

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
SCHAAF & WHEELER**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas and the Milpitas Redevelopment Agency, collectively referred to herein as the ("City"), and SchAAF & Wheeler, Consulting Civil Engineer ("Consultant") as of April 20, 2010.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2011, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the 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 a substantial manner and shall conform to the 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 A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **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 \$ 315,988.55 based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement (base work amount is \$190,641.80 and optional tasks amount is \$125,346.75). Only tasks authorized by City shall be performed by Consultant. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

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

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 are shown on Exhibits A and B. Expenses not listed 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.

- 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 (i.e., both the City of Milpitas and the Milpitas Redevelopment 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 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 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:

Charles Anderson, Principal  
Schaaf & Wheeler  
100 North Winchester Blvd, Suite 200  
Santa Clara, California 95050

Any written notice to City shall be sent to:

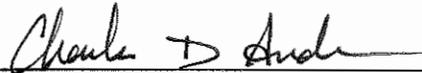
Greg Armendariz, City Engineer  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, California 95035

- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C Williams, City Manager/RDA Director

  
\_\_\_\_\_  
Charles Anderson, Principal, Schaaf & Wheeler

ATTEST:

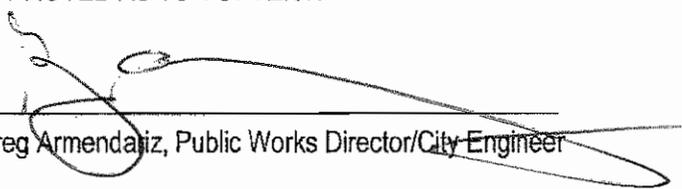
\_\_\_\_\_  
Mary Lavelle, City Clerk/Agency Secretary

77-0061375  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney/Agency Counsel

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Greg Armendajiz, Public Works Director/City Engineer

APPROVED:

\_\_\_\_\_  
Emma Karlen, Finance Director/Risk Manager

**EXHIBIT A**

**SCOPE OF SERVICES, SCHEDULE AND PERSONNEL**

Exhibit A

**CITY OF MILPITAS  
WRIGLEY AND FORD CREEKS DREDGING DESIGN AND PERMITTING**

The City of Milpitas is seeking a consultant to prepare construction documents for competitive bidding in accordance with Public Contract Code and obtain the necessary permits to perform maintenance dredging and vegetation removal of Wrigley Creek and Ford Creek for four reaches of the creeks as follows:

1. Reach 1: Wrigley-Ford Creek from the end of the Wrigley/Ford pump station to the confluence point of Wrigley/Ford Creek.
2. Reach 2: Ford Creek from the Wrigley/Ford Confluence point upstream to the upper reach of Ford Creek, including the twin culverts under SR 237.
3. Reach 3: Wrigley Creek from the Wrigley/Ford Confluence point upstream to the northern side of the E. Calaveras Blvd Bridge & SR 237.
4. Reach 4: It is anticipated that the dredging work for this reach will be performed by VTA as part of the BART C211 Mitigation Project. The reach starts at the box culvert adjacent to Gibraltar Water Pump Station and going downstream about 1,900 linear feet. The mitigation of any dredging for this reach will need to be done as part of this project, and sediment removal as stated above.

The project stream reaches are separated from Berryessa Creek and San Francisco Bay by the Wrigley-Ford Stormwater Pump Station. The Permit will be for dredging of the creeks to remove the sediment, debris, and any dead trees in the channel stream bed and perform any necessary outfall repairs to re-established flow capacity and flood protection. It is anticipated an approval, permit or acknowledgement from the following agencies are required: San Francisco Bay Regional Water Quality Control Board (Section 401 Permit), Army Corps of Engineers (Section 404 Permit) and California Department of Fish and Game (Section 1602 Permit). A Mitigated Negative Declaration was prepared for SCVTA's Wrigley Creek Improvement Project, dated January 8, 2010. This project addresses Wrigley Creek above and below the SCVTA site.

Both creeks are trapezoidal channels, indicating that they were shaped and maintained by the City or Water District at some point. However, portions of the creeks have not been recently maintained, allowing trees and woody shrubs to establish in the channel bottoms. The long culverts under Highway 237 are blocked with sediment, reducing hydraulic capacity. The removal of established trees, particularly willow trees, precludes this project from falling under the Corps of Engineers Nationwide Permit 41, Reshaping of Existing Drainage Ditches. The preparation of environmental studies and documents to support the three required permit applications is the majority of the work in this project.



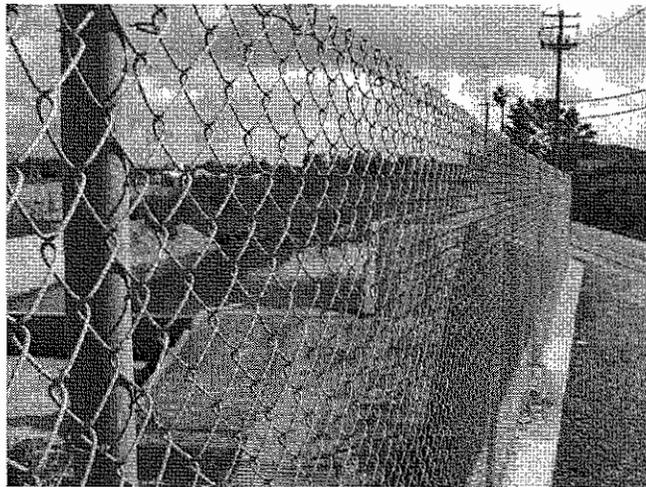


## Exhibit A

2.7 Identify Disposal Sites – Based on the results of the soil sampling, reuse or disposal sites will be identified for the removed sediments. Sediments that are contaminated with hazardous materials will be treated as waste.

2.8 Identify Culvert Cleaning and Channel Dredging Methods – The methods used to clean the channels and culverts will determine the controls needed to prevent sediment migration from the work areas. The culverts under Highway 237 present a particular challenge due to their long lengths. Possible options include jetting/pressure washing, directional drilling with custom tools, and workmen with shovels and brooms. Channel excavation methods are limited by the bank slope and height. The only reach where equipment might access the channel bottom without damaging the banks is Wrigley-Ford Creek via the pump station inlet works, which has a concrete ramp for equipment access.

2.9 Determine Site Access Requirements – The requirements for equipment access and materials lay-down will be determined, based on the amount and method of work for each creek segment. We will identify which portions cannot be accessed through existing easements. The ownership of the adjacent property for each segment of the creeks will be reviewed to determine which landowners should be contacted to obtain construction rights-of-entry, with the intent of inconveniencing as few landowners as possible.



2.10 Publish Technical Memorandum – A written report detailing the hydraulic analysis, potential culvert cleaning and channel dredging methods and the site access requirements will be prepared for inclusion in the IS/MND.

