CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND HARRIS & ASSOCIATES

THIS AGREEMENT for consulting services is made by and between the Milpitas Redevelopment Agency ("RDA") and Harris & Associates ("Consultant") as of February 17, 2009 in Milpitas, California.

DRAFT 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, 2010, 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 normal professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, normal manner and shall conform to the normal professional standards of quality observed by a person practicing in Consultant's profession.

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

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

1.5 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed $ 150,000 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identification of bills; ("Invoice #")
- The beginning and ending dates of the billing period;
- A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit C for invoice tracking and shall submit the form with each invoice;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10)

percent shall be retained by the City from each contract billing until the completion of the contract unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

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

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

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

2.5 Reimbursable Expenses. Reimbursable expenses are included on Exhibit B. 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.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be

limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

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

a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

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

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

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

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

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

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

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

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

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

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury,

bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant No Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be

specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and 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, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant

to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire". Upon submission of any work for hire pursuant to this Agreement and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

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

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

10.10 Not Used

10.11 Notices. Any written notice to Consultant shall be sent to:
Millette Litzinger, Senior Project Manager
178 Second Street, Suite C
Gilroy, California 95020

Any written notice to City shall be sent to:
Greg Armendariz, City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035

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

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

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

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

This agreement is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, Executive Director

CONSULTANT

_____
Harris & Associates
Michael K. Cooper, Vice President

APPROVED AS TO CONTENT:

_____
Greg Armendariz, City Engineer

APPROVED AS TO FORM:

_____
Michael J. Ogaz, Agency Counsel

ATTEST BY:

_____
Mary Lavelle, Agency Secretary

Attachments:

Exhibit A:	Scope of Services
Exhibit B:	Compensation Schedule
Exhibit C:	Insurance Coverage Documents
Exhibit D:	Sample Progress Payment form

Exhibit A
SCOPE OF SERVICES

PROJECT UNDERSTANDING

The City of Milpitas' Street Resurfacing Program 2009 consists of three projects involving pavement rehabilitation and roadway improvements for various City streets: 1) Street Resurfacing 2009, 2) Slurry Seal 2009, and 3) Crack Seal 2009.

The Street Resurfacing 2009 project will include base repair, asphalt overlay, or reconstruction of the following streets:

Street	Segment
N. Milpitas Blvd	Tramway Ave to Calaveras Blvd

The Slurry Seal 2009 project will include streets which were previously crack sealed by the City as part of the Crack Seal FY 2008-09 project and two additional streets (shown in italics). All the slurry seal locations are listed below:

Street	Segment
N. Park Victoria Dr	*Jacklin Rd to Calaveras Blvd*
Country Club Dr	*Entire Segment*
Adams Ave	Gadsden Dr to Temple Dr
Arana Ct	Temple Dr to east end
Brian Ct	Michael St to west end
Calle Oriente	Park Victoria Dr to Evans Rd
Dennis Ave	Temple Dr to east end
Evans Rd	Park Victoria Dr to Calle Oriente
Fair Hill Dr	Temple Dr to Spring Valley Lane
Gadsden Dr	Adams Ave to Ellis Ave
Golden Hills Dr	Temple Dr to Spring Valley Lane
Kennedy Dr	Park Victoria Dr to Evans Rd
Lynn Ave	Adams Ave to Kennedy Dr
Michael Ct	Michael St to west end
Michael St	Brian Court to Evans Rd
Old Evans Rd	Kennedy Dr to Serpa Dr
Prada Ct	Prada Dr to east end
Prada Dr	Kennedy Dr to Traughber St
Quail Dr	Simas Dr to east end

Exhibit A
SCOPE OF SERVICES

Street	Segment
Ramos Ct	Quail Dr to north end
Santos Ct	Stemel Way to north end
Serpa Dr	Quail Dr to Old Evans Rd
Simas Dr	Kennedy Dr to Stemel Way
Spring Valley Lane	Golden Hills Dr to Fair Hill Dr
Stemel Ct	Stemel Way to north end
Stemel Way	Prada Dr to Evans Rd
Temple Dr	Calaveras Blvd to Kennedy Dr
Traughber St	Park Victoria Dr to east end
View Dr	Temple Dr to Spring Valley Lane

The streets to be included in the Crack Seal 2009 project have not yet been identified. The City and the Consultant shall determine which streets to include in this program at the completion of the Street Resurfacing 2009 and Slurry Seal 2009 projects. The Consultant's scope of work shall include the following tasks for each of the three projects:

Our detailed scope of work is outlined here:

- Task 1: Preliminary Determinations
- Task 2: Plans, Specifications, and Estimate (PS&E)
- Task 3: Bidding Phase Assistance
- Task 4: Reimbursables and Reproductions
- Task 5: Project Management

SCOPE OF WORK

Task 1: Preliminary Determinations

Task 1.1 Kick-off Meeting. Consultant shall meet with the City to confirm scope of work, schedule, budget, availability of project documents, and format of deliverables.

