

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
RMC WATER & ENVIRONMENT**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and RMC Water & Environment ("Consultant") as of November 17, 2009 in Milpitas, California.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A –scope of work 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 B-schedule, 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 professional standards normally 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 accordance with professional standards of quality normally 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 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 C identifies specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **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 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed one hundred sixty seven thousand three hundred thirty six dollars (\$167,336.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

- The Consultant's signature.
- Use City progress payment tracking format.

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 Agreement billing until the completion of the Agreement 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.

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

2.5 **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.

2.6 **Reimbursable Expenses.** Reimbursable expenses shall not exceed the amounts shown on Exhibit C. Expenses not listed in Exhibit C are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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. Notwithstanding the foregoing, Consultant's professional liability insurance shall be procured on a "claims made" basis.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.

Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant;

premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3 The policy must contain a cross liability clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
 - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

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

administration, and defense expenses that is satisfactory in all respects to the City.

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any

damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are

preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by the City Engineer, 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:

Project 6073 RMC

Dennis Gellerman
RMC Water & Environment
2290 North First Street, Suite 212
San Jose, CA 95131

(408) 240-8160 (phone)
(408) 586-0101 (fax)

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

(408) 586-3300 (phone)
(408) 586-3305 (fax)

- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.
- 10.14 **City Responsibilities.** The City shall provide the available information regarding the project described in Exhibit A. Consultant shall be entitled to rely upon the adequacy of such information in the performance of its work and services.

Project 6073 RMC

CITY OF MILPITAS

Thomas C Williams, City Manager

ATTEST:

Mary Lavelle, City Clerk/

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Greg Armendariz, Public Works Director/City Engineer

APPROVED:

Emma Karlen, Finance Director/Risk Manager

CONSULTANT



RMC Water & Environment,
Dennis Gellerman, Vice President

94 329 5096

Taxpayer Identification Number

Exhibit A – Scope of Work

CITY OF MILPITAS Sewer Deficiency and Structural Correction Program Phase 6 Scope of Work

Introduction

The City of Milpitas (City) has several sewers in its Sewer Deficiency and Structural Correction Program that are deficient and require frequent maintenance. RMC Water and Environment (RMC) shall provide engineering services to the City for sewer rehab and/or replacement design, and services during construction at the following sites. Alternatives analysis work is assumed to be completed under an existing Agreement before design work begins.

1. Bixby at Findley to Bixby at Canton
2. Bixby at Girard to Bixby at Canton
3. 1835 Canton Drive to Bixby
4. Whittier Street
5. San Petra Court
6. Southwest Corner of Erie Circle to Erie at Tramway
7. Superior at Ontario to Superior at Erie
8. 1645 Arizona to Arizona at Hazen

RMC's scope of work is broken down into the following 6 tasks:

1. Project management
2. Field Investigations
3. 90% Design
4. 100% Design
5. Bid Services
6. Construction Services

Task 1 – Project Management

RMC shall coordinate and communicate with the City and subconsultants to ensure timely and efficient completion of the work.

RMC shall prepare monthly progress reports to be submitted with the monthly invoice. The reports shall summarize the work completed to date and during the previous month, the work remaining, estimated percent complete, schedule and budget status, and any issues requiring resolution.

Throughout the project RMC shall track and evaluate progress to ensure that the budget and schedule are met. RMC shall submit monthly reports to the City which will present progress on each task for both schedule and budget.

Anticipated Deliverables, Task 1:

- ***Progress Meeting Agendas and Minutes (electronic copy)***
- ***Monthly Progress Reports and Invoices (1 copy)***

Task 2 – Field Investigations

2.1 Geotechnical Work. RMC shall perform geotechnical borings at each of the sewer rehab sites. A parallel environmental field investigation shall also be performed at each site to test soil and groundwater for potential contamination. The following environmental tests shall be performed on the soil samples:

- TPH as Gasoline and BTEX (Method 8015C)
- TPH as Diesel/Motor Oil (Method 8015C)
- CAM 17 Metals (Method 6020A)

Groundwater samples collected during this investigation shall be tested for the constituents listed in the City of Milpitas Standard Specifications Section C-34 (Dewatering Operations Under Effluent Limit Guidelines).

A geotechnical and environmental data report shall be provided. It shall contain the following information:

- Geotechnical boring logs
- Groundwater and soil quality testing results
- Specification language and recommendations for construction in trenches with high groundwater and difficult soil conditions.

2.2 Survey Work. RMC shall perform survey work to determine the rim and invert elevations of all manholes along the sewer rehab sites and select manholes upstream and downstream of the sites in support of design work. Elevations will be relative to the City's vertical datum. Because all sewers are anticipated to be rehabilitated or replaced in kind (no new sewer alignments), horizontal position information will not be included.

