conditions of the specification shall be valid unless reduced to writing and signed by both parties.

SPECIFICATIONS, DEFINITION. The term "specification" or "RFP specification" as used in this solicitation shall be interpreted to mean all the pages that make up this solicitation, including *but not limited* to the Request For Proposals, Instructions To Proposer, Terms and Conditions, Detailed Specifications or Scope of Work, Proposal form, Special Provisions, Proposed Equipment & Material Manufacturers form, Experience Statement, Subcontractor's List, Workers Compensation Insurance Certificate, Contractor Guaranty statement and Proposal Security Bond.

**PROPOSER'S STATEMENT  
REGARDING INSURANCE COVERAGE  
To Be Submitted With Proposal**

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the Request For Proposals No. 4444, to Remove & Dispose of Water Treatment Sludge. Should the Proposer be awarded the contract for the work, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City of Milpitas as Additional Insured for the work specified.

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Name of Proposer (Person, Firm, or Corporation)

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Signature of Proposer's Authorized Representative

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Name & Title of Authorized Representative

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Date of Signing

## WORKER'S COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

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Name of Proposer (Person, Firm, or Corporation)

---

Signature of Proposer's Authorized Representative

---

Name & Title of Authorized Representative

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Date of Signing

**EXPERIENCE STATEMENT  
To Be Submitted With Proposal**

**List at least three references for work of a similar nature performed within the last three years.**

I hereby certify that I have performed the work listed below.

\_\_\_\_\_  
Signature of Proposer

| <b>Description</b> | <b>Yr.</b> | <b>Amt.</b> | <b>Customer</b> | <b>&amp;</b> | <b>Telephone</b> |
|--------------------|------------|-------------|-----------------|--------------|------------------|
| _____              | _____      | \$ _____    | _____           | _____        | (____) _____     |
| _____              | _____      | \$ _____    | _____           | _____        | (____) _____     |
| _____              | _____      | \$ _____    | _____           | _____        | (____) _____     |
| _____              | _____      | \$ _____    | _____           | _____        | (____) _____     |
| _____              | _____      | \$ _____    | _____           | _____        | (____) _____     |
| _____              | _____      | \$ _____    | _____           | _____        | (____) _____     |



## HEXAGON TRANSPORTATION CONSULTANTS, INC.

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June 13, 2008

Mr. Joe Oliva, III, Principle Transportation Planner  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035-5411

### **Re: Request for Qualifications – Traffic Consultant**

Dear Mr. Oliva:

Hexagon Transportation Consultants, Inc. is pleased to submit this Statement of Qualifications to provide as-needed assistance for the development of the City of Milpitas Deficiency Plan. It is our understanding that the City desires a consultant to assist with the technical details of preparing the Deficiency Plan document – including traffic engineering and travel demand forecasting support. Hexagon staff has been working in the City of Milpitas for over 15 years on a variety of projects. We believe our staff is well qualified to provide the services you desire. Hexagon proposes Brett Walinski as our lead traffic consultant and At van den Hout as lead travel demand forecast consultant.

Brett Walinski has been working in Milpitas since 1996 (before Hexagon was founded). He has managed numerous traffic impact studies within the City of Milpitas as well as many accident and parking studies. Mr. Walinski was also Hexagon's project manager for developing both the Milpitas Citywide Traffic Database and the Milpitas Citywide Approved Project Database. He then provided as-needed training to City staff for both of these databases.

At van den Hout has been working in the City of Milpitas on various projects for nearly 15 years. Mr. van den Hout performed all of the travel forecasting work for the McCarthy Ranch projects and has provided travel demand forecasting support for numerous traffic engineering and transportation planning studies in the City of Milpitas. Mr. Van den Hout was also Hexagon's lead travel demand forecaster for the most recent deficiency plans prepared for the Cities of Sunnyvale and San Jose.

Mr. Walinski and Mr. Van den Hout would have the assistance of Hexagon's staff which includes 30 professional engineers and planners – all of which have a variety of skills that the City could take advantage of.

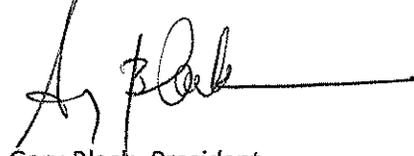
As you are aware, our firm has a long relationship with the City of Milpitas. It has been our pleasure to work with you and City staff to serve the residents of Milpitas. For this project, Hexagon offers (1) extensive experience gained through our long history in Milpitas, (2) highly proficient staff in both travel forecasting and traffic engineering, and (3) our experience in

preparing deficiency plans for two of the largest Cities in Santa Clara County (San Jose and Sunnyvale).

Thank you for inviting Hexagon to submit this Statement of Qualifications. Please let us know if you have any questions regarding our experience, skills or resources.

Sincerely,

**HEXAGON TRANSPORTATION CONSULTANTS, INC.**

A handwritten signature in black ink, appearing to read "Gary Black", with a long horizontal line extending to the right.

Gary Black, *President*



### *Firm Description*

Hexagon Transportation Consultants, Inc. was founded in March 1998 in San Jose, California. Hexagon provides services in transportation planning, traffic engineering, travel demand forecasting, signal design, and parking. Hexagon's staff members have prepared thousands of studies, both large and small, over their professional careers. Hexagon's public clients include city, county and state agencies and regional planning organizations. Hexagon has various private clients including technology companies, developers, architects, civil engineers, and environmental firms.