Task 1.2 Field Review. Consultant shall conduct an initial field review of each street with follow-up visits as necessary to understand each streets unique features that will affect the design, construction and preparation of the contract documents. In addition, Consultant shall identify locations requiring base repair on each street to be resurfaced and slurry sealed.

Task 1.3 Data Gathering. Consultant shall gather and review existing Record Drawing information about each street that is pertinent to the development of each project. Consultant shall verify City-furnished data for accuracy prior to using this information for preparation of contract documents. Typical data collection includes:

- As-built plans for existing roadway facilities

- Preliminary design data
- Design standards, details, and specifications
- City's Pavement Management System (PMS)
- Mapping and aerial photographs
- Monumentation
- Traffic data
- Utility maps and contacts
- Geotechnical reports
- Right-of-way record maps

Aerial photos will be provided by the City to be used as base maps for the street resurfacing and the slurry seal projects.

Task 1.4 Utility Coordination. Consultant shall identify potential utility conflicts and contact each utility company regarding adjustments.

Task 1.5 Preliminary Design. Consultant shall work closely with the City in preparation of contract documents for each project. Based on the field reviews, information gathered, and input from the City staff, Consultant shall develop a preliminary location map identifying the types, locations, and limits of the street improvements for review and comment by the City. A preliminary opinion of probable construction costs will also be prepared to confirm the proposed project is within the City budget.

Task 1.6 Stop Control Study. Consultant shall conduct a multiway stop control study for the intersection of Kennedy Drive and Fanyon Street. Consultant shall collect the following data necessary to conduct a multiway stop control study as specified in the U. S. Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD):

- Weekday 2 hour AM, Mid-day, and PM peak period pedestrian crossing counts.
- 24-Hour period vehicle count on all four approaches.
- Accident data for this intersection for the past three years.
- 85th percentile speed for Kennedy Drive.

Consultant shall conduct field observations within the same time frame as the counts are collected.

According to the MUTCD, the decision to install a multiway stop control should be based on an engineering study. Consultant shall examine the criteria for a multiway stop sign installation in the MUTCD 2003 Edition and apply the data collected. Consultant shall present the results of the study and any additional findings to the City of Milpitas. Consultant shall address comments provided by the City on the draft report and submit a final memo.

Task 2: Plans, Specifications, and Estimates (PS&E)

Task 2.1 Submittals. Separate construction documents shall be prepared for each project: street resurfacing, slurry seal, and crack seal, including 65%, 95% and 100% submittals for each project.

Consultant shall facilitate resolution of any conflicting comments and respond to all comments in writing. After all comments are resolved, Consultant shall incorporate all comments into the next

submittal. This process will be repeated, ending with the 100% submittal. As indicated in Task 5: Project Management, review meetings will be held after every submittal to discuss and resolve comments.

Task 2.2 Plans. Aerial photos, provided by the City, will be used as a base map for the street resurfacing and slurry seal projects. Layout plans will not be prepared for any of the crack seal streets; however, typical sections will be provided. It is assumed that layout plans will be required for major slurry seal streets, such as North Park Victoria Drive, Evans Road, and Kennedy Drive and any streets requiring base repair work.

For each of the three projects, Consultant shall prepare street improvement plans that will include the following plan sheets:

- Title Sheet
- Location Map
- Typical Sections
- Details
- Street Layouts
- Striping

Each plan sheet for the street resurfacing projects will include quantities of manholes and valves to be adjusted to grade.

Electronic submissions of the plans will be in AutoCAD (.dwg) and Adobe Acrobat (.pdf) format. The final hard copy submittal will be on mylar.

Task 2.3 Specifications. For the each submittal, Consultant shall prepare technical specification for review and comment by the City. Each submittal shall include complete specifications based upon the City Standard Specifications. The specifications will include a list of streets to be resurfaced, slurry sealed, and crack sealed depending on the project along with the limits of work for each street. Electronic submissions of the specifications will be in Microsoft Word (.doc) format. The City will provide the front-end specifications to the Consultant for final packaging into each project.

