

City of Milpitas, California

BUDGET CHANGE FORM

Budget # _____
Refer # _____

***RA4**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	390 - 2940	\$298,799	390-116-4237	\$298,799

Explain the reason for the budget change:

In March 2009, the City Council directed staff to issue a Request for Proposal (RFP) for a feasibility analysis of three areas in the City to determine potential for redevelopment project area formation. Three firms indicated interest in the Request, but only one firm, Keyser Marston Associates (KMA), submitted a response. Of the other two firms that expressed interest, one indicated that they were not available and the other firm is currently engaged with a developer seeking financial assistance from the Milpitas Redevelopment Agency and felt it was a potential conflict of interest. KMA, as requested in the RFP, proposes to complete the study area feasibility analysis for Council review in August 2009 for an amount not to exceed \$63,000. The work required for the extension of time of Project Area No. 1 is estimated at \$149,500, as this effort will require findings of continued blight and other processes, such as noticing and more environmental review, that the study area feasibility analysis will not. The environmental review for the extension of time will cost \$86,299, for a total contract cost of \$298,799.

A budget appropriation in the amount of \$298,799, from the Redevelopment Agency Fund to the RDA & Economic Development function is required. Sufficient funds are available in the Redevelopment Agency Fund.

Check if City Council Approval required.

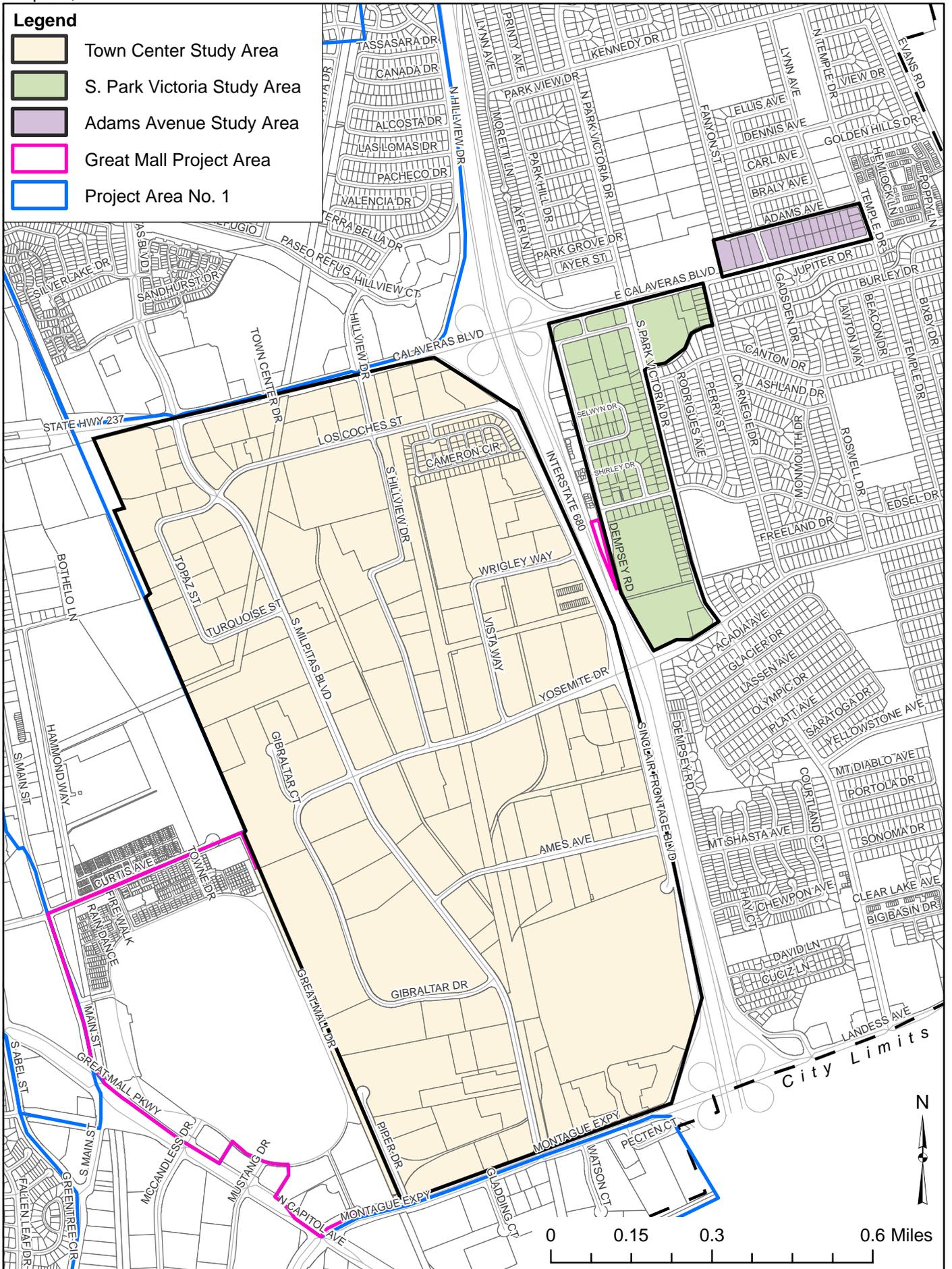
Meeting Date: May 19, 2009

Itemization of funds, if needed:			Amount
Requested by:	Division Head: <i>Stana Barnhart</i>	Date:	<i>5/8/09</i>
	Department Head:	Date:	
Reviewed by:	Finance Director: <i>m c Ker</i>	Date:	<i>5/8/09</i>
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	

Proposed Study Area Boundaries
Milpitas, CA

Legend

- Town Center Study Area
- S. Park Victoria Study Area
- Adams Avenue Study Area
- Great Mall Project Area
- Project Area No. 1



**CONSULTING SERVICES AGREEMENT BETWEEN
THE REDEVELOPMENT AGENCY OF THE AGENCY OF MILPITAS AND
KEYSER MARSTON ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the Redevelopment Agency of the City of Milpitas ("Agency") and Keyser Marston Associates ("Consultant") as of May 20, 2009.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency 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 December 31, 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 Agency'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 Agency, 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 Agency of such desire of Agency, 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. Agency hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ 298,799 for all services to be performed under this Agreement. Agency 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 Agency to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency 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. Agency 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.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency 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 Agency 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.** Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Agency 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 Agency 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 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 Agency or Consultant terminates this Agreement pursuant to Section 8, the Agency 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 Agency 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. Agency shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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. Agency 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 Agency 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 Agency and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the Agency 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 AGENCY 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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. Agency 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, Agency 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 Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency 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 Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency 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 Agency 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 Agency or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. Agency 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 Agency 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 Agency in connection with this Agreement.