Anticipated Deliverables, Task 2:

- ***Geotechnical Data Report (PDF and 5 hard copies)***
- ***Survey data will be used in support of design and provided to the City on request.***

Task 3 – 90% Design

RMC shall prepare 90% plans, specifications, and cost estimate for the project including plan and profile drawings, drawing details, technical specifications, general and special conditions, bid instruction and notices, and bid forms. This task will not begin until the Alternatives Analysis task has been completed under a different Agreement.

The 90% design submittal shall include half-size drawings, technical specifications, edited versions of the City's front end boilerplate specifications and a construction cost estimate, presenting the full scope of work. A draft Engineer's Estimate of the construction costs shall be included with the submittal.

Anticipated Deliverables, Task 3:

- ***90% Drawings – 11"x17" (PDF)***
- ***90% Specifications – 8.5"x11" (MS-Word)***
- ***90% Construction Cost Estimate (MS-Excel)***

Task 4 – 100% Design

RMC shall prepare the final bid package for the project including plan and profile drawings, drawing details, technical specifications, general and special conditions, bid instruction and notices, and bid forms.

The 100% design submittal shall include half-size drawings, technical specifications, edited versions of the City's front end boilerplate specifications and a construction cost estimate, presenting the full scope of work. A draft Engineer's Estimate of the construction costs shall be included with the submittal.

Assumptions:

- City is responsible for printing bid sets and distributing/selling bid sets.

Anticipated Deliverables, Task 4:

- ***100% Drawings – 11"x17" (PDF) and 24"x36" (PDF), printable to full size***
- ***100% Specifications – 8.5"x11" (MS-Word)***
- ***100% Construction Cost Estimate (MS-Excel)***

Task 5 – Bid Services

RMC shall assist City in bidding, maintain bidders list, answer questions from contractors, and perform addenda preparation during the bid phase. The City shall reproduce and distribute addenda. It is assumed that all construction will be included in a single bid package.

Assumptions:

- City is responsible for printing and distributing addenda.
- RMC shall not participate in a pre-bid meeting, nor evaluation of bids received.

Anticipated Deliverables, Task 5:

- ***Bidders list and addenda preparation***

Task 6– Construction Services

During the construction phase RMC shall assist the City and the construction management team by providing engineering services during construction. It is assumed that the City will have an onsite inspection and construction management team to handle the day to day construction management.

Preconstruction Meeting – RMC shall attend a pre-construction meeting to be held in the offices of the City. This meeting will be held in order for RMC and the City to become acquainted with the selected contractor, to discuss the major elements of the construction contract, and to address any concerns or questions at that time.

Site Visits and Meetings- RMC shall participate in site visits and/or construction meetings, for up to 6 total hours.

Submittals Review - RMC shall review up to 15 submittals required by the contract documents. The level of effort is based on the assumption that many of the general condition and administrative submittals will be reviewed by the Construction Manager and City.

Requests for Information (RFI) - RMC shall respond to up to 15 RFIs to answer questions from the Contractor and construction manager to clarify the contract documents and design intent. The level of effort assumes that many of the routine RFIs which do not involve design intent will be answered by the Construction Manager.

Change Orders Assistance – RMC shall assist in the preparation of change orders by preparing sketches, drawings, instructions, etc. The level of effort assumes that many of the routine Change Orders which do not involve design intent will be prepared by the Construction Manager.

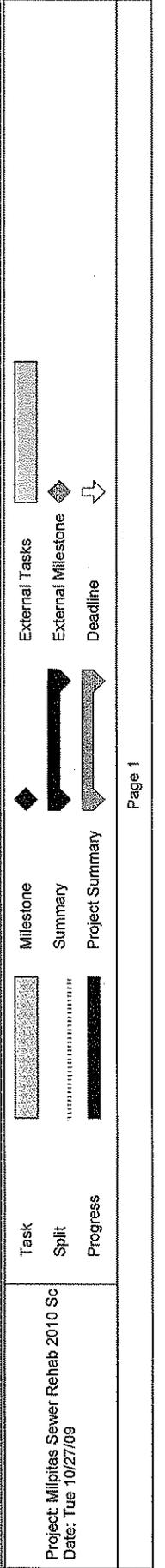
Record Drawings - RMC shall prepare record drawings from one compiled set of markups from the Contractor and Construction Manager.