Hexagon has California offices in San Jose, Gilroy and Marina del Rey and an Arizona office in Phoenix offering a wide range of services including:

- Countywide and Citywide Circulation Plans
- Corridor Studies
- Major Investment Studies
- Specific Plans
- Area Plans
- Site Master Plans
- Traffic Impact Analyses
- Traffic Simulation
- Travel Demand Forecasting Models (development and implementation)
- Traffic Impact Fee Studies
- Traffic Safety Studies
- Site Review Studies
- Neighborhood Traffic Control Studies
- Campus Plans
- Ballpark and Stadium Studies
- Site Feasibility Studies
- Signal Designs
- Parking Studies

Hexagon has a total of 30 employees between its San Jose, Gilroy, Marina del Rey and Phoenix offices. Hexagon's professional staff is experienced in all technical aspects of transportation consulting and highly proficient in state-of-the-art computer software including all major modeling packages, intersection level of service programs, advanced traffic operations programs, CADD programs and many specialized programs that process and analyze traffic data. Hexagon's clients can be sure they are being provided high-quality, leading-edge technical services.



*Proposal to the*

# *City of Milpitas*



June 16, 2008

To provide Traffic and Transportation Engineering Services to  
Assist with a Citywide Deficiency plan



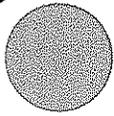
HEXAGON TRANSPORTATION CONSULTANTS, INC.

**San Jose**  
40 S. Market Street  
Suite 600  
San Jose, CA 95113  
408.971.6100

**Gilroy**  
7888 Wren Avenue  
Building B121  
Gilroy, CA 95020  
408.846.7410

**Marina del Rey**  
14005 Palawan Way  
#212  
Marina del Rey, CA 90292  
310.578.8461

**Phoenix**  
302 North First Avenue  
Suite 300  
Phoenix, AZ 85003  
602.452.5038



Hexagon utilizes a quality assurance program to minimize the impact of errors on all our projects. We are committed to producing the highest quality work and meeting our client's scheduling needs.

Hexagon's point of contact for a contract resulting from this RFQ will be Brett Walinski in the San Jose office (408) 971-6100. Any work from a contract resulting from this RFQ will be performed in Hexagon's San Jose office.

Hexagon has been in business continuously for ten years, during which time we have grown from a staff size of 6 to a staff size of 30. Although the firm has been in existence for 10 years, many of the principals have over 20 years of experience. In our ten-year history, Hexagon has seen revenues consistently grow from year to year as we have taken on new clients and expanded to new geographic areas. Hexagon has successfully completed contracts with values up to and over \$1 million. Hexagon's current bank of record is Wells Fargo, Market Street, San Jose, California.

### *Litigation Disclosure*

Hexagon Transportation Consultants, Inc. has not been involved in any lawsuit or litigation resulting from any public project undertaken by us or by any of our subcontractors within the last five years. Hexagon has not been involved in any type of project where claims or settlements were paid by Hexagon or our insurers within the last five years.

Hexagon Transportation Consultants, Inc.'s Dun and Bradstreet number is 019764492.

### *Relevant Reference Projects*

#### **North San Jose Area Development Policy** *San Jose, California*



Hexagon conducted a comprehensive traffic and transportation analysis to evaluate the impacts of the new North San Jose Area Development Policy. The purpose of the analysis was to define and analyze the Preferred Project for the new development policy and EIR. The project ultimately selected would allow for the intensification of employment, and adds additional housing to achieve a

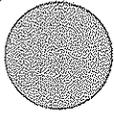
balance of land uses in the North San Jose area. The project consists of the following:

- 26.7 million square feet of industrial space,
- 1.7 million square feet commercial space, and
- 50,000 residential units

The residential component includes residential development within and outside North San Jose, though the majority. (approximately 32,000 units) would be located within North San Jose.

Two major objectives were considered in the development of the project description. First, the land use plan should contain a reasonable balance between jobs and housing to encourage internalization of traffic and reduction of trip lengths, thereby reducing the demand that will be placed on regional transportation facilities. Secondly, the project would be "transit friendly", located in a major transit corridor with high





density multi-story buildings near transit stations. Most of the project would be located within ¼ mile walking distance of North First Street with access to VTA light rail. Transportation improvements would include build-out of the current General Plan Roadway network plus the addition of several grid streets to facilitate local access and circulation within North San Jose.

Specific tasks undertaken by Hexagon included developing a focused travel demand forecast model with a very detailed zone system within the North San Jose project area. The model was initially used to test alternative land use schemes and to compare the generated traffic with the existing and planned capacity of the transportation system. The model was also applied to forecast future travel demand associated with the project, including the potential for internalization of project traffic, use of carpools, and transit ridership demand of project trips. According to model estimates, the demand for transit would greatly increase from about 8,200 without the project to 44,000 riders a day under project conditions.

The traffic impact study conducted by Hexagon included the analysis of 220 signalized intersections located throughout Santa Clara County. Results of the intersection level of service analysis showed that 48 of the 220 study intersections would be impacted by the project. Improvements for 23 of the 48 impacted intersections were identified to fully mitigate project impacts. Improvements were identified for another 12 of the 48 impacted intersections, but the identified improvements would not be sufficient to improve the intersection operating conditions to acceptable levels.

Hexagon prepared a Deficiency Plan to address the transportation deficiencies projected to occur with the proposed intensification of future development within the North San Jose area. The objective of the North San Jose Deficiency Plan (NSJDP) was to identify and implement a set of measures that will improve transportation conditions and air quality in North San Jose. Further, it is the objective of the NSJDP to set forth a comprehensive solution to LOS deficiencies at CMP intersections in North San Jose to avoid the need for strict adherence to LOS standards at CMP intersections for which no localized mitigation is feasible.