8.2 Extension. Agency 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 Agency grants such an extension, Agency shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, Agency 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. Agency 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 Agency 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 Agency 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 maps, diagrams, 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 Agency 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 Agency and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the Agency within the time period specified by the Agency shall be a material breach of this Agreement. Agency and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the Agency 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 Agency 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 Agency 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 Agency 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 Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency 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 Agency 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 Agency 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 Diana Barnhart, Economic Development Manager, 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:

Keyser Marston Associates
500 South Grand Avenue, Ste. 1480
Los Angeles, CA 90071
Attn: Paul Anderson

Any written notice to Agency shall be sent to:
Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, California 95035
Attn: Diana Barnhart

10.11 **Deleted Intentionally.**

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between Agency 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.

AGENCYOF MILPITAS

CONSULTANT

Thomas C. Williams, Executive Director

[NAME, TITLE]

APPROVED AS TO CONTENT:

Taxpayer Identification Number

Diana Barnhart, Economic Development Manager

Agency of Milpitas Business License Number

APPROVED AS TO FORM:

Michael J. Ogaz, Agency Attorney

APPROVED:

Emma Karlen, Finance Director/Risk Manager

PREPARED BY:

Christopher Schroder, Purchasing Agent

ATTEST:

Mary Lavelle, Agency Secretary

EXHIBIT A

II. SCOPE OF SERVICES

The following scope of services is divided into three service areas: Technical Studies, Document Preparation, and Project Coordination and Community Consultation Services.

The Technical Studies are composed of three separate analyses, including: 1) the analysis of physical blighting conditions; 2) the analysis of economic blighting conditions; and 3) the financial feasibility analysis, which includes a tax increment projection and the program costs to alleviate the blighting conditions. The Technical Studies provide the information that will be the basis of the feasibility study and key documents in the amendment adoption process (the Preliminary Report and Report to the City Council).

Document Preparation includes the documents and related services required in the plan amendment and environmental review process. Seven tasks are provided under Plan Amendment Document Preparation, including the preparation of: 1) taxing agency, the Department of Finance (DOF) and Department of Housing and Community Development (HCD) notices; 2) owner mailing list; 3) Preliminary Plan (for the Added Area); 4) Redevelopment Plan amendment; 5) staff reports, resolutions, notices and ordinance; 6) preparing the Preliminary Report, which will incorporate the Technical Studies; and 7) preparing the Report to the City Council, which is a compilation of the key documents and actions taken during the amendment process.

Nine tasks are provided under Environmental Review Document Preparation including: 1) project initiation, organization, scoping and early consultation; 2) Initial Study/Notice of Preparation; 3) Administrative Draft Environmental Impact Report; 4) Preparation of DEIR/Screen check/Circulation; 5) Response to Comments/Administrative Final EIR; 6) FEIR Preparation/Screen check/Circulation; 7) attendance at public meetings and hearings; 8) Project Management, Coordination and Meetings; and 9) Preparation of Mitigation Monitoring Plan, Finding of Fact and Overriding Considerations. If the Agency decides only to pursue the time extension, an alternative scope for a Mitigated Negative Declaration is provided.

KMA's Project Coordination and Community Consultation Services consists of four tasks including: 1) schedule preparation and project coordination; 2) supporting the Agency in consultations with affected taxing agencies; 3) assisting staff in conducting public information meetings or alternatively forming a Project Area Committee; and 4) attending City and staff meetings.

A. TECHNICAL STUDIES

Task 1 - Physical Blight Analysis (for Added Area and Existing Project Area)

KMA will collect and analyze secondary data sources as necessary to determine if there is blight within the proposed Added Area and significant remaining blight within the Existing Project Area. KMA anticipates documenting buildings in which it is unsafe or unhealthy for persons to live or work based on serious building code violations (electronic database to be provided by the City). KMA will document factors that hinder the economically viable use or capacity of buildings or lots, as applicable. This will include an analysis of how the existing building stock compares to contemporary standards, and the impact of the building and site limitations on attracting reinvestment and depressed property values. Specific indicators will include small building size, small lot size and lack of adequate parking.

Using the City's GIS files to be provided by staff, KMA will also download secondary data to expand upon and create maps depicting key blighting conditions. For the Existing Project Area, the map will also indicate where blighting conditions no longer exist and the location of necessary and essential parcels. The City will be responsible for providing resource referrals as requested, and will be responsible for facilitating the dissemination of City data to KMA.

Product:..... Physical Blight Analysis

Task 2 - Economic Blight Analysis (for Added Area and Existing Project Area)

The economic blight analysis will focus on documenting the economic indicators that demonstrate blight in the Added Area and significant remaining blighting conditions within the Existing Project Area. The overall approach will be to show that the areas are not experiencing the same economic growth and vitality as other areas such as the City and the County as a whole. KMA will apply our unique knowledge and understanding of market indicators and constraints in this analysis. Specific analysis areas will include property sales and lease rates analyses, identification of properties impacted by hazardous waste contamination and anticipated costs to remediate the sites (data to be provided by the City) as well as crime impacts to public safety and impact on business viability (City to provide crime statistics).

Product:..... Economic Blight Analysis

Task 3 - Financial Feasibility Analysis (All Areas)

At the conclusion of the feasibility analysis and with the direction of staff to proceed, KMA will analyze the financial feasibility of amending the Existing Project Area to extend the plan duration and period for tax increment / debt repayment. This will include documentation of anticipated expenditures and a projection of potential financing sources, including tax increment revenues, for implementation of a specific redevelopment program. The financial analysis will also show the need for and how the additional tax increment that would be made available from the time limit extension is related to the project's needs to eliminate remaining blight. Concurrently, KMA will analyze the feasibility of adding territory. The resulting cash flow projection will be prepared over the anticipated life of the Existing Project Area to demonstrate continued project feasibility and the financial feasibility of adding territory. If it is decided to adopt a new project area rather than add territory, an independent feasibility analysis will be prepared for the new project area.

Anticipated expenditures may include estimated Agency identified costs for capital improvement projects, redevelopment public participation efforts, land assembly, demolition, and administration of the Existing Project Area and Added Area. Expenditures to be projected may include assumed repayment of future year bonded indebtedness or repayment of any other debt financing mechanisms that may be incurred.

Projected funding sources will include the use of tax increment revenues projected to be generated within the Existing Project Area and if applicable, the Added Area. The tax increment revenue projection will incorporate future year valuation increases due to new development or property transfers of ownership, as well as limitations set forth under existing Redevelopment Law. The projected tax increment revenues will be subject to all limitations set forth under current Redevelopment Law, including set-asides for Low and Moderate Income Housing and allocations to affected taxing entities.