### **3 Prepare CEQA Initial Study and Mitigated Negative Declaration**

3.1 Prepare Biotic Study - H. T. Harvey & Associates will prepare a Biotic Study for the project's CEQA Initial Study. They will identify the sensitive biological resources of the project site, assess the biotic impacts, and develop mitigation measures to compensate for significant impacts associated with implementation of the Wrigley-Ford Creek dredging project. The study area for this task includes Reaches 1, 2, and 3, but does not include Reach 4 on Wrigley Creek. Information on Reach 4 will be taken from the IS/MND prepared for Santa Clara Valley Transportation Authority. Detailed subtask descriptions are in the attached scope provided by H.T. Harvey & Associates.

## Exhibit A

3.2 Prepare Corps of Engineers Jurisdictional Delineation - H. T. Harvey & Associates will delineate the limits of USACE jurisdiction within the proposed project footprint. This task assumes that the project will not impact wetland habitat and our delineation will be conducted to document this fact. They will also delineate the extent of open water habitat not occupied by wetlands that would be impacted (e.g. sediments to be removed in and around culverts, sediments/tree root wads to be removed at channel constriction points). Detailed subtask descriptions are in the attached scope provided by H.T. Harvey & Associates.



3.3 (Optional) Prepare Wetlands Delineation – If required to achieve the desired channel capacity, H. T. Harvey & Associates will prepare a wetland delineation of all areas potentially impacted by the proposed dredging, as required by the U. S. Army Corps of Engineers (USACE) and Regional Water Quality Control Board (RWQCB) for their respective permit applications. This will include field surveys and meetings with USACE. Detailed subtask descriptions are in the attached scope provided by H.T. Harvey & Associates.

3.4 Conduct Sediment Sampling and Testing - Cornerstone Earth Group will collect five sediment samples within the proposed project sites. The sediment samples will be submitted to a state certified laboratory and analyzed for:

- 17 California Assessment Manual (CAM) metals,
- total petroleum hydrocarbons in the diesel (TPHd) and motor oil (TPHmo) ranges,
- total petroleum hydrocarbons in the gasoline (TPHg) range plus benzene, toluene, ethylbenzene and xylene (BTEX) and MTBE,
- volatile organic compounds (VOCs),
- semi-VOCs, organochlorine pesticides and
- polychlorinated biphenyls (PCBs).

Up to four samples will be analyzed for soluble metals (STLC), if needed based on the initial analytical results. In addition, because the sediment samples may be saturated, the laboratory will test the moisture content of the samples and report the analytical results on a dry-weight basis. Cornerstone will prepare a report presenting the analytical results, their conclusions and recommendations. The report will include a site map showing approximate sample locations and copies of the laboratory analytical reports.

(Optional) If required, Cornerstone will collect and test additional sediment samples, up to a density of one in every 500 LF of creek (8 additional sites, or 13 total samples).

## Exhibit A

3.5 (Optional) Wetlands Mitigation Site Search – If wetlands mitigation is required, H. T. Harvey & Associates will collaborate with the City of Milpitas to identify a suitable wetland mitigation site, preferably on City-controlled lands. It is assumed that the riparian mitigation can be accommodated by establishing woody riparian vegetation on the upper banks of the dredged creeks. Thus, the search will focus on a potential wetland mitigation site. Because the extent of potentially appropriate lands under the control of the City is unknown, the level of effort may need to be adjusted pending the actual level of effort required. As part of this task, H. T. Harvey & Associates will consult with the resource agencies and research potential mitigation banks that have credits available as a potential avenue to mitigate the project's impacts. To our knowledge, there are no wetland mitigation banks with credits available whose service area includes the project site.

3.6 Meet with City Staff to Discuss Mitigation – When the environmental studies are complete, the project team will meet with City Staff to discuss potential required mitigations for the project.

3.7 Prepare the Mitigation and Monitoring Plan – H. T. Harvey & Associates will prepare a Riparian Habitat Mitigation and Monitoring Plan (MMP) for the project in support of the permit applications. The MMP will quantify impacts to regulated habitats (i.e. riparian habitat, aquatic habitat) and present a conceptual design to mitigate temporary and permanent impacts to regulated habitats. We assume that no wetland mitigation will be required. This task includes the preparation of a conceptual design for the riparian mitigation. The MMP will also include a long-term ecological monitoring plan to satisfy regulatory agency requirements.

3.8 (Optional) Prepare Administrative Draft Initial Study / Mitigated Negative Declaration – If requested by the City, David J. Powers and Associates will prepare the Draft Initial Study / Mitigated Negative Declaration for the project. The Initial Study will include a detailed description of the project and an overview of the existing environmental setting, including a description of the land use characteristics of the project area. The IS will include an environmental checklist consistent with the City of Milpitas and CEQA Guidelines. Each impact identified in the checklist will be addressed, including a discussion of its significance and mitigation measures to reduce the impact, if necessary. The primary issues to be discussed in the IS include biological resources, construction-related noise, air, and water quality, hydrology and water quality and cultural resources, as described below. Information contained in the IS recently prepared for the section of Wrigley Creek immediately upstream of the proposed project by the Valley Transportation Authority (VTA) will be utilized to the extent possible in the evaluation of project impacts. Detailed subtask descriptions are in the attached scope provided by David J. Powers and Associates.

3.9 City Review of ADIS/MND - We anticipate staff will require four weeks to review and comment on the document.

3.10 Update ADIS/MND – Following City review, the IS/MND will be updated to address review comments and published as the Administrative Draft Initial Study / Mitigated Negative Declaration.

## Exhibit A

3.11 Publish for Public Review and Comment - The ADIS/MND will be provided to the City in hard copy and digital (.pdf) form for public review. The public review period is a minimum of 30 days.

3.12 Conduct Public Hearing – A public hearing during the review period is recommended. Project team members will attend to answer technical questions and capture minutes.

3.13 Publish Final IS/MND. It is not anticipated that substantive comments will be received on the proposed project. Following the public review period, the project team will updated the IS/MND as needed in response to substantive comments. The Final IS/MND will be published and provided to City Staff for City Council approval.

3.14 City Adopts IS/MND – We anticipate staff will require two weeks to place this item on the council agenda and gain approval. Project team members will attend the council meeting, if requested.

### **4 Prepare and Submit Permit Applications**

4.1 Joint Aquatic Resources Permit Application - H. T. Harvey & Associates will prepare a JARPA application suitable for submittal to the USACE, Regional Water Quality Control Board (RWQCB), and California Department of Fish and Game (CDFG). This task assumes that the project will not require an USACE Individual Permit with associated 404(b)(1) Alternatives Analysis. All fees associated with the permit applications are to be paid by the City of Milpitas and cannot be estimated herein, because the extent of the project is not yet known.