Task 2.4 Opinion of Probable Construction Costs. A detailed cost estimate will be prepared for each submittal for each project, including quantity take-offs, unit costs, and cost estimates for each element of each project. Electronic submissions of the estimate will be in Microsoft Excel (.xls) format.

Task 3: Bidding Phase Assistance

Task 3.1 Bid Support. Consultant shall attend a pre-bid meeting to answer questions from prospective bidders and Consultant shall prepare responses to bidders Request for Information (RFIs), including the preparation of details if needed. Consultant shall prepare technical data required to support addenda materials.

Task 4: Reimbursables and Reproductions

Task 4.1 Reimbursables and Reproductions. Deliverables requiring reproduction will be provided to the City. Consultant shall provide 7 hard copies and one electronic copy of each deliverable as listed below. Reimbursable expenses shall not include meals, travel, lodging, per diem, internal reproductions, telephone, telecommunications, or network costs.

Task 1 Deliverables

- Kick-off meeting notes
- Contact list
- Basemaps (street resurfacing and some slurry seal locations)
- Location map
- Preliminary opinion of probable construction costs

Task 2 Deliverables

- 65% PS&E submittal
- 95% PS&E submittal
- 100% PS&E submittal
- Final PS&E submittal

Task 3 Deliverables

- Bidder questions and designer responses
- Addenda documentation

Task 5 Deliverables

- Written response to comments
- Monthly progress reports and invoices

Task 5: Project Management

Task 5.1 Project Management. Consultant project management functions shall include monitoring the schedule and budget of each project; ensuring the delivery of submittals and conformance with applicable standards of each project; and facilitating verbal and written communication through meetings, project documentation, and progress reports.

Task 5.2 Review Meetings. After every submittal (65%, 95%, and 100%), the Consultant shall participate in a review meeting with the City to discuss and resolve comments. Consultant shall prepare minutes for these meetings and a written response to comments, as well as summarize action items.

Task 5.3 Project Estimates. Prior to every submittal, the Consultant shall review quantity take-off and unit costs and make revisions as required. The engineer's estimate will be compared to construction cost data from recent bid results for similar projects in the region.

Task 5.4 Quality Assurance/Quality Control (QA/QC). All deliverables produced by the Consultant shall be checked prior to submission to the City. The Consultant will utilize staff who is not affiliated with the project on a day-to-day basis.

SCHEDULE

A project schedule using Microsoft Project shall be prepared and maintained by the Consultant.

COMPENSATION

The maximum compensation to the Consultant for these services is identified in Exhibit B.

Exhibit B

COMPENSATION SCHEDULE

CITY OF MILPITAS											
STREET RESURFACING PROGRAM 2009											
Cost Proposal and Level of Effort											
	Hours										
Task Description	PD/QC	PM	PE	TECH	CLERICAL	Subcons.	Subcons.	Subcons.	Subcons.	Reimbursables	FEE
										Aerials	
Hourly Rate (per Standard Hourly Rate Schedule)	$ 240.00	$ 195.00	$ 150.00	$ 125.00	$ 60.00	Surveying	Geotech	Traffic	Structures	Reproductions	
1.0 PRELIMINARY DETERMINATIONS											
1.1 Kickoff Meeting (1 max)		2	2		1						$750
1.2 Field Review		8		25							$4,685
1.3 Data Gathering		8	24								$5,160
1.4 Utility Coordination			2	8							$1,300
1.5 Preliminary Design	1	4	8	16							$4,220
1.6 Stop Control Study		2						$5,000			$5,390
Subtotal	1	24	36	49	1	$0	$0	$5,000	$0	$0	$21,505
2.0 PLANS, SPECIFICATIONS, AND ESTIMATES (65%, 95%, 100%											
STREET RESURFACING PROJECT											
2.1a Submittal	1	6	12	4	2						$3,830
2.2a Plans		16	50	80							$20,620
2.3a Specifications		16	20		8						$6,600
2.4a Opinion of Probable Construction Costs		6	20	8							$5,170
SLURRY SEAL PROJECT											
2.1b Submittal	1	8	14	4	3						$4,580
2.2b Plans		31	90	150							$38,295
2.3b Specifications		16	20		8						$6,600
2.4b Opinion of Probable Construction Costs		12	40	16							$10,340
CRACK SEAL PROJECT											
2.1c Submittal	1	4	6		2						$2,040
2.2c Plans											$0
2.3c Specifications		16	20		8						$6,600
2.4c Opinion of Probable Construction Costs		4	12	6							$3,330
Subtotal	3	135	304	268	31	$0	$0	$0	$0	$0	$108,005
3.0 BIDDING PHASE ASSISTANCE											
3.1a Bid Support - Pre-Bid Meeting		2	2								$690
3.1b Bid Support - Answer Bidder Questions		2	4								$990
3.1c Bid Support - Addenda Assistance		2		4							$890
Subtotal	0	6	6	4	0	$0	$0	$0	$0	$0	$2,570
4.0 REIMBURSABLES AND REPRODUCTIONS											
4.1a Task 1 Deliverables											$0
4.1b Task 2 Deliverables										$2,000	$2,000
4.1c Task 3 Deliverables											$0
4.1d Task 5 Deliverables											$0
Subtotal	0	0	0	0	0	$0	$0	$0	$0	$2,000	$2,000