Anticipated Deliverables, Task 6:

- ***Completed submittal review forms (hardcopy)***
- ***RFI responses (hardcopy)***
- ***Change order documentation (hardcopy)***
- ***Record Drawings (drafts as PDF, final as CAD, TIFF, and full-size Mylar)***

Exhibit B - Schedule City of Milpitas - Sewer Deficiency and Structural Correction Program - Phase 6

ID	Task Name	Duration	Start	Finish
1	Task 1: Project Management	260 days	Mon 11/23/09	Fri 11/19/10
2	1.1 Notice to Proceed - Alts Analysis Complete	0 days	Mon 11/23/09	Mon 11/23/09
3	1.1 Client Coordination and communication	52 wks	Mon 11/23/09	Fri 11/19/10
4	1.2 Coordination with subconsultants and outside parties	52 wks	Mon 11/23/09	Fri 11/19/10
5	1.3 Management of scope, schedule, and budget	52 wks	Mon 11/23/09	Fri 11/19/10
6	Task 2: Field Investigations	30 days	Mon 11/23/09	Fri 1/1/10
7	2.1 Survey Work	4 wks	Mon 11/23/09	Fri 12/18/09
8	2.2 Geotech Work	6 wks	Mon 11/23/09	Fri 1/1/10
9	Task 3: 90% Design	50 days	Mon 11/23/09	Fri 1/29/10
10	3.1 Develop 90% PS&E	6 wks	Mon 11/23/09	Fri 1/1/10
11	3.2 QA-QC, incorporate comments	2 wks	Mon 1/4/10	Fri 1/15/10
12	3.3 Submit 90% PS&E to City	0 days	Fri 1/15/10	Fri 1/15/10
13	3.4 City review period	2 wks	Mon 1/18/10	Fri 1/29/10
14	Task 4: 100% Design	25 days	Mon 2/1/10	Fri 3/5/10
15	4.1 Incorporate City comments, finalize package	3 wks	Mon 2/1/10	Fri 2/19/10
16	4.2 Internal QA-QC	1 wk	Mon 2/22/10	Fri 2/26/10
17	4.3 Incorporate QA-QC comments, finalize package	1 wk	Mon 3/1/10	Fri 3/5/10
18	4.4 Submit final bid package to City	0 days	Fri 3/5/10	Fri 3/5/10
19	Task 5: Bid Services	25 days	Mon 4/5/10	Fri 5/7/10
20	5.1 Prepare contract addenda, response to bidder's questions	4 wks	Mon 4/5/10	Fri 4/30/10
21	5.2 Bid Opening	0 days	Fri 4/30/10	Fri 4/30/10
22	5.3 Council approval to award	1 wk	Mon 5/3/10	Fri 5/7/10
23	Task 6: Construction Services	120 days	Fri 6/4/10	Fri 11/19/10
24	6.1: Pre-Construction Meeting	0 days	Fri 6/4/10	Fri 6/4/10
25	6.2 Site Visits and Meetings	3 mons	Mon 6/7/10	Fri 8/27/10
26	6.3 Submittals Review	3 mons	Mon 6/7/10	Fri 8/27/10
27	6.4 Requests for Information (RFI)	3 mons	Mon 6/7/10	Fri 8/27/10
28	6.5 Change Orders Assistance	3 mons	Mon 6/7/10	Fri 8/27/10
29	6.6 Construction Complete	0 days	Fri 9/10/10	Fri 9/10/10
30	6.7 Record Drawings	2 wks	Mon 11/8/10	Fri 11/19/10