4.2 Agency Review of Applications - After submitting the permit applications, H. T. Harvey & Associates will maintain regular contact with the resource agencies. This task assumes a reasonable amount of time for some discussions with the resource agencies in order to clarify/answer any concerns agency staff may have regarding the project. Site visits with agency staff may be required and are included with this task.

4.3 (Optional) Corps of Engineers Section 404 Permit – If the project does not meet the Nationwide Permit limits, H. T. Harvey & Associates will prepare an Individual Permit Package suitable for submission to the USACE. Schaaf & Wheeler will develop alternatives to the full project for their analysis. This material includes copies of the CEQA document, all correspondence with the USACE, RWQCB, and CDFG staff, verified wetland delineation, verification letter from the USACE, proposed mitigation bank credits to be purchased (if applicable), Mitigation and Monitoring Plan (MMP) (if applicable), project drawings, alternatives analysis and the Application for Department of the Army Permit (ENG Form 4345).

4.4 (Optional) Department of Fish and Game Section 1602 Permit - If the project does not meet the Nationwide Permit limits, H. T. Harvey & Associates will prepare materials in support of a 1602 Notification for submittal to the CDFG. This includes completion of Form FG 2023, Lake and Streambed Alteration Program Project Questionnaire, all copies of environmental documentation, all correspondence with USACE, RWQCB and CDFG staff, impact assessment,

## Exhibit A

mitigation and monitoring plan and project drawings. We will submit a draft Notification package to the City Staff for review and comment. After incorporation of any changes, the package will be submitted to the CDFG. In addition, the CDFG requires a processing fee for handling the application, based upon the cost of the proposed work that is to take place within the CDFG jurisdiction. This fee will be determined at the time of preparation.

4.5 (Optional) Regional Board Section 401 Permit - If the project does not meet the Nationwide Permit limits, H. T. Harvey & Associates will prepare a certification application for submittal to the RWQCB. The complete package is essentially the same information that is to be submitted to the USACE as described above, with some additional supplemental material required. We will submit a draft RWQCB Section 401 Water Quality Certification package to the City Staff for review and comment. After incorporation of any changes, the package will be submitted to the RWQCB. The RWQCB requires a processing fee for handling the application. The amount of this fee is based upon the size of the fill activity proposed.

### **5 Prepare Detailed Civil Design**

5.1 Prepare Channel Plan and Section Drawings – Construction drawings will be prepared to a 90% level for the project at a standard scale (typically 1:40). The existing and proposed channel conditions will be provided in plan and cross-section. Detail sheets will be prepared, as needed.

5.2 Prepare Mitigation Drawings (if required) – Construction drawings for the mitigation site(s) will be prepared to a 90% level, if needed.

5.3 Prepare Technical Specifications – Technical specifications will be prepared to a 90% level for the project using the Construction Standards Institute (CSI) format, tailored to work with the City's standard construction contract documents. It is assumed that the bid documents (Division 00) will be prepared by the City.

5.4 Prepare Construction Cost Estimate – A probable estimate of construction costs will be developed for the project, based upon the design drawings and specifications. Estimates will be based on standard tables for heavy construction, augmented with bid information for similar projects, where available.

5.5 Submit Plans, Specifications and Cost Estimate to City – Three copies of the plans, specifications and cost estimate will be submitted to the City for review. It is assumed the City Staff will require four weeks for review, although comments are not required until the permitting agencies make their determinations.

### **6 Prepare Construction Documents**

6.1 Update Channel Plan and Section Drawings per Permit Requirements – The construction drawings will be updated per the comments of the City Staff and any conditions imposed by the permitting agencies.

## Exhibit A

6.2 Update Mitigation Drawings (if required) per Permit Requirements – The mitigation drawings will be updated per the comments of the City Staff and any conditions imposed by the permitting agencies.

6.3 Update Technical Specifications per Permit Requirements – The technical specification will be updated per the comments of the City Staff and any conditions imposed by the permitting agencies.

6.4 Update Construction Cost Estimate – The probable estimate of construction costs will be updated to reflect the updated plans and specifications, and adjusted to the current month using the ENR Construction Cost Index for San Francisco.

6.5 Submit Plans, Specifications and Cost Estimate to City. The 100% plans and specifications will be submitted to the city in hard copy and digital (.pdf) form. It is anticipated that a brief (one week) review by City Staff will be required before signed final plans are submitted.

Scope items identified as optional are separated in the fee estimate.

Items not included in the Scope:

- Obtaining construction rights-of-entry
- Bid- and construction-phase services

Personnel Assigned to Project:

Andrew A. Sterbenz, P.E.     Project Manager  
Charles D. Anderson, P.E.    Principal-in-Charge

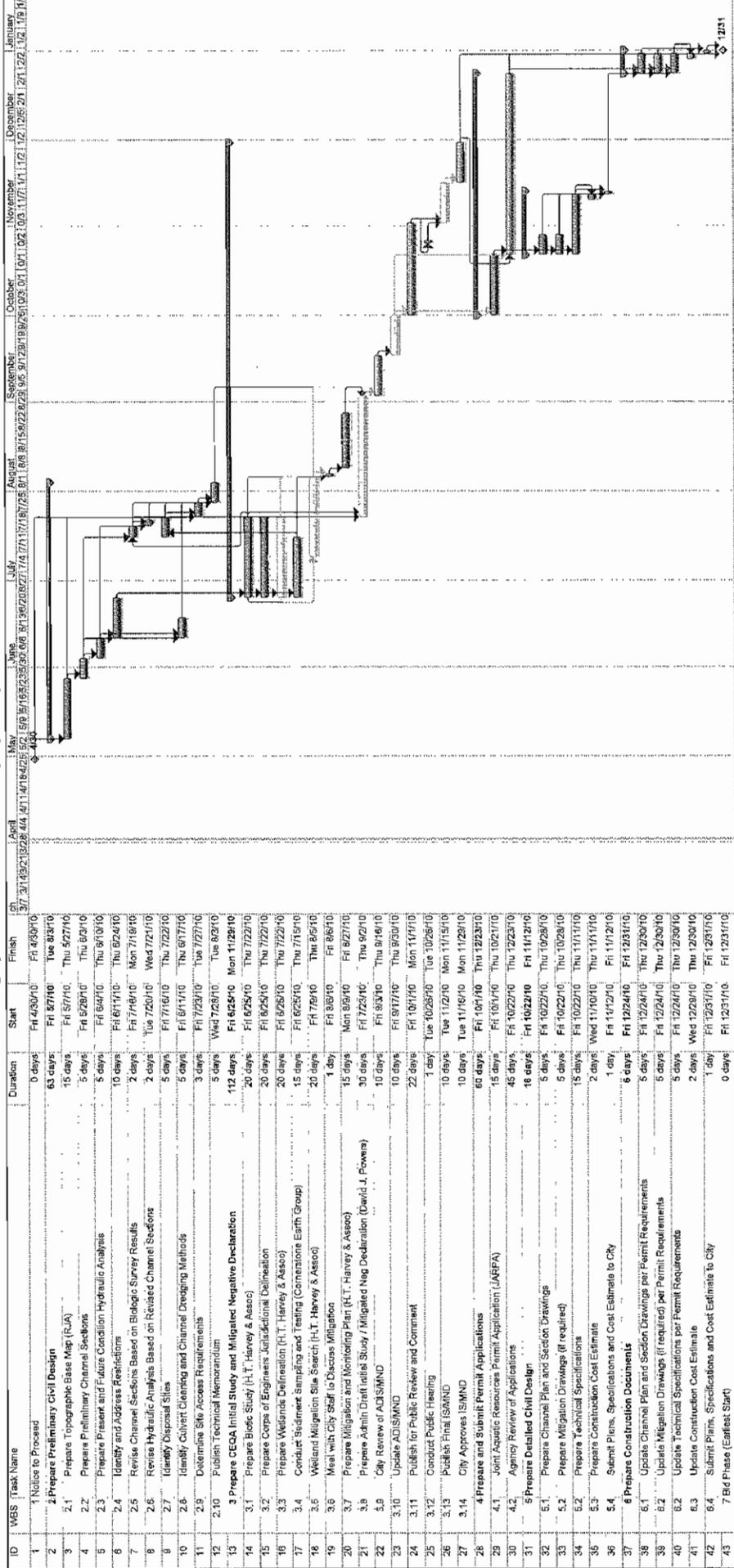
Attachments:

Detailed Scope, David J. Powers & Associates  
Detailed Scope, H.T. Harvey and Associates

Schaaf & Wheeler  
Exhibit A (Fee Estimate)  
City of Milpitas, Wrigley and Ford Creeks Dredging Design and Permitting

NO.	TASK ITEMS DESCRIPTION	PROJ MGR	SEN ENG	ASSOC ENG	ASST ENG	TECH	SUBTOTAL M.H.	N-HOUSE LABOR COSTS	MATERIALS & SERVICES COSTS	TOTAL COSTS	@ 1.05	SUBTOTAL M&S	TOTAL COSTS
1	Notice to Proceed												
2	Prepare Preliminary Civil Design						0	\$0.00				\$0.00	
2.1	Prepare Topographic Base Map (RJA)	2					2	\$400.00	\$ 14,500.00	\$ 15,225.00		\$ 15,225.00	\$ 15,625.00
2.2	Prepare Preliminary Channel Sections						8	\$1,564.00				\$1,564.00	\$1,564.00
2.3	Prepare Present and Future Condition Hydraulic Analysis	4					8	\$1,904.00				\$1,904.00	\$1,904.00
2.4	Identify and Address Restrictions	4					16	\$3,128.00				\$3,128.00	\$3,128.00
2.5	Revise Channel Sections Based on Biologic Survey Results	4					4	\$612.00				\$612.00	\$612.00
2.6	Revise Hydraulic Analysis Based on Revised Channel Sections	4					4	\$612.00				\$612.00	\$612.00
2.7	Identify Disposal Sites	4					4	\$612.00				\$612.00	\$612.00
2.8	Identify Culvert Cleaning and Channel Dredging Methods	4					12	\$1,904.00				\$1,904.00	\$1,904.00
2.9	Determine Site Access Requirements	4					8	\$1,904.00				\$1,904.00	\$1,904.00
2.10	Publish Technical Memorandum	4					12	\$3,656.00				\$3,656.00	\$3,656.00
3	Prepare CEQA Initial Study and Mitigated Negative Declaration						0	\$0.00				\$0.00	
3.1	Prepare Biotic Study (H.T. Harvey & Assoc)	2					2	\$400.00	\$ 16,295.00	\$ 17,109.75		\$ 17,109.75	\$ 17,509.75
3.2	Prepare Corps of Engineers Jurisdictional Delineation (H.T. Harvey & Assoc)						0	\$0.00	\$ 12,352.00	\$ 12,968.60		\$ 12,968.60	\$ 12,968.60
3.4	Conduct Sediment Sampling and Testing (Assume 5 sites, Cornerstone Earth Group)	2					2	\$400.00	\$ 6,770.00	\$ 7,108.50		\$ 7,108.50	\$ 7,508.50
3.6	Meet with City Staff to Discuss Mitigation	2					4	\$1,692.00				\$1,692.00	\$1,692.00
3.7	Prepare Mitigation and Monitoring Plan (H.T. Harvey & Assoc)						8	\$1,360.00	\$ 30,126.00	\$ 31,632.30		\$ 31,632.30	\$ 31,632.30
3.8	Prepare Admin Draft Initial Study / Mitigated Neg Declaration (David J. Powers)						0	\$0.00				\$0.00	
3.9	City Review of ADISMND						0	\$0.00				\$0.00	
3.10	Update ADISMND						4	\$680.00				\$680.00	\$680.00
3.11	Publish for Public Review and Comment						2	\$306.00				\$306.00	\$306.00
3.12	Conduct Public Hearing						4	\$848.00				\$848.00	\$848.00
3.13	Publish Final IS/MND						8	\$1,292.00				\$1,292.00	\$1,292.00
3.14	City Approves IS/MND						0	\$0.00				\$0.00	\$0.00
4	Prepare and Submit Permit Applications						0	\$0.00				\$0.00	
4.1	Joint Aquatic Resources Permit Application (JARPA)	2					6	\$952.00	\$ 16,271.00	\$ 17,084.55		\$ 17,084.55	\$ 18,036.55
4.2	Agency Review of Applications						0	\$0.00				\$0.00	\$0.00
5	Prepare Detailed Civil Design						0	\$0.00				\$0.00	
5.1	Prepare Channel Plan and Section Drawings	2					22	\$9,528.00				\$9,528.00	\$9,528.00
5.2	Prepare Mitigation Drawings (if required)	4					20	\$3,128.00	\$ 19,666.00	\$ 20,638.80		\$ 20,638.80	\$ 23,766.80
5.3	Prepare Technical Specifications	2					46	\$7,336.00				\$7,336.00	\$7,336.00
5.4	Prepare Construction Cost Estimate	4					4	\$612.00				\$612.00	\$612.00
5.4	Submit Plans, Specifications and Cost Estimate to City	2					2	\$306.00				\$306.00	\$306.00
6	Prepare Construction Documents						0	\$0.00				\$0.00	
6.1	Update Channel Plan and Section Drawings per Permit Requirements	4					16	\$2,516.00				\$2,516.00	\$2,516.00
6.2	Update Mitigation Drawings (if required) per Permit Requirements	2					10	\$1,564.00	\$ 21,066.00	\$ 22,119.30		\$ 22,119.30	\$ 23,683.30
6.3	Update Technical Specifications per Permit Requirements	4					20	\$3,128.00				\$3,128.00	\$3,128.00
6.4	Update Construction Cost Estimate	2					2	\$306.00				\$306.00	\$306.00
6.5	Submit Plans, Specifications and Cost Estimate to City	2					2	\$306.00				\$306.00	\$306.00
<b>TOTAL BASE SCOPE</b>													
<b>Optional Tasks</b>													
O-3.3	Prepare Wetlands Delineation (H.T. Harvey & Assoc)						0	\$0.00	\$ 30,238.00	\$ 31,746.90		\$ 31,746.90	\$ 31,746.90
O-3.4	Additional Sediment Sampling (8 sites at \$1,354 each)						0	\$0.00	\$ 10,832.00	\$ 11,373.60		\$ 11,373.60	\$ 11,373.60
O-3.5	Wetland Mitigation Site Search (H.T. Harvey & Assoc)						0	\$0.00	\$ 8,984.00	\$ 9,380.70		\$ 9,380.70	\$ 9,380.70
O-3.8	Prepare CEQA Initial Study / Mitigated Neg Declaration (David J. Powers)						0	\$0.00	\$ 23,000.00	\$ 24,150.00		\$ 24,150.00	\$ 24,150.00
O-4.3	Corps of Engineers Section 404 Permit						22	\$3,466.00	\$ 21,666.00	\$ 22,748.25		\$ 22,748.25	\$ 26,216.25
O-4.4	Department of Fish and Game Section 1602 Permit						0	\$0.00	\$ 10,680.00	\$ 11,214.00		\$ 11,214.00	\$ 11,214.00
O-4.5	Regional Board Section 401 Permit						0	\$0.00	\$ 10,728.00	\$ 11,262.30		\$ 11,262.30	\$ 11,262.30
<b>TOTAL OPTIONAL TASKS</b>													
<b>TOTAL PROJECT COSTS</b>													