Harris & Associates

Exhibit B

COMPENSATION SCHEDULE

	Hours										
Task Description	PD/QC	PM	PE	TECH	CLERICAL	Subcons.	Subcons.	Subcons.	Subcons.	Reimbursables	FEE
										Aerials	
Hourly Rate (per Standard Hourly Rate Schedule)	$ 240.00	$ 195.00	$ 150.00	$ 125.00	$ 60.00	Surveying	Geotech	Traffic	Structures	Reproductions	
5.0 PROJECT MANAGEMENT											
5.1 Project Management	2	6			4						$1,890
5.2 Review Meetings (3 max)		6	6		4						$2,310
5.3 Project Estimates		8									$1,560
5.4 Quality Assurance/ Quality Control	6										$1,440
Subtotal	8	20	6	0	8	$0	$0	$0	$0	$0	$7,200
6.0 OTHER SERVICES											
6.1 Other Services											$8,000
Subconsultant Markup (10%)						$0	$0	$500	$0	$200	$700
TOTAL	12	185	352	321	40	$0	$0	$5,500	$0	$2,200	$149,980
Rounded											$150,000

ASSUMPTIONS:

1. Fee assumes aerial photos, provided by the City, will be used for base sheets. Layouts will be prepared for resurfacing Milpitas Blvd and the following slurry seal locations: North Park Victoria Dr, Evans Rd, and Kennedy Dr.

2. Improvement Plans for Street Resurfacing Project are anticipated to include:
   - 1 - Title Sheet
   - 1 - Location Map
   - 1 - Typical Sections
   - 1 - Details
   - 2 - Street Layouts (Milpitas Blvd: 1"=40' scale, two strips)
   - 2 - Striping (Milpitas Blvd)
   - 0 -Traffic Handling

   Improvement Plans for Slurry Seal Project are anticipated to include:
   - 1 - Title Sheet
   - 1 - Location Map
   - 3 - Typical Sections
   - 1 - Details
   - 13 - Street Layouts (1"=40' scale, two strips)
   - 5 - Striping (N. Park Victoria, Kennedy)
   - 0 -Traffic Handling

3. The maximum compensation to Harris & Associates for services related to the design of the Street Resurfacing Program 2009 shall be One Hundred Fifty Thousand Dollars ($150,000).

4. The above Compensation Schedule identifies the maximum compensation for each respective Task as identified in Exhibit A -- Scope of Services of this Agreement. Harris & Associates shall be responsible for the on-going completion of each task after the maximum compensation for each task has been reached.

5. Requests for the reallocation of funds between tasks shall be submitted by Harris & Associates to the City in writing. The City shall consider each request for reallocation of funds between tasks, but is not obligated to move funds between tasks even though one task is complete and the maximum compensation per task has been reached in another. Work completed by Harris & Associates for each task after the maximum compensation for each task, but completed prior to any written authorizations by the City for reallocation of funds between tasks shall not be considered reimbursable.

6. Harris & Associates' Hourly Rate Fee Schedule in Exhibit B-1 shall be used for the confirmation of invoices by the City. Only one adjustment to Exhibit B-1 shall be allowed during the Term of this Agreement and only upon written authorization by the City for adjustment. Work completed prior to any approved adjustments to Exhibit B-1 shall be billed and paid at the original hourly rate fee schedule approved at the execution of the Agreement.