Nine of the 12 CMP intersections that are the subject of this Deficiency Plan are currently operating within the CMP LOS standard but all are expected to degrade to LOS F at sometime in the future. Improvements for five of these intersections were identified that will improve the level of service at the intersections to LOS E or better. Improvements for six other intersections have been identified that will improve intersection operations but not enough to meet the CMP LOS standard of E and it was determined that the improvements required to meet LOS standards are not feasible.

A Deficiency Action List was developed to identify physical improvements to non-CMP facilities designed to provide further offset for CMP deficiencies. The Action Plan also described how all feasible and appropriate actions on the VTA's Immediate Implementation Action List will be implemented as part of the deficiency plan.

**Client Name:**

Manuel Pineda, Senior Civil Engineer  
City of San Jose

**Phone:** (408) 975-3295

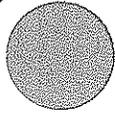
**Project Dates:** 2003-2004

**Technical Environment:** Travel Forecasting

**Amount:** \$425,000

**Hexagon Staff:** At van den Hout





**City of Sunnyvale Citywide Deficiency Plan**  
*Sunnyvale, California*

Hexagon was retained by the City of Sunnyvale to prepare a Citywide Deficiency Plan. The Deficiency Plan was a requirement of the County Congestion Management Program. Based on a long-range planning study prepared by Hexagon, the City of Sunnyvale is projecting to have some roadways that won't meet Level of Service standards. The Deficiency Plan describes the improvements that the City will make to offset the LOS deficiencies. These improvements consist of additional lanes at intersections, grade separations, one new road extension, as well as sidewalk and bicycle lane improvements. The Deficiency Plan describes how the improvements will be funded; in Sunnyvale's case this is through a transportation impact fee. The Deficiency Plan also describes how the planned improvements will result in better operating conditions for all travel modes.

**Client Name:**

Jack Witthaus

City of Sunnyvale

**Phone:** (408) 730-7330

**Project Dates:** 2006

**Technical Environment:** Travel Forecasting

**Amount:** \$25,000

**Hexagon Staff:** At van den Hout

**City of Milpitas TRAFFIX Database**

*Milpitas, California*

Under an on-call contract to provide traffic engineering services to the City of Milpitas, Hexagon Transportation Consultants developed a comprehensive citywide TRAFFIX database. The TRAFFIX database contains existing traffic volumes, existing and planned intersection lane geometrics, signal phasing and timing data, and trips generated by approved projects that have not yet been built or fully occupied. The database facilitates the retrieval of existing traffic counts, eliminates redundant tasks such as traffic data entry for separate but related analyses, and prevents inconsistencies in traffic analyses completed for related projects.

Hexagon staff conducted a comprehensive field inventory to identify the physical characteristics, signal phasing pattern and cycle length of the each signalized intersection. Existing intersection geometrics gathered in the field and the available existing traffic volumes were entered for every signalized intersection and the existing intersection levels of service were evaluated.

Hexagon provided City staff with training on the TRAFFIX database including a description of the database structure and instructions on how to maintain, expand and modify the database.

**Client Name:**

Joe Oliva, Principal Transportation Planner

City of Milpitas

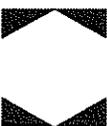
**Phone:** (408) 586-3290

**Project Dates:** 2001-2002

**Technical Environment:** Traffic Engineering

**Amount:** \$12,000

**Hexagon Staff:** Brett Walinski



**McCarthy Ranch 2008 EIR**  
Milpitas, California

Hexagon has been hired by The McCarthy Ranch Company to analyze the traffic and transportation impacts associated with the development of the remaining parcels of the McCarthy Ranch Property in Milpitas, California. The EIR-level traffic analysis will be an update of the September 2007 Traffic Impact Analysis (TIA) report that was prepared for the McCarthy Ranch project. The project description of the 2007 TIA assumed development of the approximately 58.5-acre property with Research and Development land uses. The McCarthy Ranch Company wants to have the flexibility of marketing the property for different types of land uses. Since an Environmental Impact Report will be prepared for this project, the Traffic and Transportation Section of the EIR will include potential land uses for which the traffic impacts would represent "worst" case conditions. Therefore, the proposed project includes land uses that generate relatively high traffic volumes during the peak-hours. The project's land uses consist of 49.2 acres of *Office Park* at a FAR of 0.50 and 9.34 acres of *Community Shopping Center* at an FAR of 0.23.

In addition to the standard traffic analysis scenarios, a long-term (2030) cumulative analysis will be performed using the Milpitas version of the VTA's travel forecasting model. The land uses in the McCarthy Ranch Area will be updated to reflect the proposed development plans and the results of the model forecasts will be used to identify the long term cumulative impact that the project may have on selected roadway segments in the larger Milpitas area.