Product:..... Financial Feasibility Analysis Including Tax Increment Projection

Task 4 - Memorandum Summarizing Findings of Feasibility Analysis for Added Area

KMA will prepare a memorandum summarizing our review and findings regarding the urbanization and blight findings for the Added Area. KMA will discuss strategies for adding territory vs. adopting a new project area and potential challenges in the amendment process. KMA's recommendation may include adding all or a portion of the Added Area. Also given the close proximity of the three areas being considered; the Agency may want to join them into a single added area.

Product:..... Memorandum Report and Recommendations

B. PLAN AMENDMENT DOCUMENT PREPARATION

Task 1 - Taxing Agencies, DOF and HCD Notices

The affected taxing agencies, the DOF and HCD are required to be notified of the Agency's intent to add territory and amend certain Plan limits. KMA will prepare the required notices for mailing. For staff's reference and use, KMA will also provide staff with an electronic file of the list of taxing agencies.

Product:..... Preparation of Taxing Agencies DOF and HCD Notices

Task 2 - Owner Mailing List

Using the County Assessor data for the Existing Project Area and the Added Area, if applicable, KMA will identify the list of owners to be used for the distribution of the joint public hearing notice and community information meeting. If KMA surveys the Added Area, KMA will produce a list of occupant addresses for the Added Area. However, if a survey will not be beneficial in documenting blight, the City will be responsible for generating the occupant list. However, an occupant list will need to be generated for the Existing Project Area. If there is a City-owned utility, the occupant addresses could be generated from this source. If not, it is recommended that Agency contract with a mailing house to provide a mailing list for the occupants in the Existing Project Area and Added Area. In any event, a mailing house is recommended to handle the mailing for the joint public hearing on the Amendments. KMA can assist with identifying a mailing house and coordinating the mailings. Staff will contract directly with the mailing house.

Task 3 - Preliminary Plan

KMA will prepare a Preliminary Plan incorporating the following components:

- A description of the boundaries of the Added Area;
- A general statement on land uses;
- The layout of principal streets; and
- Descriptions of the population densities, building intensities and standards.

The Preliminary Plan will also demonstrate that the proposed Redevelopment Plan as amended, is consistent with the community's General Plan and describe the impact of redevelopment upon the area's and surrounding area's residents.

Product:..... One Draft and One Final Version of the Preliminary Plan

(It is assumed that City staff will prepare the legal description of the Added Area or contract separately for these services. KMA will work the civil engineer to ensure that the description is based upon the correct boundary and that it is prepared in accordance with the State Board of Equalization standards.)

Task 4 - Redevelopment Plan Amendment

KMA will prepare the Redevelopment Plan amendments that will identify the Agency's authorities and responsibilities for the Added Area, and establish new time limits for duration and the receipt of tax increment/repayment of debt for the eligible portions of the Existing Project Area. The Amendments to the Redevelopment Plan will also include a separate bonded indebtedness limit for the Added Area which will be determined by KMA. In addition, KMA will prepare a Redevelopment Plan Map for the Added Area to be attached to the Redevelopment Plan.

Product:..... One Draft and One Final Version of the Redevelopment Plan Amendment

Task 5 - Staff Reports, Resolutions, Notices and Ordinances

There are numerous resolutions, ordinances and notices including the Redevelopment Plan amendment adoption ordinance, which are either required or recommended to document that all of the required steps in the amendment adoption process have been taken. KMA will prepare these documents along with the accompanying staff report for staff and legal counsel review.

Product:..... Staff Reports, Resolutions, Notices and Ordinances

Task 6 - Preliminary Report (One Report for Amendments and All Areas)

KMA will prepare one draft and one final version of the Preliminary Report. The Preliminary Report will summarize and incorporate the findings of the Technical Studies. This will include describing the physical and economic blighting conditions; describing the projects and programs proposed to remove blight; and will include the financial feasibility analysis of the Amendments. The Report will also explain the reasons for amending the Redevelopment Plan; explain why the private sector acting alone or without redevelopment could not redevelop the areas; and why the blighting conditions are a burden on the community. The Preliminary Report will include a map identifying the location and type of blighting conditions and for the areas, the areas that are no longer blighted, and for the Existing Project Area the necessary and essential parcels. The Report will also include:

- The proposed method of financing including a description of each bond sold by the Agency to finance or refinance the redevelopment project six months prior to the adoption of the Amendments.
- An amendment to the Five-Year Implementation Plan.
- An explanation of why redevelopment cannot be accomplished by other government entities or the private sector acting alone.
- The plan or method of relocation for families or persons temporarily or permanently displaced.

Product:..... One Draft and One Final Version of the Preliminary Report

Task 7 - Report to the City Council (One Report for Amendments and All Areas)

KMA will prepare one draft and one final version of the Report to the City Council. The Report to the City Council will be prepared in accordance with the requirements of CRL Sections 33352 and 33451.5, and will incorporate the evidence from which the City Council will make certain findings upon adoption of the Amendments. The Report to the City Council will also contain a summation of the process followed in the amendment adoption process as required in the CRL, and the information contained in the Preliminary Report in addition to the following:

- The environmental document (by reference);
- The report and recommendations of the Planning Commission;
- A summary record of consultations with Existing Project Area, and Added Area owners and occupants; and
- Analysis of the report of the County fiscal officer and a summary of consultations with affected taxing entities.

Product:..... One Draft and One Final Version of the Report to the City Council

C. ENVIRONMENTAL REVIEW DOCUMENT PREPARATION (SEE NEXT PAGE)

This scope provides for the preparation of an environmental impact report (EIR) if the feasibility analysis determines that the Existing Project Area will be expanded or a new project area will be created. In addition, if either of those actions is determined to be infeasible, it is assumed a 10-year extension would be proposed. In that case, an Initial Study / Negative Declaration or Mitigated Negative Declaration could likely be prepared. Therefore, both a scope and budget are provided to cover either scenario. It is anticipated that these scopes would be further refined based on the final project definition.

The documentation will programmatically evaluate the potential impacts associated with the options, and will include as much detail and programmatic analysis of any contemplated projects as possible. The document will assume the existing adopted land uses for the existing and/or expanded/new project area will be maintained, and analyze the general impacts of redevelopment activities, including potential eminent domain activities, over the life of the Plan, and the impacts of Plan activities on the existing environment. Whereas the original documentation for the Existing Project Area is in some places 30 years old, this information will be updated to current standards and requirements in the EIR, including a discussion on greenhouse gases.