### City of Milpitas Wrigley and Ford Creeks Dredging Design and Permitting





March 16, 2010

Charles D. Anderson, PE  
President  
Schaaf & Wheeler Consulting Civil Engineers  
100 N Winchester Blvd, Ste 200  
Santa Clara, CA 95050

**RE: Scope of Work for Preparation of an Initial Study for the Wrigley Creek and Ford Creek Maintenance Project**

Dear Mr. Anderson:

David J. Powers & Associates (DJP&A) is pleased to provide you with this Scope of Work to prepare an Initial Study (IS) for the ongoing maintenance of the sections of Wrigley and Ford Creek located approximately between North Able Street and East Calaveras Boulevard in the City of Milpitas. The maintenance activities include the dredging of the creeks to remove sediment, debris, and any dead trees in the channel stream bed, and performing any necessary outfall repairs to re-established flow and flood protection. It is our understanding that the City of Milpitas will be the lead agency, but that permits will be needed for the project from the United States Army Corp of Engineers, California Department of Fish and Game, and the Regional Water Quality Control Board. This Scope of Work does not include obtaining permits for the project.

The attached Scope of Work to prepare an IS for the proposed project is based on our communication with you and the project biologist, and DJP&A's experience working on similar projects.

If this proposal is acceptable to you, a dated countersigned copy of this Scope of Work, returned to us will serve as our binding legal agreement for the services described. We appreciate your consideration of our firm for this work and look forward to working with you on this project. Please let me know if you have any questions about this proposal or need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "John M. Hesler".

John Hesler  
Vice President

## SCOPE OF WORK WRIGLEY AND FORD CREEKS MAINTENANCE PROJECT INITIAL STUDY

Based on our current understanding of the proposed project, it is believed that the project will be eligible for a Mitigated Negative Declaration, assuming mitigation is available for the loss of wetland due to the proposed creek maintenance activities.<sup>1</sup> The specific tasks included in preparing the IS are outlined below.

### **Project Description**

The project is the ongoing maintenance of the sections of Wrigley and Ford Creek located approximately between North Able Street and East Calaveras Boulevard in the City of Milpitas. The maintenance activities include the dredging of the creeks to remove sediment, debris, and any dead trees in the channel stream bed, and performing any necessary outfall repairs to re-established flow and flood protection. It is our understanding that permits for the project will be obtained by *H.T. Harvey & Associates* under separate agreement.

Based on information provided to DJP&A by *Schaaf & Wheeler* and *H.T. Harvey & Associates*, the Initial Study (IS) will provide a detailed description of the proposed project. This information will include grading, tree removal, stormwater runoff Best Management Practices (BMPs), and all other construction activities. This Scope assumes that project plans will be provided to DJP&A by *Schaaf & Wheeler* in both full-size hardcopy and PDF format for use in the IS.

### **Environmental Setting, Impacts & Mitigation**

An overview of the existing environmental setting will be included in the IS, including a description of the land use characteristics of the project area. The IS will include an environmental checklist consistent with the City of Milpitas and CEQA Guidelines. Each impact identified in the checklist will be addressed, including a discussion of its significance and mitigation measures to reduce the impact, if necessary. The primary issues to be discussed in the IS include biological resources, construction-related noise, air, and water quality, hydrology and water quality and cultural resources, as described below. Information contained in the IS recently prepared for the section of Wrigley Creek immediately upstream of the proposed project by the Valley Transportation Authority (VTA) will be utilized to the extent possible in the evaluation of project impacts.

#### *Biological Resources*

The project site includes the sections of Wrigley and Ford Creek located approximately between North Able Street and East Calaveras Boulevard in the City of Milpitas, and includes grassland, riparian, and wetland habitats. The IS will describe the project's impacts on these habitats, and other biological resources, based on a biotic study prepared under separate agreement by *H.T. Harvey & Associates*, and provided to DJP&A. The biotic study will include a tree survey, which will include

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<sup>1</sup> If the Initial Study determines that the project would result in significant, unavoidable impacts, or the project does not include the features required to mitigate impacts to a less than significant level, then an Environmental Impact Report (EIR) would be required. DJP&A can prepare the EIR under a separate Scope of Work.

all trees affected by the project. The trees will be measured using the City of Milpitas methodology, and species and health of the trees will be described. Tree replacement ratios based on the City's requirements will be identified in the IS. Mitigation measures for biological resource impacts will be identified, as appropriate.

#### *Cultural Resources*

The project will remove sediment from the creeks, but will not disturb the native soil beneath the sediment. The proposed project site is not located in an Archeological Sensitivity Zone.<sup>2</sup> The IS will describe the potential for encountering cultural resources during project construction. Mitigation measures for cultural resource impacts will be identified, as appropriate.