Estimated Level of Effort and Cost
City of Milpitas
Sewer Rehab 2010 - Phase 6

Exhibit C - Budget and Personnel



Task	RMC Labor Costs							Total Hours	Total Labor Costs ⁽¹⁾	ODCs ⁽²⁾	PTCC ⁽³⁾	RMC Total	Geotechnical (DCM)	Survey (Crossroad)	Sub-Consultant Total ⁽⁴⁾	Total
	Dennis Goleman	Eric Evans	Glenn Hermanson	Stephen Jung	Admin. Support	Project Manager / Charge Engineer	Senior Technical Reviewer, O&OC Designer, Admin.									
Task 1: Project Management																
1.1 - Client Coordination and communication	8	20	20	8	8	8	36	\$6,340	\$100	\$190	\$0	\$6,640			\$0	\$6,640
1.2 - Coordination with subs and others	4	16	16	8	8	8	28	\$4,540	\$100	\$156	\$0	\$4,786			\$0	\$4,786
1.3 - Management of Scope, Schedule, Budget	4	16	16	8	8	8	28	\$4,700	\$100	\$141	\$0	\$4,951			\$0	\$4,951
Subtotal Task 1:	12	56	56	24	24	24	92	\$15,580	\$300	\$487	\$0	\$16,377			\$0	\$16,377
Task 2: Field Investigations																
2.1 - Geotech and Environmental Work	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$55,000	\$10,000	\$59,125	\$59,125
2.2 - Survey Work	8	120	32	80	4	4	244	\$11,620	\$200	\$1,248	\$0	\$13,068		\$10,000	\$10,750	\$10,750
Subtotal Task 2:	8	120	32	80	4	4	244	\$11,620	\$200	\$1,248	\$0	\$13,068		\$10,000	\$10,750	\$10,750
Task 3: 80% Design																
3.1 - Develop 80% PS&E	4	40	16	40	4	4	104	\$17,320	\$200	\$520	\$0	\$18,060			\$0	\$18,060
4.1 - Finalize PS&E	4	40	16	40	4	4	104	\$17,320	\$200	\$520	\$0	\$18,060			\$0	\$18,060
Subtotal Task 3:	8	80	32	80	8	8	208	\$34,640	\$400	\$1,040	\$0	\$36,080			\$0	\$36,080
Task 4: Bid Services																
5.1 - Prepare Contract Addenda, respond to bidder's questions	2	24	4	6	4	4	40	\$6,940	\$100	\$209	\$0	\$7,279			\$0	\$7,279
Subtotal Task 4:	2	24	4	6	4	4	40	\$6,940	\$100	\$209	\$0	\$7,279			\$0	\$7,279
Task 5: Construction Services																
6.1 - Site meetings and visits	6	6	6	6	6	6	36	\$1,110	\$0	\$33	\$0	\$1,143			\$0	\$1,143
6.2 - Submittals review, RFI's	12	12	12	12	12	12	60	\$2,220	\$100	\$67	\$0	\$2,387			\$0	\$2,387
6.3 - Change Orders Assistance	10	10	4	4	4	4	36	\$2,750	\$100	\$63	\$0	\$2,943			\$0	\$2,943
6.4 - Record Drawings	16	16	16	20	20	20	98	\$5,480	\$400	\$164	\$0	\$6,064			\$0	\$6,064
Subtotal Task 5:	44	44	32	42	42	42	262	\$11,540	\$600	\$326	\$0	\$12,466			\$0	\$12,466
TOTAL:	20	262	50	176	40	40	549	\$83,000	\$1,600	\$2,931	\$0	\$87,531		\$10,000	\$2,931	\$117,982

1. The individual hourly rates include salary, overhead, and profit.
 2. Other direct costs (ODCs) include large reproduction jobs, mileage, and travel expenses.
 3. PTCC are project technology and communication charges at 3% of labor costs.
 4. RMC's 2009 standard rates are shown; 2010 rates will be the same as 2009. RMC reserves the right to adjust its hourly rates at the start of the 2011 calendar year if the Agreement is still in place at that time.
 5. Subconsultants will be billed at actual cost plus 7.5%.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY) 10/22/09
PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090 David C. Eckman	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED RMC Water and Environment 2001 N. Main Street, Suite 400 Walnut Creek, CA 94596	INSURERS AFFORDING COVERAGE	
	INSURER A: Travelers Property Casualty Co. of A INSURER B: American Automobile Ins. Co. INSURER C: ACE American Insurance Company INSURER D: The Travelers Indemnity Co of CT INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	6805427L498	10/14/09	10/14/10	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				FIRE DAMAGE (Any one fire) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS -COMP/OP AGG \$2,000,000	
D	AUTOMOBILE LIABILITY	BA5427L23A	10/14/09	10/14/10	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
A	EXCESS LIABILITY	CUP7371Y987	10/14/09	10/14/10	EACH OCCURRENCE	\$4,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				AGGREGATE	\$4,000,000
						\$
						\$
						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WZP80974751	07/01/09	07/01/10	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
					E.L. EACH ACCIDENT	\$1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
					E.L. DISEASE - POLICY LIMIT	\$1,000,000
C	OTHER Professional Liability	EONG2165732006	10/14/09	10/14/10	\$2,000,000 per Claim \$2,000,000 Annl Aggr.	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
GENERAL LIABILITY POLICY EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.
REF: ALL OPERATIONS OF THE NAMED INSURED.
 (See Attached Descriptions)

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION
City of Milpitas 455 East Calaveras Blvd. Milpitas, CA 95035		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL NOT BE REQUIRED TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT NOT LESS THAN 30 30 DAYS BEFORE THE CANCELLATION DATE. AUTHORIZED REPRESENTATIVE 

DESCRIPTIONS (Continued from Page 1)

GENERAL LIABILITY ADDITIONAL INSURED: City of Milpitas, and the Milpitas Redevelopment Agency and its officers, employees, contractors, agents, consultants & volunteers.

Primary insurance and severability of interests apply per policy form.

Waiver of subrogation applies to workers' compensation.

Professional Liability Retro Date: 4/3/1998.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S):

**City of Milpitas, and the Milpitas Redevelopment Agency and its officers,
employees, contractors, agents,**

PROJECT/LOCATION OF COVERED OPERATIONS: All Operations of the Named Insured

PROVISIONS

A. The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.