Because a Redevelopment Plan by law must be consistent with the City's General Plan, the document will analyze redevelopment impacts from the perspective that the Amendments will remove barriers to General Plan buildout. Thus, redevelopment will be a contributor to impacts identified in earlier land use approvals, but will not result in new, unanticipated growth, unless the proposed capital improvements list specifically includes capacity enhancements that are inconsistent with General Plan growth assumptions.

Task 1 - Project Initiation, Organization, Scoping and Early Consultation

Reference materials for the Amendments may include the current Five-Year Implementation Plan, the Milpitas General Plan, the EIR for the 8th Amendment to the Redevelopment Plan for the

Milpitas Redevelopment Project Area No. 1 (2003), City of Milpitas Midtown Specific Plan EIR (2002), historic surveys, engineering studies, planning studies, technical memoranda, and comments, recent project EIRs, and other documentation. ECG will review existing materials and identify and obtain any additional information necessary for the initiation of data analysis. Original environmental documentation on the Existing Project Area (1976-1982) will be updated as necessary and appropriate. ECG will work with KMA and staff to develop the overall project schedule and project description, and become familiar with the issues and concerns identified for analysis. ECG will attend initial orientation meetings with the Agency to review the scope of work and agree on elements to be included in the description of the project, impact analysis, and alternatives.

Product:..... Memo Detailing Data Needs (if necessary)

OPTION A: NEW PROJECT AREA / EXPANDED PROJECT AREA

Task 2A - Initial Study/Notice of Preparation

ECG will prepare an Initial Study for the Added Area and Notice of Preparation (NOP) that is consistent with State CEQA Guidelines. The Initial Study will be used to scope out issues that are considered less-than-significant and focus the EIR on a discussion of significant and potentially significant impacts. This will include a project description and a brief analysis for every topic area of the Initial Study, with particular emphasis on land use, transportation, air quality, noise, hazards and hazardous substances, cultural resources, and public services and utilities. ECG will print 75 copies of the NOP for the Agency, and will mail copies to the list of taxing agencies, responsible and trustee agencies, and interested persons provided by the Agency. Remaining copies will be delivered to the Agency for decision makers and for the public. A scoping session is not anticipated in this scope, since this project is not of statewide, regional or areawide significance pursuant to CEQA Guidelines Section 15206.

Product:..... Administrative Draft Initial Study for Review, Final Initial Study and Notice of Preparation - 75 copies; Partial Mailing List

Task 3 - Administrative Draft Environmental Impact Report

Using existing information to the degree possible, ECG will work closely with the Agency staff and technical consultants to prepare a programmatic Administrative Draft EIR (DEIR) for the Redevelopment Plan/Amendments. The following subtasks describe the contents of the Administrative Draft EIR and the steps necessary to complete each section.

1. **Introduction:** The DEIR will include an introduction that describes the type and use of the DEIR, the environmental process required for the Redevelopment Plan/Amendments, organization of the DEIR, focus of the DEIR analysis, discussion of other documents used in the preparation of the DEIR, and identification of the lead and responsible agencies.
2. **Summary:** A summary will be prepared that presents the significant conclusions of the DEIR in a manner that is easily understood by the public. An introduction, project history, project description, and description of alternatives will be provided. A summary "table" format will be used to identify less-than-significant impacts, significant impacts, cumulative impacts, mitigation measures, and the effectiveness of the recommended mitigation measures for the Redevelopment Plan.

3. **Project Description:** In close coordination with the Agency staff and KMA, ECG will develop a comprehensive project description. The project description will include the following discussions:
- *Regional and Local Setting.* The EIR will describe the regional and local project location and physical setting.
 - *Project Background.* A brief discussion of the history of the redevelopment adoption/amendment process will be prepared.
 - *Project Objectives.* The goals and objectives for the Amendments will be clearly stated so as to support the adoption of findings for the project.
 - *Project Characteristics.* The EIR will fully describe the characteristics of the Amendments including the identified financing mechanisms and implementation projects in an updated Five-Year Implementation Plan, if available. This section will include as much detail about contemplated projects as possible.
 - *Intended Uses of the EIR.* As required by Section 15124(d) of the State CEQA Guidelines, the project description will include a list of responsible and other agencies expected to use the EIR in decision-making, a list of permits and other approvals required to implement the project, and a list of related environmental review and consultation requirements needed for compliance with federal, state, or local laws and regulations.
4. **Alternatives:** The EIR will include alternatives to the Amendments. ECG will qualitatively assess these alternatives, and work closely with the Agency to define the alternatives to be assessed in the EIR. Up to two project alternatives and the “no project” alternative will be defined. As required by the State CEQA Guidelines, the Alternatives section will discuss the advantages and disadvantages of each alternative and the reasons for their rejection or recommendation. The environmentally superior alternative will be identified. A summary of the various alternatives and the associated impacts will be provided as part of the EIR summary.
5. **Impact Analysis / Environmental Consequences:** The Initial Study will be used to scope out certain topics; such topics are anticipated to be agriculture, population and housing, mineral resources, geology, hydrology, and biological resources. The following topics are anticipated to be included in the DEIR. These topics may change once the Added Area is defined:
- *Land Use.* The land use discussion will discuss relevant City and Agency plans, goals, and policies, and the Redevelopment Plans’ consistency with relevant plans and policies will be determined.
 - *Air Quality.* Regional and local air quality will be described based on current existing data. Air emissions associated with redevelopment activities and cumulative growth in the Existing Project Area and Added Area will be programmatically assessed in accordance with updated Bay Area Air Quality Management District (BAAQMD) recommended methodologies, in consultation with the BAAQMD. The Amendments will be analyzed for conformity with local and state air quality attainment plans. A discussion of greenhouse gas emissions and the impact of the Amendments on global climate change will be

addressed. Mitigation measures and/or performance measures for air quality impacts will be recommended, as appropriate.