**Client Name:**

Joey McCarthy

The McCarthy Ranch

Phone: (408) 356-2300

Project Dates: 2007-2008

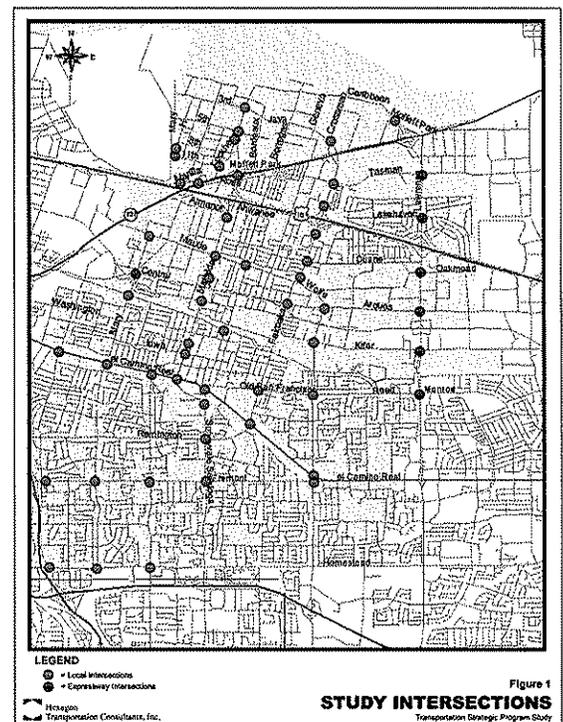
Technical Environment: Travel Forecasting

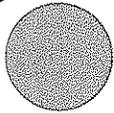
Amount: \$60,000

Hexagon Staff: At van den Hout

**Sunnyvale Model Update and Strategic Transportation Program**  
Sunnyvale, California

Hexagon was hired by the City of Sunnyvale to update the 2000 *Citywide Travel Forecasting Model* and the 2003 *Transportation Strategic Plan*. The original citywide model was implemented in TRANPLAN, relied on 2020 land use projections, was outdated and inconsistent with VTA's CUBE-based County wide model. Hexagon used the VTA's countywide model as the basis for updating the citywide model. Additional traffic analysis zones were added within Sunnyvale, the networks were updated and the model was validated for the year 2005. Consistent with VTA's most recent forecasting projections, ABAG Projections 2007 for the year 2030 were used to develop turning movement forecasts at approximately 50 intersections. An intersection turning movement post processing procedure was developed to adjust the 2030 raw model output based on actual traffic counts and year 2005 and 2030 model estimated volumes.





The preparation of the Transportation Strategic Plan (TSP) entailed (1) evaluating intersection levels of service under existing and future traffic conditions, (2) identifying locations of substandard conditions, (3) devising improvements to mitigate conditions at the substandard locations, (4) estimating the cost of implementing the improvements, (5) identifying funding sources for the improvements, and (6) calculating a proposed traffic impact fee by distributing the total improvement costs over anticipated future development in the City of Sunnyvale. Hexagon is currently in the process of updating the 2003 TSP. In addition to the aforementioned tasks, Hexagon will evaluate if there will any CMP intersection that cannot be mitigated and would therefore operate at unacceptable standards in the future. In that case, these deficiencies can be addressed by implementing a deficiency plan.

**Client Name:**

Jack Witthaus

The City of Sunnyvale

Phone: (408) 730-7330

Project Dates: 2006-2008

Technical Environment: Travel Forecasting

Amount: \$75,000

Hexagon Staff: At van den Hout

***Other Hexagon City of Milpitas Projects***

**Traffic Engineering**

Quantum Pedestrian Study – *Brett Walinski*

Milpitas Approved Trip Inventory – *Brett Walinski*

Town Center Monitoring

**Traffic Impact Analysis**

1210 CA Circle Feasibility Study

S. Main Street Residential

Montague Expressway Mosque Property – *Brett Walinski*

Murphy Ranch Road Residential TIA – *Brett Walinski*

Warmington Residential

USA Main Street Residential

Irvine Company Research and Development Complex – *Brett Walinski*

Great Mall Residential Long Term and Short Term Traffic Analysis – *Brett Walinski*

**EIR**

Great Mall Home Depot – *Brett Walinski*

Great Mall Redevelopment – *Brett Walinski*

Midtown Plan Update – *Brett Walinski*

**Parking**

750 Calaveras Parking Study – *Brett Walinski*

Great Mall Parking Study – *Brett Walinski*

Smash City Parking Study – *Brett Walinski*

Red Brick Pizza Parking Analysis

Subway Parking Study

Milpitas Civic Center – *Brett Walinski*

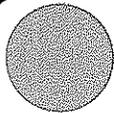
**Site Plan Review**

Bear Creek Paintball Access Study

Los Coches Driveway Study – *Brett Walinski*

Barry Swenson 451 Los Coches Traffic Circulation Study – *Brett Walinski*





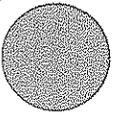
## **Project Staffing** (resume files at end of proposal)

**At van den Hout** is a Principal with Hexagon and has over twenty years of experience in transportation planning and traffic engineering with the emphasis on travel demand forecasting. Throughout his career, Mr. van den Hout has acquired extensive experience with multi-modal travel forecasting models. He is particularly familiar with the models from the Metropolitan Transportation Commission (MTC) in the San Francisco Bay Area, the Maricopa Association of Governments (MAG) in Phoenix, and the Pima Association of Governments (PAG) models in Tucson. Mr. van den Hout is familiar with all major travel demand forecasting software packages such as EMME/2, CUBE / TP+, TRANPLAN, TransCat, and MINUTP. He has acquired specific expertise in developing “focused” sub area and citywide travel demand models that provide the level of detail to evaluate local-level transportation planning decisions and intersection-based traffic impact analysis.