7. Hours and fee may be renegotiated if the project is delayed by factors beyond Harris' control.

8. The number of budgeted meetings is indicated on the spreadsheet.

9. No high-risk utilities exist in the project area.

Harris & Associates

Exhibit B-1

HOURLY RATE FEE SCHEDULE

RANGE OF HOURLY RATES: ALL EMPLOYEES

Effective January 1, 2009 - December 31, 2010

ENGINEERING DESIGN AND MUNICIPAL SERVICES GROUPS	HOURLY RATE
Project Directors	$190-290
Project Managers	150-270
Project Engineers	125-250
Technical Support	75-150
Administration	65-130

CONSTRUCTION / PROGRAM MANAGEMENT	HOURLY RATE
Project Directors	$190-290
Project Managers	150-270
Construction Managers	125-220
Resident Engineers	150-220
Construction Engineers	110-220
Scheduling Engineers	110-190
Cost Engineers	110-220
Inspectors *	100-220
Technicians	90-160
Administration	65-130

Notes: Only one adjustment to this Fee Schedule shall be allowed during the Term of the Agreement and only upon written authorization by the City for adjustment. Work completed prior to any approved adjustments to the Fee Schedule shall be billed and paid at the original hourly rate fee schedule approved at the execution of the Agreement.

* Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

Exhibit C

CITY OF MILPITAS

CERTIFICATE OF INSURANCE

General and Automobile Liability

The undersigned insurance company hereby certifies to the City of Milpitas, California that it has issued a policy of insurance bearing Policy No. _____ to _____ in connection with a certain improvement work generally described as Street Resurfacing Program 2009, Project No.: 8194 being a certain general public liability policy which names the City of Milpitas, its officers and employees as additional insured, and which insures said City, officers and employees against liability of financial loss resulting from injuries occurring to persons or property in or about or in connection with said work of improvement, including, but not limited to, coverage for all work performed by, for or on behalf of_____

Said policy of insurance provides coverage in the following minimum amounts and for the following periods:

	COVERAGE	POLICY NO.	POLICY PERIOD	MINIMUM LIMITS OF LIABILITY
1)	Bodily Injury			$1,000,000 each person $1,000,000 each occurrence
2)	Property Damage			$1,000,000 each person $1,000,000 each occurrence

This policy provides: (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) That said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) Each insurance policy required by this clause shall be endorsed to 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 Clerk.

_____
Insurance Company

Address of Signatory:

_____

_____

_____
Authorized Representative (Signature)

_____
(Typed name, capacity, or title)

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.
Executed at _____ , _____ , on the _____ day of _____ , 2009.
(City) * (State)

_____
Authorized Representative (Signature)

_____
(Typed name, capacity, or title)

Approved as to Form this _____ day of

_____ , 2009

_____
Agency Counsel

* SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, this _____ day of _____ , 2009.

_____
Signature of Notary

_____
(Typed name)

* If this Certificate is executed outside of California, it must be sworn to before a Notary Public.

Exhibit C

CITY OF MILPITAS

DATA SHEET: INSURANCE COMPANY

Data Regarding Insurance Company and Representatives'
Authority to act in Connection with Insurance Certificates Issued to:

_____ City of Milpitas
____X____ Milpitas Redevelopment Agency

RE: Project No. 8194

Project Title: Street Resurfacing Program 2009

Date of Agreement: February 17, 2009

I, the undersigned, hereby certify that I am authorized to issue the attached Certificate of Insurance for:

Full Name of Insurance Company: _____

Mailing Address: _____

City, State, Zip Code: _____ Phone:_____

My name, address and license number with the California Insurance Commissioner is as follows:

* Name: _____

Address: _____

Broker's License No.: _____

If not applicable, explain why: _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ , California, on the _____ day of _____ , 20 _____ .

Approved as to Form this _____ day of

_____ , 2009

_____
Agency Counsel

* _____
Authorized Representative (Signature)

* _____
(Typed name, capacity, or title)

* The name and signature should be the same name and signature as shown on the Insurance Certificate.

Exhibit C

CITY OF MILPITAS

CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

The undersigned insurance company hereby certifies to the City of Milpitas, California, that it is an admitted Worker's Compensation Insurer and that it has issued a policy of Worker's Compensation Insurance bearing policy number _____ to _____ Said policy is a valid policy of Worker's Compensation Insurance issued in a form approved by the California Insurance Commissioner and is now in full force and effect. The full deposit on said policy has been paid. The expiration date of said policy is the _____ day of _____ , 20_____ . The undersigned insurer will give said City of Milpitas at least ten (10) days advance notice of the cancellation of said policy.