- *Noise.* Noise sensitive land uses that could be affected by redevelopment activities, and redevelopment activities that could be affected by the existing noise environment will be identified using maps and other environmental documents. Impacts on adjacent noise-sensitive land uses will be programmatically assessed. Potential noise impacts will be identified and mitigation measures and/or performance measures proposed as appropriate.
- *Transportation and Circulation.* ECG will programmatically evaluate the road segment traffic impacts anticipated with implementation of the Amendments. There are no land use changes, therefore the Amendments will be analyzed at a programmatic level, and no intersection analysis is warranted. Existing documentation will be used to characterize the local traffic conditions and the general effects of redevelopment on the local roadway network will be discussed, in consultation with the City.
- *Hazards and Hazardous Materials (Public Health and Safety).* The expansion area(s) contain commercial and industrial properties and, therefore, are expected to have some contamination problems. ECG, with the assistance of EEI, will conduct a windshield survey of properties throughout the Added Area to identify suspect properties, and review federal, state, and county records to identify known sources of contamination in the Added Area. ECG will provide a GIS layer to the Agency and City of identified properties. The EIR will address the potential hazards to the public resulting from the use or disposal of hazardous materials in the Added Area, as well as anticipated effects of known or suspected hazardous substance contamination, and the effect of recycling such properties. Mitigation measures and/or performance measures for hazardous substance impacts will be recommended, as appropriate.
- *Cultural/Historical Resources.* The City of Milpitas has a rich history, and the Existing Project Area contains a number of historically or architecturally interesting buildings and subsurface cultural resources. ECG will acquire a prehistoric and historic site record and literature search from the California Historical Resources Information System, Northwest Information Center (CHRIS/NWIC), Sonoma State University, and will consult with the Native American Heritage Commission and local tribes to determine the sensitivity for cultural resources within the Existing Project Area. State and City historic resource lists will be reviewed to identified historic and potentially historic structures within the Existing Project Area. City of Milpitas General Plan, Municipal Code, and Midtown Specific Plan policies concerning cultural resource preservation will be described. A brief cultural history and summary of findings will be prepared from the available documentation, and potential impacts from redevelopment activities will be identified. Mitigation measures will be recommended for potential impacts.
- *Public Services and Utilities.* ECG will coordinate with the City to assess the potential for impacts to utilities and service systems. The focus of the analysis will be on whether implementation of the Amendments creates demands on public services or utilities such that physical changes are needed to address the demands, leading to potential impacts.

Utility service providers will be analyzed for existing capacity, adequacy of existing infrastructure, and plans for future expansion and/or improvements to accommodate the proposed project. Surface drainage issues and localized flooding will be addressed as a utility issue.

Other public services may also be evaluated including police protection, fire protection, solid waste, schools, water, sewer, gas, and electricity, if not scoped out in the Initial Study. Mitigation measures will be identified, if necessary, for potentially adverse effects.

6. **Other CEQA Statutory Requirements:** These requirements include the discussion of significant unavoidable adverse impacts (State CEQA Guidelines, Section 15126(b)), growth-inducing impacts (Section 15126(d)), and cumulative impacts for each technical issue will be evaluated separately in the EIR. The cumulative analysis will address known projects, either approved or proposed within growth areas of the City and vicinity, that may, in combination with implementation of the Amendments, result in adverse environmental impacts. The potential for the Amendments to remove major obstacles to growth will be evaluated in the context of growth plans within the City. Other CEQA-mandated sections of the EIR will be prepared, including: 1) Table of Contents; 2) Significant Irreversible Environmental Changes and Commitment of Resources; 3) References / Organizations and Persons Consulted; 4) Preparers of the Environmental Document; and 5) Appendices.

Product: Administrative Draft EIR (electronic copy)

Task 4A - Preparation of DEIR/Screencheck/Circulation

ECG will respond to City staff and KMA comments on the Administrative Draft EIR, complete necessary revisions, provide a screencheck to the Agency for review, and publish the document for public review. ECG will prepare and reproduce 50 copies of the Draft EIR and deliver 15 copies to the State Clearinghouse. Copies will be mailed to taxing entities, agencies, and interested persons as identified on the Agency's list; ECG will assist the Agency and KMA in preparing a mailing list of taxing agencies, responsible and trustee agencies, and interested persons. All remaining copies will be delivered to the Agency for distribution to decision makers and the public. A public notice will be drafted for filing with the County Clerk and for publication by the Agency.

Product:..... Draft EIR for Public Review (50 copies)

Task 5A - Response to Comments / Administrative Final EIR

After comments are received on the Draft EIR, ECG will work with the Agency to discuss the comments and to develop a strategy for responses. The Administrative Final EIR will be a response-to-comments document bound under separate cover. Any necessary changes in the EIR text will be made and summarized on an errata sheet. The Administrative Final EIR will include all comments received at the public hearings, all written comments received during the Draft EIR public review period, and responses to all submitted comments.

Product:..... Administrative Final EIR (electronic copy)

Task 6A - FEIR Preparation/Screencheck/Circulation

Upon receipt of the Agency comments on the Administrative Final EIR, ECG will revise the response to comments in preparation of the Final EIR. ECG will mail copies of the FEIR to commenters, and deliver the remaining copies of the Final EIR to the Agency for distribution to decision-makers, and agencies and the public.

Product:..... Final EIR for Public Review (25 copies)

Task 7A - Attend Public Meetings and Hearings

Gail Ervin will attend one public meeting or hearing on the proposed Redevelopment Plan EIR. Ms. Ervin will be available to develop an understanding of the public's concerns, answer questions about environmental issues, and make presentations on the EIR, if necessary. If additional meetings are required, these can generally be accommodated under Task 8, below.

Product:..... Attendance at One Meeting

Task 8A - Project Management, Meetings and Coordination with Plan Consultant

ECG will manage the EIR preparation effort and maintain close communication with the Plan consultant and Agency staff. Gail Ervin will personally work closely with KMA, staff and legal counsel as an active project team member to ensure the Preliminary Report outlines proposed plan activities in a manner that provides a strong project description for a legally defensible EIR. This coordination will ensure that the project is running on time and within budget, as well as being technically correct and legally defensible.

Product:..... Ongoing Project Management

Task 9A - Prepare Mitigation Monitoring Plan, Findings of Fact and Overriding Considerations

ECG will prepare the Mitigation Monitoring Plan, Findings of Fact, and Statement of Overriding Considerations and assist Agency staff in preparing the staff report and resolutions.

Product:..... Monitoring Plan, Findings of Fact, and Statement of Overriding Considerations

OPTION B: 10-YEAR EXTENSION AMENDMENT

Task 2B - Administrative Draft Initial Study

ECG will review current information and reports on activities in and/or near the Existing Project Area and prepare an administrative draft Initial Study based on the tasks outlined below. One electronic Word document will be submitted to the Agency for distribution to appropriate project team members for a two week review. The following subtasks describe the key issue areas of the Initial Study and the steps necessary to complete each section; other minor sections are summarized in Task 2h. The Initial Study will provide a programmatic review of potential impacts as redevelopment activities occur and removal of barriers to General Plan growth result in intensification of development in the Existing Project Area. Mitigation measures will be provided if existing City ordinances and regulations do not provide a sufficient level of long-term protection for an identified impact.