Currently, Mr. van den Hout is the Principal-in-Charge, overseeing the patronage forecasts that are being developed for several transportation corridors in the Phoenix Metropolitan area. Using MAG’s travel forecasting model, Mr. van den Hout recently developed detailed ridership projections for 15 light rail corridors in support of the LRT Configuration Study. Mr. van den Hout was responsible for developing ridership forecasts for the Tucson Major Investment Study. In cooperation with FTA staff, he implemented an incremental logit model procedure to develop transit ridership forecasts for several alternatives to be used in the evaluating and selection of a locally preferred alternative. Currently, Mr. van den Hout is developing the patronage forecasts for the Tucson Streetcar DEIS, which includes calculating the traditional user benefits as well as the user benefits resulting from modal attributes that are typical not included in conventional travel forecasting models. Mr. Van den Hout is also responsible for developing the ridership forecasts for the Silicon Valley Rapid Transit Corridor Study. In this role, he created patronage forecasts for both the MIS and EIS alternatives. In the past, he also implemented multi-modal travel demand models in Kansas City, Albuquerque, Bakersfield, San Mateo, Contra Costa and Alameda Counties. For this project, Mr. van den Hout would serve as Hexagon’s lead travel forecaster.

**Brett Walinski, T.E.** is a Principal with over ten years of experience in transportation planning and traffic engineering. He is a licensed Traffic Engineer in the State of California. With Hexagon since its inception, Mr. Walinski is one of the firm’s original six partners. Mr. Walinski has managed many types of transportation studies ranging from traffic impact analysis and areawide parking studies, to conceptual traffic improvement studies and detour planning. Many of these studies have included extensive contact with members of the general public to gain feedback for the conceptual designs of potential transportation improvements. Typical conceptual design projects included road closures, lane removals, roadway widenings, and lane additions. For this project, Mr. Walinski would serve as Hexagon’s lead traffic engineer.





### Hexagon 2008 Rates

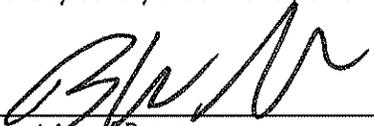
|                  |       |
|------------------|-------|
| President        | \$235 |
| Principal        | \$190 |
| Senior Associate | \$160 |
| Associate        | \$130 |
| Engineer II      | \$110 |
| Planner/Engineer | \$100 |
| Admin/Graphics   | \$90  |
| Technician       | \$70  |

Direct expenses are billed at actual costs, with the exception of mileage, which is reimbursed at \$0.505 per mile.

\*Effective January 1, 2008, rates subject to change January 1, 2009

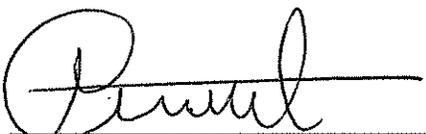
### Experience Statement

I hereby certify that I have performed the work listed in this proposal.

  
 \_\_\_\_\_  
 Signature of Proposer

**Brett Walinski, Principal**  
 \_\_\_\_\_  
 Name & Title of Authorized Representative

**June 13, 2008**  
 \_\_\_\_\_  
 Date of Signing

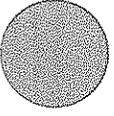
  
 \_\_\_\_\_  
 Signature of Proposer

**At van den Hout Principal**  
 \_\_\_\_\_  
 Name & Title of Authorized Representative

**June 13, 2008**  
 \_\_\_\_\_  
 Date of Signing

Hexagon Transportation Consultants, Inc.





**Statement Regarding Insurance Coverage**

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the Request for Qualifications for a 1134 Traffic Consultant. Should the Proposer be awarded the contract for the work, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City of Milpitas as Additional Insured for the work specified.

**Hexagon Transportation Consultants, Inc.**

\_\_\_\_\_  
Name of Proposer (Person, Firm, or Corporation)

  
\_\_\_\_\_  
Signature of Proposers, Authorized Representative

**Brett Walinski, Principal**

\_\_\_\_\_  
Name & Title of Authorized Representative

**June 13, 2008**

\_\_\_\_\_  
Date of Signing

**Worker's Compensation Insurance Certificate**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of provision of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

**Hexagon Transportation Consultants, Inc.**

\_\_\_\_\_  
Name of Proposer (Person, Firm, or Corporation)

  
\_\_\_\_\_  
Signature of Proposers, Authorized Representative

**Brett Walinski, Principal**

\_\_\_\_\_  
Name & Title of Authorized Representative

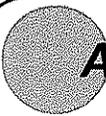
**June 13, 2008**

\_\_\_\_\_  
Date of Signing

**Key Staff resumes on the following pages.**

Hexagon Transportation Consultants, Inc.





## **At van den Hout, Principal**

### **Education**

**Bachelor of Science in Traffic Engineering and Transportation Planning**, Nationale Verkeersacademie, Tilburg, The Netherlands

### **Experience**

Over 20 years of experience in traffic engineering and transportation planning. He has served as project manager for a variety of major studies in travel demand forecasting and environmental impact assessments. His experience includes multi-modal travel demand modeling, surface transportation models for air passengers, traffic impact studies, and environmental studies.

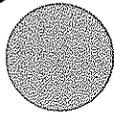
Mr. van den Hout has developed specialized experience in several areas of traffic engineering and transportation planning, with the emphasis on travel demand modeling using EMME/2, TRANPLAN, CUBE VOYAGER ( TP+/VIPER), and MINUTP. Mr. van den Hout is the principal travel demand forecaster for developing the patronage forecasts for the Silicon Valley Rapid Transit Corridor (BART extension to San Jose). The modeling work for this project is being done with VTA's Countywide Travel Forecasting Model. Mr. van den Hout recently developed travel forecasting models for the cities of Gilroy and Sunnyvale. The structure and application of these citywide models are identical to VTA's Countywide model; however, additional refinements were made to more accurately represent the land use activities and transportation systems within these municipalities. The primary use of these citywide models is to provide travel forecasting data in support of major transportation planning studies such General Plan Updates, large development projects, and traffic impact studies.