#### *Construction-Related Impacts*

Residential uses are located within the project area, which could be affected by noise and dust generated during construction. Water quality impacts could occur during creek maintenance activities. Policies and requirements of the Regional Water Quality Control Board (C.3 Provisions) require that mitigation for water quality impacts associated with construction be addressed as part of the environmental review process. BMPs will be developed by *Schaaf & Wheeler* and provided to DJP&A. The IS will evaluate the construction-related noise, air quality, and water quality impacts and identify project-specific mitigation measures to reduce impacts to a less than significant level.

#### *Hydrology*

The stream maintenance activities proposed by the project will occur within and adjacent to the creek channel and, therefore, there is the potential for the project to result in hydrology impacts both during and after the maintenance activities are complete. Hydrologic impacts and measures to reduce the impacts to a less than significant level will be identified by *Schaaf & Wheeler* and provided to DJP&A for inclusion in the Initial Study, as appropriate.

#### *Hazardous Materials*

The IS will describe the potential for hazardous materials to be encountered during project construction, based on Phase I and Phase II (testing) Environmental Site Assessments prepared under separate agreement by *Cornerstone Earth Group* and provided to DJP&A. Measures to reduce hazardous material impacts to a less than significant level will be identified by *Cornerstone Earth Group* and provided to DJP&A for inclusion in the Initial Study, as appropriate.

#### *Other Issues*

The IS will also describe the potential for the project to result in land use, air quality, noise, geology and soils, public services, recreation, and utilities impacts. Mitigation measures to reduce impacts to a less than significant impact will be identified, as appropriate.

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<sup>2</sup> City of San Jose, Archaeological Sensitivity Maps, March 1993.

### **Revisions to Initial Study**

DJP&A will provide one electronic copy of the IS to *Schaaf & Wheeler* for review and comment. We will revise the document once before submittal to the City of Milpitas. Up to 10 copies of the Administrative Draft IS will be submitted to City staff for review and comment. After revising the IS, up to 25 copies will be printed for distribution by the City of Milpitas. A PDF of the report will be provided to the City for posting on the City's website.

### **Meetings and Public Hearings**

This Scope of Work includes Principal Project Manager and Project Manager attendance at up to two, two-hour meetings (a total of eight hours) with the project team, City of Milpitas staff, and/or public hearings on the project.

### **Preparation of Mitigation Monitoring or Reporting Program**

In accordance with Section 15097 of the CEQA Guidelines, a Mitigation Monitoring or Reporting Program (MMRP) will be prepared by DJP&A, based on the findings of the IS, to ensure that the mitigation measures and project revisions identified in the Negative Declaration are implemented. A copy of the MMRP will be provided to the City in PDF format, for posting on the City's website.

### **Preparation of Final Initial Study**

Comments on the IS may be received during public circulation of the document; however, it is not anticipated at this time that these comments will be substantial. Therefore, this Scope of Work does not include the preparation of a Final IS (responses to comments). If comments are substantial and the City requests it, DJP&A can prepare a Final IS that includes the comment letters, responses to the comments received, and any required revisions to the text of the IS. This work will be completed as an amendment to this Scope of Work.

### **INFORMATION TO BE PROVIDED TO DJP&A**

This Scope of Work assumes that the following technical information will be provided to DJP&A by *Schaaf & Wheeler*:

- Project plans, elevations, and other pertinent project information (e.g., amount of soil to be hauled off-site), both as hard copies and in electronic form (PDF files),
- Biotic Study with tree survey prepared by *H.T. Harvey & Associates*,
- Hydrology and water quality plans with information regarding proposed stormwater BMPs for the project site, both during construction and operation of the project.

All technical information/reports will be subject to review by DJP&A for their adequacy for use in the preparation of the IS. In the event that additional technical analysis is required, or if the technical reports require revisions, this work shall be done by the subconsultants at the direction of DJP&A

and under contract with *Schaaf & Wheeler*. An amendment to this Scope of Work will be necessary should additional hours be required for DJP&A's direction of this work.

### SCHEDULE

David J. Powers & Associates proposes the following optimum schedule for preparation of the IS for the Wrigley and Ford Creeks Maintenance Project. DJP&A can commit to maintaining the schedule in the areas which are within our control. Completion of the IS, as described in the schedule below, is based upon receipt of all necessary project information on schedule. Delays in receiving requested information will result in at least day-for-day delays in the overall schedule. The schedule below also assumes that the project description is not changed once we receive notice to proceed, and that no comments are received during the circulation of the IS that raise any new issues, or require additional technical studies.

Task/Product	Completed at End of Week
Receive written authorization to proceed, complete project plans, and technical reports (see list, above).	Day 1
Complete Administrative Draft IS (ADIS).	Week 4
Schaaf & Wheeler Reviews ADIS	Week 5
City staff review ADIS (four weeks)	Week 9
Revise IS per comments received.	Week 10
City staff review revised IS (two weeks).	Week 12
Final revisions and printing of document.	Week 13
End of 30-day public review period/adoption of Mitigated Negative Declaration.	Week 18

### COST ESTIMATE

The total cost for preparation of the IS is estimated not to exceed a maximum of **\$23,000**, based upon our understanding of the project to date and in accordance with the estimated budget below and attached fee schedule. All costs would be charged on a time and materials basis commensurate with the work completed. Payment will be due on a monthly basis.

A total cost estimate to prepare the IS broken down by task is provided below. Please note that the cost estimate shown below is a not-to-exceed amount for all tasks combined. Within this not-to-exceed total, actual amounts spent on individual tasks may be more or less than the estimates. If we can complete the environmental review for this project for less than the total budget, you will only be billed for actual time spent to complete the work. It should be noted that if changes to the project description are made after authorization to proceed is received, additional funds may be necessary to revise the report.

Cost Breakdown:

<b>DJP&amp;A in-house staff time:</b> Preparation of IS	\$21,000
<b>Reimbursables</b> (Printing, maps, PDFs, CDs, mileage)	\$2,000
<b>Total:</b>	<b>\$23,000</b>



**CHARGE RATE SCHEDULE<sup>1</sup>**

PRINCIPAL	\$205.00 PER HOUR
SENIOR ENVIRONMENTAL SPECIALIST	\$180.00 PER HOUR
SENIOR PROJECT MANAGER	\$158.00 PER HOUR
ENVIRONMENTAL SPECIALIST	\$145.00 PER HOUR
PROJECT MANAGER	\$135.00 PER HOUR
ASSISTANT PROJECT MANAGER	\$ 98.00 PER HOUR
RESEARCHER	\$ 82.00 PER HOUR
DRAFTSPERSON/GRAPHIC ARTIST	\$ 77.00 PER HOUR
DOCUMENT PROCESSOR/QUALITY CONTROL	\$ 77.00 PER HOUR
ADMINISTRATIVE MANAGER	\$ 77.00 PER HOUR
OFFICE SUPPORT	\$ 60.00 PER HOUR

MATERIALS, OUTSIDE SERVICES AND SUBCONSULTANTS INCLUDE A 15% ADMINISTRATION FEE.