- a. **Introduction/Background.** The IS will include an introduction and background section that describes the use of the IS, the environmental process required for Amendments approval, organization of the IS, focus of the IS analysis, other documents used in the preparation of the IS, and lead and responsible agencies. A brief summary of the Redevelopment Plan, merger, and previous amendments and documents will be provided.
- b. **Project Description.** In close coordination with Agency staff and KMA, ECG will develop a comprehensive project description of the Amendments. The project description will include a discussion of the regional and local setting, redevelopment objectives, Amendment characteristics, any provided list of capital improvements, and intended uses of the IS.
- c. **Air Quality.** Regional and local air quality will be described based on existing data. Air and greenhouse gas emissions associated with construction and operation of potential future redevelopment activities and the removal of barriers to General Plan build-out in the Existing Project Area will be programmatically assessed in consultation with the Bay Area Air Quality Management District (BAAQMD). The Amendments will be analyzed for its conformity with local and state air quality attainment plans.
- d. **Biological Resources.** Based on a site visit and existing documentation, ECG will assess potential future construction and operation impacts on heritage and street trees, and any potential special status species and habitat within buildable areas. Existing City policies and ordinance for habitat and tree protection will be described.
- e. **Cultural and Historic Resources.** ECG will acquire a prehistoric and historic site record and literature search from the California Historical Resources Information System, Northwest Information Center (CHRIS/NWIC), Sonoma State University, and will consult with the Native American Heritage Commission and local tribes to determine the sensitivity for cultural resources within the Existing Project Area. State and City historic resource lists will be reviewed to identified historic and potentially historic structures within the Existing Project Area. City of Milpitas General Plan, Municipal Code, and Midtown Specific Plan policies concerning cultural resource preservation will be described.
- f. **Hazards and Hazardous Materials.** The Existing Project Area contains commercial and industrial properties that would be expected to have some contamination problems. In coordination with the KMA blight survey, ECG, with the assistance of EEI, will conduct a windshield survey of properties throughout the Existing Project Area to identify suspect properties, and review federal, state and county records to identify known sources of contamination in the Existing Project Area. This section will address the potential hazards to the public resulting from the use or disposal of hazardous materials in the Existing Project Area, as well as anticipated effects of known or suspected hazardous substance contamination, and the construction and reuse effects of recycling such properties. A GIS layer of identified properties will be provided to assist the Agency in future planning and Polanco actions.
- g. **Noise.** Noise exposure in the Existing Project Area is dominated by traffic and rail. ECG will identify the noise level standards contained in the General Plan Noise Element and any other germane local, state, and federal standards which are applicable to public spaces. Redevelopment activities such as rehabilitation, as well as construction and roadway noise impacts on sensitive receptors within the Existing Project Area will be programmatically assessed.

- h. **Transportation and Circulation.** ECG will incorporate traffic, transit, and circulation information from the recent area traffic analyses. The types of circulation and non-vehicular improvements provided by the Amendments will be described and assessed for the life of the Redevelopment Plan as amended based on projected traffic volumes.
- i. **Other Initial Study Sections.** All other issues areas of the Initial Study will be discussed using existing data available for the Existing Project Area.

Product:..... Draft Initial Study for Staff Review and Comment

Task 3B - Screencheck, and Finalize Mitigated Negative Declaration, Mitigation Monitoring Plan and Notice

It is assumed for purposed of this proposal that all environmental impacts will be less than significant, or can be mitigated to less-than-significant levels at this programmatic level and based on the nature of the anticipated redevelopment activities. ECG will prepare a Negative or Mitigated Negative Declaration and a Notice of Intent to Adopt a Negative Declaration for publication by the Agency Clerk. A Mitigation Monitoring Plan will be prepared as required and attached to the Initial Study. ECG will print 100 copies of the complete document (to cover the list of agencies, provide copies for decision makers, and have copies available for the public), with notice, assist the Agency in preparing a mailing list of taxing agencies, responsible and trustee agencies, and interested persons, and mail the document. A copy will be provided to be filed with the County Clerk, and ECG can deliver to the State Clearinghouse if desired by the Agency.

Product:..... Screencheck Initial Study, Final Initial Study, Mitigated Negative Declaration and Public Notice - 100 copies, Notice of Intent to Adopt Mitigated Negative Declaration (to Agency Clerk)

Task 4B - Meetings and Hearings

Gail Ervin will attend up to two public meetings or hearings on the environmental documentation and be available of up to two coordination meetings. Ms. Ervin will be available to develop an understanding of the public’s concerns, answer questions about environmental issues, and make presentations on the environmental documentation, if necessary.

Product:..... Attendance at Two Meetings

D. PROJECT COORDINATION AND COMMUNITY CONSULTATION SERVICES

Task 1 – Schedule Preparation and Project Coordination

This task will include preparing the Amendments adoption schedule and coordinating with staff, the EIR consultant, civil engineer and legal counsel on upcoming actions. KMA will also update the full (detailed) schedule and the summary schedule as possible within the budget.

Product:..... Schedule of Actions and Ongoing Coordination with Staff

Task 2 - Consultations with Taxing Agencies (Two Meetings)

KMA will attend with staff up to two meetings with affected taxing agencies to discuss issues of blight and financial feasibility or alternatively respond to comments received by agencies as permitted within the budget.

Product:..... Attendance at Two Meetings with Affected Taxing Agencies

Task 3 - Option A – Community Outreach

KMA will assist in conducting a public information meeting. It is anticipated that staff will provide a brief introduction and then turn the meetings over to KMA. KMA will prepare a PowerPoint presentation that provides an overview of the purpose of the proposed Amendments and the Amendments adoption timeline. Community questions and comments will follow the presentation.

No. of Meetings:..... One Meeting

Task 4 - Option B – PAC Formation

Task 4A - PAC Composition Determination

KMA will assist staff and legal counsel in determining the appropriate number of PAC members and the number of members within each of the categories. KMA anticipates that this will include estimating the number of business, renters, and residential homeowners in the Added Area.

Product:..... PAC Composition Determination

Task 4B - PAC Procedures

KMA will prepare PAC formation and election procedures that will identify the Project Area Committee (PAC) composition and instructions for conducting the PAC election. In order to reduce the costs of mailing and noticing, KMA recommends that the information for all PAC formation and related meetings be included in one notice. The notice would contain the dates of the information meeting; the meeting of the City Council at which they will adopt the PAC formation procedures; the PAC election; and the meeting at which the City Council will confirm that the PAC was formed according to the adopted procedures.

KMA will prepare a draft of the meeting notices for staff review and will provide draft versions of the notices electronically to staff so that staff may generate the notices and provide them to a mailing house for mailing.

Using the County Assessor data, KMA will identify property owners within the Added Area as identified on the County Assessor role. KMA will work with the mailing house (contracted by staff) to identify non-owner occupants (i.e. business and residential tenants) and addresses for a complete mailing list. Community organizations to be included in the mailings will be identified by staff. The mailing house will complete the actual mailing of notices and will complete an affidavit of mailing for each mailing.