### **Representative Projects**

#### **Travel Demand Model Development Projects:**

- Sunnyvale Citywide Model – Santa Clara County, California. Model Refinement and Validation (CUBE/VOYAGER), 2007)
- Gilroy Citywide Model – Santa Clara County, California. Model Refinement and Validation (CUBE/VOYAGER), 2007)
- 2000 Planning Area 2 Subarea Model Update - Alameda County, California. Model Calibration and Validation (EMME/2, 2003)
- Sun Valley Subarea Model—California. Model Validation (EMME/2, 1998)
- Watsonville Model Update—California. Model Development (EMME/2, 1998)
- Scottsdale Focused Subarea Model—Scottsdale, Arizona. Development of a modal split methodology to bypass the mode choice models and feedback loops to simplify and expedite the Scottsdale model for use in selected applications.(EMME/2, 1998)
- 1996 Planning Area 2 Subarea Model—Alameda County, California. Model Development (EMME/2, 1997)
- Bakersfield Model—Kern County, California. Distribution model calibration (MINUTP, 1995)
- Middle Rio Grande of Governments Regional Model—Albuquerque, New Mexico. Model Development (EMME/2, 1995)
- San Mateo Countywide Model—San Mateo, California. Model development (EMME/2, 1993)
- San Francisco International Airport Surface Transportation Air Passenger Model—San Francisco, California. Trip Generation/distribution model development, mode choice calibration, model validation (EMME/2, 1994)
- West Contra Costa County Subarea Model—Contra Costa County, California. Model development (EMME/2, 1992)
- Oakley Areawide Model—Contra Costa County, California. Model development (EMME/2, 1989)



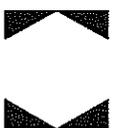


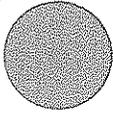
### **Travel Demand Model Applications**

- Silicon Valley Rapid Transit Corridor MIS / EIS – Development of ridership and traffic forecast for the MIS, EIS, and EIR- Santa Clara County, California. (CUBE/VOYAGER, 2001 – 2007)
- North San Jose Area Development Policy Update – Development of multi-modal travel forecasts for several large development concepts in North San Jose (TP+, 2004)
- Dumbarton Commuter Rail – Patronage forecasts for commuter rail alternatives for the Dumbarton rail Project – Bay Area, California. (TP+, 2002)
- MAG Regional Travel Forecasting Model – Phoenix, Arizona – Development of ridership forecasts for the proposed Bus Rapid Transit Plan (EMME/2, 2001).
- MTC Regional Transportation Model – San Jose, California – Model refinement and patronage forecasting for the South Bay Rapid Transit Major Investment Study (TP+, 2001).
- MAG Regional Travel Forecasting Model – Phoenix, Arizona – Travel forecasting for the Phoenix/East Valley PE/DEIS. Development of traffic and transit data for all aspects of the DEIS document and cost effectiveness data for the New Starts submittal (EMME/2, 2000-2003).
- Milpitas Subarea Model- Santa Clara County, California – Travel Forecasts for the McCarthy Ranch R&D Project (TRANPLAN, 1999)
- Planning Area 2 Model—Alameda County, California. Travel Forecasts for the 880/92 Interchange (EMME/2, 1998)
- Carquinez Bridge Subarea Model—Contra Costa, Solano Counties, California. Travel forecasts for the Carquinez Bridge Re-placement Project (MINUTP, EMME/2, 1996)
- Santa Clara County Model—Santa Clara County, California. Travel forecasts for the Highway 85 widening and U.S. 101/Route 85 Inter-change Projects, development of year 2020 land use and demographic forecast (TRANPLAN, 1996)
- Regional Transportation Committee Model—Reno, Nevada. Reallocation of trips based on trip purpose and parking availability in down-town Reno (EMME/2, MINUTP, 1995)
- Mid-America Regional Council Model—Kansas City, Missouri. Mode choice model re-calibration, patronage forecasts for the Kansas City Southtown Corridor AA/DEIS (EMME/2, 1995)
- Hayward Citywide Model—Hayward, California. Model validation, Future forecasts for city's Transportation Plan, Route 238 Corridor Study, Mission Boulevard Widening Study, Route 84 Realignment Project (EMME/2, 1990-1995)
- Tri-Valley Subarea Model—Alameda and Contra Costa Counties, California. I-580/I-680 Interchange Project, Tassajara Valley EIR, Tri-Valley Transportation Plan (EMME/2, 1991-1995)
- Alameda Countywide Model—Alameda County, California. Travel forecasts and analysis for the Alameda County Transportation Plan, I-880 Intermodal Corridor Study, I-880 Cypress Replacement Project, Castro Valley Arterial Study (EMME/2, 1992-1995)
- West Contra Costa Subarea Model—Contra Costa County, California. Travel forecasts and intersection operation analysis for the Hercules General Plan, Richmond General Plan, West Contra Costa County Action Plan (EMME/2, 1993)
- Contra Costa Countywide Model—Contra Costa County, California. Travel forecasts and analysis for the Contra Costa County General Plan (EMME/2, 1989)