MILEAGE WILL BE CHARGED PER THE CURRENT IRS STANDARD MILEAGE RATE AT THE TIME COSTS OCCUR.

SUBJECT TO REVISION JULY 2010

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<sup>1</sup> David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis.



**H. T. HARVEY & ASSOCIATES**  
**ECOLOGICAL CONSULTANTS**

**PROPOSED SCOPE OF SERVICES**

**CITY OF MILPITAS**  
**WRIGLEY-FORD CREEK FLOOD CONTROL PROJECT**  
**BIOTIC STUDY, PERMITTING, AND MITIGATION DESIGN**

**1 April 2010**

Proposal # 5999

H. T. Harvey & Associates proposes to provide ecological consulting services to Schaaf & Wheeler for the Wrigley-Ford Creek Flood Control project for the following work:

- Biotic Study for an Initial Study/Mitigated Negative Declaration
- Wetland Delineation
- Resource Agency Permitting
- Riparian Habitat Mitigation and Monitoring Plan
- Riparian Habitat Mitigation Landscape Plans and Specifications

This project will be billed on a time-and-charges, not to exceed basis.

The non-optional tasks associated with this scope of services are presented below followed by a set of optional tasks. The non-optional tasks assume that the project will be designed to avoid impacts to wetland habitat and to fit within the requirements of the U. S. Army Corps of Engineers (USACE) Nationwide Permit program. The optional tasks cover an expanded project that would impact wetland habitat and exceed the USACE Nationwide Permit conditions.

**TASK 1. PREPARATION OF BIOTIC STUDY**

H. T. Harvey & Associates will prepare a Biotic Study for use by David J. Powers & Associates in their preparation of the project's CEQA Initial Study. We will identify the sensitive biological resources of the project site, assess the biotic impacts, and develop mitigation measures to compensate for significant impacts associated with implementation of the Wrigley-Ford Creek dredging project.

We also assume that the study area for this task includes Reaches 1, 2, and 3, but does not include Reach 4 on Wrigley Creek. Reach 4 is assumed to be covered by the Santa Clara Valley Transportation Authority's CEQA documentation for their BART project. We also assume that the dredged sediments will be disposed at an appropriate landfill and as a result an analysis of a dredge materials disposal site will not be required and is not included in this scope and budget. Additionally, we assume that this task will be completed in conjunction with the wetland delineation (Task 2).

### **1a. Background Materials Review**

H. T. Harvey & Associates will review relevant background material about the site and adjacent lands. These materials will include the California Natural Diversity Database (CNDDDB), Soil Survey of Santa Clara County, USGS quadrangle maps, the California Native Plant Society's Inventory of Rare and Endangered plants, personal communications with local biologists and botanists, as well as recent EIR's (or Initial Studies) completed for projects in the vicinity.

### **1b. Field Studies**

H. T. Harvey & Associates' plant and wildlife ecologists will visit the site and immediately adjacent areas to document existing ecological conditions and determine the potential for occurrence of regulated habitats and special-status species (i.e., threatened, endangered, rare, species of concern) and their habitats. This will include mapping of the general habitat types present. We assume that protocol-level surveys for special-status species will not be required to make a determination of potentially significant impacts. If protocol-level surveys are required to make a significance determination, Schaaf & Wheeler and/or the City of Milpitas will be contacted to discuss potential protocol-level surveys for the site.

### **1c. Preparation of a Draft Biotic Study**

H. T. Harvey & Associates will prepare a Biotic Study Report that presents our professional opinion regarding the potential for occurrence of special-status species and distribution of regulated habitats at the project site. Our report will characterize the biotic habitats at the site and assess the potential for occurrence of special-status species. We will identify potentially significant impacts and mitigation measures, where feasible, to reduce impacts to a less-than-significant level. The report will also include a vicinity map, CNDDDB search figure and a generalized habitat map.

### **1d. Final Biotic Study Report Preparation**

H. T. Harvey & Associates will revise the draft report based upon comments received from Schaaf & Wheeler and the City of Milpitas. This task assumes up to 2 rounds of minor revisions to generate a Final Biotic Study Report, and is limited to the level of effort in the attached budget.

***Deliverables:*** Draft and Final Biotic Study Report

## **TASK 2. DELINEATION OF U. S. ARMY CORPS OF ENGINEERS JURISDICTION**

H. T. Harvey & Associates will delineate the limits of USACE jurisdiction within the proposed project footprint. This task assumes that the project will not impact wetland habitat and our delineation will be conducted to document this fact. We will also delineate the extent of open water habitat not occupied by wetlands that would be impacted (e.g. sediments to be removed in and around culverts, sediments/tree root wads to be removed at channel constriction points). This task includes the following:

### **2a. Review of Background Information**

We will review available information on biotic resources that occur in the project vicinity to help focus field surveys on the determination of jurisdictional waters on site. This information includes U.S. Geological Survey Maps, National Wetland Inventory Maps, the Santa Clara County Soil Conservation Survey, and miscellaneous information available through the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG) and any previous EIR's (or Initial Studies) completed for projects in the vicinity.

This task will also include acquisition, review and preparation of basemaps (in GIS or AutoCAD) for the survey using available aerial photographs and project plans. Once we've mapped the extent of USACE jurisdiction on site, we will use GIS or AutoCAD to quantify the surface area of USACE jurisdiction in the study area. Our final report will include a recent aerial photograph overlaid with our map of USACE jurisdiction within the project site.

### **2b. Identification of Waters of the United States--Field Surveys**

We will survey the project site for areas that meet the regulatory definition of Waters of the United States (i.e tributary waters and wetlands). This level of effort will require the collection of field data relative to vegetation, soils and hydrology in order to document site conditions. All work will be completed according to methodologies outlined in the *USACE Wetland Delineation Manual* (Environmental Laboratory 1987). We will conduct the delineation within the City's specified dredging project boundaries.

The USACE's jurisdiction within tributary waters extends to the ordinary high water (OHW) marks on opposing channel banks. Therefore, the location of the OHW marks will be field-checked within the banks of the channels and ditches; it is typically indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the characters of the soil, destruction of vegetation, exposed roots on the bank or the presence of litter or debris.

## **2c. Preparation of Jurisdictional Waters Report**

H. T. Harvey & Associates will prepare a report summarizing the USACE delineation methods and results in accordance with reporting standards developed by the USACE's San Francisco District. Our report will include a brief description of existing conditions, description of field techniques employed in the delineation, and copies of aerial photographs and maps which show the extent of jurisdictional waters on the project site.