Product:..... PAC Formation Procedures and Meeting Notice

Task 4C - PAC By-laws

Once the PAC is formed, the PAC must adopt By-laws for conducting the PAC meetings. A key component of the By-laws is providing procedures for filling vacant seats. KMA will provide draft By-laws to the PAC and revise them as necessary to suit the PAC's needs.

Product:..... PAC By-laws

Task 4D - PAC Formation Presentation Graphics

KMA will prepare graphics (such as a PowerPoint presentation) that describes the role of the PAC and how to serve on the PAC. The presentation will also review candidate registration procedures, voter registration procedures and how the PAC election will be conducted.

Product:..... PowerPoint Presentation and Handouts

Task 4E - Assistance at Information Meeting and PAC Election

KMA will assist in conducting the public information meeting for the purposes of explaining the proposed Amendments and the role of the PAC. KMA will also be present to assist in conducting the PAC election, including registering voters and tabulating the ballots.

No. of Meetings:..... Two

Task 4F - Attendance and Presentation at PAC Meetings

KMA will assist in conducting two PAC meetings of staff's choice. This may include the initial meeting to establish By-Laws, to present blight findings or help in forming the PAC's recommendations prior to the joint public hearing.

No. of Meetings:..... Three

Task 5 - Meeting Attendance (Three Meetings)

KMA will attend a project kick-off meeting and two additional meetings to the meetings noted above, and make presentations to the Agency and Planning Commission upon request. This could include additional meetings with the committees or community groups. KMA's approach is to work with City staff and tailor the presentation of information to work within the City's existing framework. If necessary, KMA is available to attend additional meetings on a time-and-materials basis.

Product:..... Attendance at Three Meetings

III. BUDGET

As detailed on the table on the following pages, KMA and ECG propose to provide redevelopment feasibility and amendment adoption services on a time-and-materials basis in accordance with the following rates, with an estimated not-to-exceed budget of \$175,862 including expenses. If the Agency chooses to amend time limits and add territory, the estimated budget is \$298,799.

Task budgets are proposed as an estimate only; invoices will be billed against the total amount. Redevelopment Plan Amendment documents will be provided to the Agency in a draft and final form with a reproducible original. Environmental documents will be provided in an electronic form with hard copies as specified in the scope.

PLAN ADOPTION HOURLY FEE SCHEDULE KEYSER MARSTON ASSOCIATES, INC.

	<u>2008/2009</u>
A. JERRY KEYSER	*\$200.00
MANAGING PRINCIPALS	*\$200.00
SENIOR PRINCIPALS	*\$200.00
PRINCIPALS	*\$185.00
MANAGERS	*\$175.00
SENIOR ASSOCIATES	\$140.00
ASSOCIATES	\$125.00
SENIOR ANALYST	\$105.00
ANALYST	\$90.00
TECHNICAL STAFF	\$75.00
ADMINISTRATIVE STAFF	\$60.00

Directly related job expenses not included in the above rates are: auto mileage, air fares, hotels and motels, meals, car rentals, taxis, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost. Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date. A charge of 1% per month will be added to past due accounts.

*Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

ERVIN CONSULTING GROUP FEE SCHEDULE

	<u>2008/2009</u>
Professional Services	\$118.00
GIS Analysis	\$95.00
Graphics/Word Processing	\$75.00

Directly related job expenses not included in the above rates are: auto mileage, air fares, hotels and motels, meals, car rentals, taxis, delivery, and printing. Directly related job expenses will be billed at 110% of cost. Task items are estimates; ECG reserves the right to move hours between tasks to accommodate changes in workload.

BUDGET FOR FEASIBILITY AND PLAN AMENDMENT SERVICES

KEYSER MARSTON ASSOCIATES INC.

		Fee Estimate Time Extensions	Additional Fee Addition of Territory
A. TECHNICAL STUDIES			
Task 1	Physical Blight Analysis	\$15,000.00	\$15,000.00
Task 2	Economic Blight Analysis	\$15,000.00	\$15,000.00
Task 3	Financial Feasibility Analysis	\$15,000.00	\$ 5,000.00
Task 4	Feasibility Memorandum and Recommendation		\$ 3,000.00
Subtotal		\$45,000.00	\$38,000.00¹
B. PLAN ADOPTION DOCUMENT PREPARATION			
Task 1	Taxing Agency, DOF and HCD Notices	\$4,000.00	
Task 2	Owner Mailing List ²	\$500.00	
Task 3	Preliminary Plan		\$ 2,000.00
Task 4	Redevelopment Plan Amendment	\$3,000.00	\$ 1,000.00
Task 5	Staff Reports, Resolutions, Notices and Ordinances	\$15,000.00	\$ 3,000.00
Task 6	Preliminary Report	\$30,000.00	\$ 3,000.00
Task 7	Report to the City Council	\$20,000.00	\$ 3,000.00
Subtotal		\$72,500.00	\$12,000.00
C. ENVIRONMENTAL REVIEW DOCUMENT PREPARATION (SEE NEXT PAGE)			
D. PROJECT COORDINATION SERVICES AND COMMUNITY CONSULTANTS			
Task 1	Schedule Preparation & Project Coordination	\$15,000.00	
Task 2	Consultations with Taxing Agencies (2 meetings)	\$ 3,000.00	
Option A - Community Information Meeting			
Task 3	Community Outreach (including 1 meeting)	\$ 6,000.00	
Option B - Project Area Committee Formation			
Task 4A	PAC Composition Determination		\$ 1,000.00
Task 4B	PAC Formation Procedures		\$ 2,000.00
Task 4C	PAC By-laws		\$ 1,000.00
Task 4D	PAC Formation Presentation Graphics		\$ 1,000.00
Task 4E	Assistance at Information Meeting and Election (2 meetings)		\$ 3,000.00
Task 4F	Attendance and Presentation at PAC meetings (2 meetings)		\$ 3,000.00
			<hr/>
			\$11,000.00
Task 5	Meeting Attendance (2 meetings)	\$ 3,000.00	
Subtotal		\$27,000.00	
E. EXPENSES		\$ 5,000.00	\$ 2,000.00
TOTAL KMA		<u>\$149,500.00</u>	<u>\$63,000.00</u>

¹ Fee may be reduced if not all indicators of blight are analyzed for the feasibility analysis. However, total budget would be applied to the Plan Amendment budget should the Agency pursue the addition of territory.

² staff is responsible for mailings and duplication of documents.