### **Environmental / Traffic Impact Studies**

- McCarthy Ranch TIA – (2007)
- Dougherty Valley Traffic Impact Studies and Intersection Design Projects (2003-2007)
- Gale Ranch Phase 3 Traffic Study/Roadway Improvement Phasing Study—Contra Costa County, California. Traffic and transportation impact analysis for a 1,443 unit residential development (2000-2003)



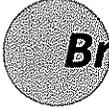


- McCarthy Ranch General Plan Amendment EIR – (2000)
- 301 Airport Boulevard Environmental Impact Report—Burlingame, California. Traffic and transportation impacts for a proposed office building (1999/2000)
- Franich Environmental Impact Report - Watsonville, Santa Cruz County. Traffic and circulation analysis of a 365 residential unit development in Watsonville. (1999/2000)
- McCarthy Ranch GPA Environmental Impact Report—Santa Clara County, California. Traffic and transportation impacts for a proposed 3,000,000 square feet research and development project. (1998/1999)
- Bayshore North Area Environmental Impact Report—Santa Clara County, California. Traffic and transportation impacts for a proposed commercial development (1998)
- Tassajara Valley General Plan Amendment and Environmental Impact Report—Contra Costa County, California. Traffic and transportation impacts for a development of 6,200 housing units (1997)

***Selected Publications/Presentations***

- “Implementation of Highway Capacity Manual Based Volume Delay Functions in a Regional Traffic Assignment Process,” presented at the TRB Annual Meeting, Washington, D.C. January 1996
- “Utilizing a Gateway Constrained Methodology to Better Forecast Traffic Volumes,” presented at the I.T.E. Conference, Denver, Colorado. August 1995 (Co-Author)
- “Building a Path-Based Fare Matrix Using EMME/2 and TRANPATH,” presented at the International EMME/2 Conference, Montreal, Canada, November 1994
- “Travel Demand Forecasting Models in the San Francisco Bay Area,” presented at the First European EMME/2 Users Conference in London, England. April 1992
- “Air Quality Impact Analysis Using the EMME/2 Network Calculator,” presented at the International EMME/2 Conference in Pasadena, California. June 1991





## **Brett Walinski, P.E.,** *Principal*

### **Education**

**Masters in Business Administration**, Beta Gamma Sigma, Santa Clara University  
**Bachelor of Science in Civil Engineering**, *President's Scholar*, San Jose State University

### **Professional Associations**

**Member of the Institute of Transportation Engineers**  
**Registered Professional Traffic Engineer in the State of California (TR 2342)**

### **Experience**

Since 1996, Mr. Walinski has managed various studies in the following areas: site traffic analyses, traffic calming, general plan amendments, traffic feasibility analyses, trip generation, bike lane, neighborhood traffic issues, road closure, lane removal, pedestrian, and parking studies. In addition to these study areas, Mr. Walinski has experience in operations analysis, signal design, transit studies, conceptual roadway design, and transportation surveys. Mr. Walinski has also worked on-call for the Cities of Sunnyvale, Milpitas, and Fremont as a traffic engineer and transportation planner.

Mr. Walinski served as Hexagon's project engineer for the Silicon Valley Rapid Transit (SVRT) station design project. Hexagon's role on the project was to provide traffic engineering input for the station designs as well as prepare traffic signal design plans. Mr. Walinski managed the preparation of project plans from concept to 35% design, produced conceptual designs for roadway improvements and station loading areas, provided traffic engineering comments for each stage of design, and prepared various engineering reports that contributed to the ultimate 35% plans. A sampling of these reports includes: a parking structure access study, a pedestrian volume origin and designation study, a slip ramp study to investigate the feasibility of a new roadway between a station parking structure and U.S. 101, and a study of the project's impact on the HP Pavilion.

### **Representative Projects**

#### **• Transportation Planning**

Site traffic analyses/EIRs/Traffic Feasibility Studies for offices, hotels, residential subdivisions, apartments, warehouses, industrial complexes, retail centers, restaurants, service stations, and multiple-use developments in San Jose, Union City, Woodland, Fremont, Santa Clara, Los Gatos, Mountain View, Palo Alto, Santa Cruz, Watsonville, Sunnyvale, Saratoga, Redwood City, and Milpitas. These included estimation of existing and future trip generation, impacts on adjacent intersections, site-plan review, parking layout review, and recommendations for mitigation measures.

Transit Policy Study for the City of Sunnyvale. Study was a comprehensive review of transit service in the city and recommended several approaches to improve transit ridership.

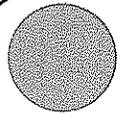
Traffic Database Development for the City of Milpitas. Project included the development of two separate databases, one to track approved project trips and the other to determine intersection level of service using TRAFFIX software.

BART Station Design Review including pedestrian, passenger vehicle, and bus circulation and access were reviewed at each station for the proposed BART extension to San Jose.

#### **• Traffic Engineering**

Operations Analyses using Netsim to solve a variety of traffic problems. These included: the evaluation of four-way stop signs at the intersection of Olive/Pastoria, striping changes at Stewart/Duane, triple-lefts at the intersection of Lawrence/Oakmead, the evaluation of two improvement alternatives at Wolfe/EI





Camino/Fremont, analysis of a merge lane alternatives on Mathilda Ave, and an analysis of future development in Daugherty Valley.

Accident Reduction Studies for South Milpitas Boulevard in Milpitas, Kifer Road in Sunnyvale, and Ridge Road in Amador County. The studies included quantifying an existing accident problem and developing several feasible design alternatives.

Signal Design at several locations in Santa Clara, Fremont, San Jose, and Milpitas. These included new signals and modifications to existing signals.