Dated: _____

_____
Insurance Company

Address: _____

_____

* _____
Authorized Representative (Signature)

* _____
(Typed name, capacity, or title)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ , California, on the _____ day of _____ , 20 _____ .

* _____
Authorized Representative (Signature)

* _____
(Typed name, capacity, or title)

* The name and signature should be the same name and signature as shown on the Data Sheet: Worker’s Compensation Insurance Company.

Exhibit C

CITY OF MILPITAS

CONTRACTOR'S CERTIFICATE RELATING TO WORKER'S COMPENSATION INSURANCE PURSUANT TO LABOR CODE SECTION 3800

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work under contract or agreement with the City of Milpitas (check one of the following):

_____ I will have in full force and effect Worker's Compensation Insurance pursuant to the attached Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said certificate shall state that there is in existence a valid policy for Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten (10) days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

_____ I have in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations (an exact copy of duplicate thereof certified by the Director may be attached).

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ , California, on the _____ day of _____ , 20 _____ .

By: _____
Authorized Representative (Signature)

_____
(Typed name, capacity, or title)

On behalf of: _____
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS, 888 NORTH FIRST STREET, SAN JOSE, CALIFORNIA, TELEPHONE 277-1265.

Exhibit C

CITY OF MILPITAS

DATA SHEET: WORKER'S COMPENSATION INSURANCE COMPANY

Data Regarding Insurance Company and Representatives'
Authority to act in Connection with Insurance Certificates Issued to:

_____	City of Milpitas
____X____	Milpitas Redevelopment Agency

RE: Project No. 8194

Project Title: Street Resurfacing Program 2009

Date of Agreement: February 17, 2009

I, the undersigned, hereby certify that I am authorized to issue the attached Certificate of Insurance for:

Full Name of Insurance Company: _____

Mailing Address: _____

City, State, Zip Code: _____ Phone: _____

My name, address and license number with the California Insurance Commissioner is as follows:

* Name: _____

Address: _____

Broker's License No.: _____

If not applicable, explain why: _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ , California, on the _____ day of _____ , 20 ____ .

Approved as to Form this _____ day of

_____ , 2009

_____
Agency Counsel

* _____
Authorized Representative (Signature)

* _____
(Typed name, capacity, or title)

* The name and signature should be the same name and signature as shown on the Worker's Compensation Insurance Certificate.

CITY OF MILPITAS

REQUIREMENTS FOR CONTRACT DOCUMENTS
(FOR CONSULTANTS ONLY)

All contract documents for Public Works contracts shall be on the forms furnished by the City. The following is an outline of requirements for execution of documents by the contractor, the surety company and the insurance company.

I. INSURANCE CERTIFICATE (1 copy - USE CITY FORM)

1. Signed by: Attorney-in-Fact or Authorized agent of insurance company beneath typed name of insurer.
2. Notarial Acknowledgment Certificate: Required if Certificate is executed outside of California.
3. Insurance to be validly in force for expected construction period.

II. DATA REGARDING INSURANCE COMPANY and DATA REGARDING BONDING COMPANY (1 copy each)

1. Completed and signed by: Authorized representative of each insurance company and each surety company. Must be signed by same person signing bonds or certificate. Be sure to insert State license number.
2. Notarial Acknowledgment Certificate: Not Required.

III. CERTIFICATE RELATING TO WORKMEN'S COMPENSATION INSURANCE (1 copy)

1. Signed by: Corporate Officer or General Partner of the Contractor.
2. Notarial Acknowledgment Certificate: Not Required.

IV. CERTIFICATE OF WORKER'S COMPENSATION INSURANCE (1 copy)

1. Signed by: Attorney-in-Fact or Authorized agent of insurance company.
2. Notarial Acknowledgment Certificate: Not Required.
3. Attach insurance company certificate form which must comply with language on City form exactly (as required by State law).

When documents have been properly executed, return all copies to the City. The contractor's copy of documents will be returned to him when fully executed by the City.

Exhibit D

Sample Progress Payment Form

CONSULTANT:
CONTRACT DATE:
CONTACT PERSON:

PROJECT NAME:
PROJECT NO:
ACCOUNT NO:

PO NO:

INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	INVOICE TO DATE	AUTHORIZED PAYMENT AMOUNT	PAID TO DATE	CONTRACT AND AMENDMENT			RETENTION		BALANCE REMAINING
						ACTION	DATE	AMOUNT	THIS INVOICE	TOTAL TO DATE	
						Agreement					