Continued:

BUDGET FOR FEASIBILITY AND PLAN AMENDMENT SERVICES

Fee Estimate

THE ERVIN CONSULTING GROUP

F. ENVIRONMENTAL REVIEW DOCUMENT PREPARATION OPTION

Task 1	Project Initiation, Organization, Scoping and Early Consultation	\$ 2,124.00
Task 2	Initial Study/Notice of Preparation	\$ 7,830.00
Task 3	Administrative Draft EIR	\$36,613.00
Task 4	Preparation of DEIR/Screencheck/Circulation	\$ 6,200.00
Task 5	Response to Comments/AFEIR	\$ 7,980.00
Task 6	FEIR Preparation/Screencheck/Circulation	\$ 4,720.00
Task 7	Attend public meetings and hearings	\$ 1,888.00
Task 8	Project management, coordination and meetings	\$ 3,540.00
Task 9	Preparation of Findings, Overriding Considerations, Mitigation Monitoring Plan, Notice of Determination	\$ 3,304.00
	Subtotal	\$74,199.00
	<i>Direct Costs</i>	
	Printing and expenses	\$ 6,000.00
	EI/Windshield survey	\$ 5,000.00
	Administration (10%)	\$ 1,100.00
TOTAL ECG		\$86,299.00

G. MITIGATED NEGATIVE DECLARATION OPTION

Task 1	Project Initiation, Organization, Scoping and Early Consultation	\$ 944.00
Task 2	Administrative Draft Initial Study	\$10,514.00
Task 3	Screencheck, Final MND and Noticing/Filing	\$ 3,540.00
Task 4	Attend public meetings and hearings	\$ 2,124.00
	Subtotal	\$17,122.00
	<i>Direct Costs</i>	
	Printing and expenses	\$ 1,400.00
	EI/Windshield survey	\$ 3,000.00
	Administration (10%)	\$ 4,840.00
TOTAL ECG		\$26,362.00

Option 1		
TOTAL ALL	Limits Amendment, Added Territory and EIR	\$298,799
Option 2		
TOTAL ALL	Limits Amendment and Mitigated Negative Declaration	\$ 175,862

**PART IV
PLAN AMENDMENT TIMELINE**

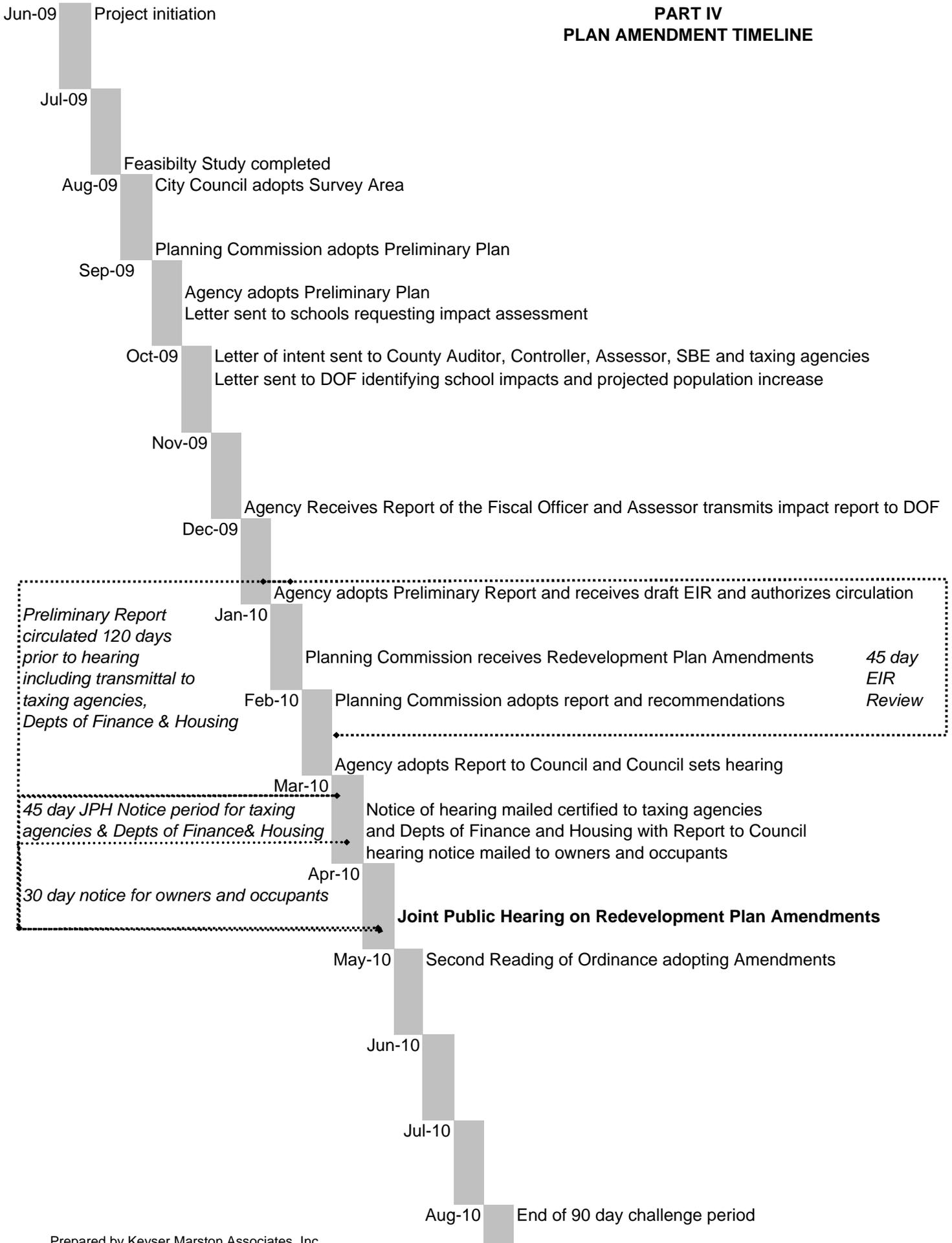


EXHIBIT B

COMPENSATION SCHEDULE

Consultant proposes to provide redevelopment feasibility and amendment adoption services on a time-and-materials basis in accordance with the following rates, with an estimated not-to-exceed budget of \$175,862 including expenses. If the Agency chooses to amend time limits and add territory, the estimated budget is \$298,799.

Task budgets are proposed as an estimate only; invoices will be billed against the total amount. Redevelopment Plan Amendment documents will be provided to the Agency in a draft and final form with a reproducible original. Environmental documents will be provided in an electronic form with hard copies as specified in the scope.

PLAN ADOPTION HOURLY FEE SCHEDULE KEYSER MARSTON ASSOCIATES, INC.

2008/2009

A. JERRY KEYSER	*\$200.00
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ERVIN CONSULTING GROUP FEE SCHEDULE

2008/2009

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