Traffic Engineering Design Support for civil engineering firms involved in roadway design. This often includes examining roadway geometrics and signal timing. Clients include Brio Engineering, Mark Thomas & Company, Earth Tech and RJA.

Detour Planning for San Pablo Dam Road in Contra Costa County, Bridge Street in Watsonville, Main Street in Milpitas, and Boscell Road in Fremont. Plans were developed in accordance with CALTRANS standards and the WATCH manual.

Roundabout Analysis/Design for Gale Ranch Phase III in Dougherty Valley, Contra Costa County. Analysis included conceptual design, level of service, and signing and striping of several roundabouts.

- **Neighborhood Traffic Issues**

Bicycle Lane/Lane Reduction Studies to determine the feasibility of providing bike lanes or bike space on several arterial/collector roadways in Sunnyvale by reducing the number of travel lanes. These included evaluation of impacts to traffic flow, parking, safety, intersection level of service, signal modifications, cost estimates, and also required several conceptual designs. In several cases, two-way left-turn lanes were introduced. Neighborhood meetings were held to gauge public support for the changes.

Representative projects include: Mary Avenue, Homestead Road, Old San Francisco Road, Evelyn Avenue and Santa Trinita Avenue.

Pedestrian & Crosswalk Studies at Sumac Drive in Milpitas and Stewart Drive in Sunnyvale. These included the estimation of pedestrian demand, crosswalk warrants, and the consideration of unique crosswalk treatments such as crosswalk humps and flashing amber lights.

Road Closure Studies in Milpitas and Sunnyvale. These included the evaluation of traffic impacts through data collection, attendance at neighborhood meetings, and affects to emergency vehicle response time.

Representative projects include: Taaffe/Frances Streets in Sunnyvale, Crawford Drive in Sunnyvale, Sumac Drive in Milpitas, and the California Avenue on-ramp to Central Expressway in Sunnyvale.

Traffic Calming Studies for several neighborhoods in Sunnyvale and Policy Development for the City of San Mateo. These studies often include extensive data collection, neighborhood meetings, and presentations to public policy makers. Representative projects include the following neighborhoods: Michelangelo, Gail, Fairwood, Bremerton/Warner.

Neighborhood Development Traffic Impact Studies for the Roberts Road residential project in Los Gatos, the Pinn Brothers housing development in Saratoga; the Village House restaurant in Los Gatos; and St. Cyprian School in Sunnyvale. These studies assessed the impacts of development on local residential areas and determined whether traffic in the area would noticeably increase.

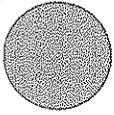
- **Parking**

Parking Studies for Japantown in San Jose, the Great Mall of the Bay Area, Providian Bancorp in Pleasanton, The Alameda Business District in San Jose, Alum Rock Business District in San Jose, the Pacific Athletic Club in Redwood Shores, Downtown San Mateo, and the Milpitas Civic Center. These included the estimation of existing and future parking demand, examined opportunities for shared parking, conceptual parking lot design, the development of a criteria/program for the construction of a parking structure, and examined the types of parking needed (long-term vs. short-term).

- **Surveys**

Surveys to determine parking demand, travel time, border crossing time, trip purpose, trip generation, trip distribution, and public opinion. Where necessary, these included statistical analyses to determine





sample size, margin of error, and survey confidence. The surveys have been used to assess the need for street closures, lane reductions, and transportation impact mitigations. Some representative projects include: Binational Border Customs Survey, Fair Oaks to Central Expressway travel time survey, Johnny Rockets and AMC Trip Purpose Surveys, Home Depot Pass-by and O-D Surveys, Eastridge Mall O-D survey, Blair Avenue Parking Survey, and the Milpitas R & D Trip Generation Survey.

**Publications**

“Holiday Parking Demand at a Super Regional Shopping Mall – A Case Study,” Institute of Transportation Engineers, July 2005 (co-author)

“Evaluation of Transit as a Traffic Relief Strategy for a Medium-Sized Suburban City,” Institute of Transportation Engineers, July 2005 (co-author)

**Previous Experience**

Parsons Transportation Group, Barton-Aschman Associates



**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
HEXAGON TRANSPORTATION CONSULTANTS, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Hexagon Transportation Consultants Inc. ("Consultant") as of August 20, 2008.

**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, 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 the date of completion specified in Exhibit A, 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 standards observed by a competent 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 standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel 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.
- 1.4 **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 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ 25,000.00 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. 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;
- The beginning and ending dates of the billing period;
- A Task Summary containing the 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. 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.

- 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 \$ 150.00. 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 **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.

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.

4.2 **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 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 require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants 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 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, 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, 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.

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 Joseph J. Oliva III, Principal Transportation Planner, 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:

Brett Walinski, Principal  
40 South Market Street, Suite 600  
San Jose, California 95113

Any written notice to City shall be sent to:  
Joseph J. Oliva III  
455 East Calaveras Boulevard  
Milpitas, California 95035

**10.11 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.

10.12 **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.

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

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Brett Walinski, Principal

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
Joseph J Oliva III,  
Principal Transportation Planner

\_\_\_\_\_  
City of Milpitas Business License Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

APPROVED:

\_\_\_\_\_  
Finance Director/Risk Manager

PREPARED BY:

\_\_\_\_\_  
Chris Schroeder, Purchasing Agent

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk

EXHIBIT A  
SCOPE OF SERVICES

EXHIBIT B  
COMPENSATION SCHEDULE