During preparation of the report, information obtained during our field survey relative to plants, hydrology and soils, and evidence gathered regarding past and current land management practices, will be compared to recent regulations/policies/agency guidance (e.g. SWAANC)/exemptions (i.e. farming and ranching activities) to arrive at an accurate and fair mapping of the extent and distribution of Waters of the U.S./State.

***Deliverables:*** A technical report summarizing all fieldwork depicted on recent aerial photograph

## **2d. Site Visit With USACE Representatives for Verification**

H. T. Harvey & Associates' senior wetland biologist will meet with staff of the San Francisco District of the USACE on the project site to verify the delineation of jurisdictional waters.

## **2e. Revisions to Jurisdictional Waters Report**

Minor revisions will be made to the technical report and accompanying maps, if necessary, after the site visit with USACE representatives.

## **TASK 3. RIPARIAN HABITAT MITIGATION AND MONITORING PLAN**

### **3a. Draft Riparian Habitat Mitigation and Monitoring Plan**

We will prepare a Draft Riparian Habitat Mitigation and Monitoring Plan (MMP) for the project in support of the permit applications. The MMP will quantify impacts to regulated habitats (i.e. riparian habitat, aquatic habitat) and present a conceptual design to mitigate temporary and permanent impacts to regulated habitats. We assume that no wetland mitigation will be required. This task includes the preparation of a conceptual design for the riparian mitigation. The MMP will also include a long-term ecological monitoring plan to satisfy regulatory agency requirements.

We assume that all riparian habitat mitigation can be accommodated within the flood control project reaches of Wrigley and Ford Creeks (i.e. soils on the creek banks are suitable with minor amendments to planting holes, property rights and utility constraints allow for adequate mitigation surface area).

The MMP will provide the following information in accordance with the *USACE San Francisco and Sacramento Districts Mitigation and Monitoring Proposal Guidelines* (2004):

- Brief summary of the proposed project
- Summary of habitat impacts and proposed mitigation ratios
- Location of mitigation site(s) and description of existing site conditions (both physical and biotic), including photo-documentation
- Conceptual riparian habitat mitigation design
- Topsoil suitability investigation (up to 4 composite samples analyzed for horticultural suitability) and planting hole amendment recommendations, if needed
- Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule)
- Remedial measures/adaptive management plan for mitigation elements that do not meet performance or final success criteria
- Appendix with photo-documentation of project site (pre-impact) and mitigation site(s) (pre-impact)

### **3b. Final Riparian Habitat MMP**

H. T. Harvey & Associates will revise the Draft MMP based upon comments received from Schaaf & Wheeler and the City of Milpitas. This task assumes up to 2 rounds of minor revisions to generate a Final MMP, and is limited to the level of effort in the attached budget.

***Deliverables:*** Draft and Final Riparian Habitat MMP

## **TASK 4. PERMITTING**

### **4a. Prepare Joint Aquatic Resources Permit Application**

The reduced project is a good candidate to be permitted by the various resource agencies using the Joint Aquatic Resources Permit Application (JARPA). In essence, the JARPA process involves completion of a single application form that is then distributed to the applicable state and federal agencies. In addition to the JARPA form, each of the agencies requires the submittal of additional information such as the USACE Jurisdictional Delineation and the Riparian Habitat Mitigation and Monitoring Plan described above.

H. T. Harvey & Associates will prepare a JARPA application suitable for submittal to the USACE, Regional Water Quality Control Board (RWQCB), and California Department of Fish and Game (CDFG). This task assumes that the project will not require an USACE Individual Permit with associated 404(b)(1) Alternatives Analysis. All fees associated with the permit applications are to be paid by the City of Milpitas and cannot be estimated herein, because the extent of the project is not yet known.

**U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA).** It is assumed that there are no federally-listed species that would be

impacted as a result of the project. Thus, it is assumed that consultation under Section 7 of the Endangered Species Act will not be required and is thus not included in this scope or budget.

#### **Task 4d. Permit Processing**

After submitting the permit applications, we will maintain regular contact with the resource agencies. This task assumes a reasonable amount of time for some discussions with the resource agencies in order to clarify/answer any concerns agency staff may have regarding the project. Site visits with agency staff may be required and are included with this task. If more time than is allocated in this task budget is required to coordinate with the agencies, then additional budget will be necessary.

**Deliverables:** JARPA application submitted to the permitting agencies

### **TASK 5. RIPARIAN MITIGATION LANDSCAPE PLANS AND SPECIFICATIONS**

H. T. Harvey & Associates will prepare the landscape architectural revegetation planting, irrigation, and plant establishment period maintenance plans and specifications which include the necessary details, tables and notes needed to bid and construct this project. The design of the planting and irrigation plans will show generalized zones with enough detail and annotation to indicate individual plant/irrigation head location without graphically showing individual symbols for each item. Project base files (showing property lines, right of ways, utilities, site features, as well as basic topography), front-end drawings and specification and other 'boiler plate' items are assumed to be prepared by others. Comments received for each submittal are assumed to be provided in a consolidated manner with any conflicting comments resolved. Submittals are assumed to be electronic, H. T. Harvey will provide Schaaf & Wheeler all AutoCAD, Word, or Excel files associated with each submittal as well as full size printable PDF files of all drawings.

#### **Task 5a. 65% Plans, Specifications, and Estimate (PS&E) Submittal**

H. T. Harvey & Associates' landscape architects will develop the restoration plan sheets for a 65% submittal. The restoration plan sheets are assumed to include irrigation, planting and any restoration planting specific site preparation and/or layout information. The 65% restoration plans will be the basis for the subsequent construction drawings and will be prepared in accordance with the restoration guidelines and requirements set forth in the MMP. Also as part of the 65% submittal H. T. Harvey will develop draft technical specifications for irrigation, planting, and plant establishment maintenance. Based on the 65% plans H. T. Harvey will develop a preliminary cost estimate for the restoration components of the project. Also assumed under this subtask H. T. Harvey will participate in one field meeting and one design review meeting with Schaaf & Wheeler.

#### **Task 5b. 95% PS&E Submittal**

H. T. Harvey & Associates will prepare the 95% construction document submittal. During this subtask H. T. Harvey will prepare written responses to the comments on the 65% design

submittal and refine the plan sheets and specifications incorporating the comments as necessary. The preliminary cost estimate will be refined to be congruent with the 95% plan updates and specifications. H. T. Harvey will participate in up to 1 design coordination / review meeting as part of this sub task.

#### **Task 5c. 100% / Final Submittal**

H. T. Harvey & Associates will prepare a 100% / final construction document submittal. During this subtask H. T. Harvey will prepare written responses to the comments on the 95% design submittal and finalize the plan sheets, technical specification and cost estimate incorporating the comments as necessary. H. T. Harvey will attend up to 1 design coordination / review meeting.

#### ***Deliverables:***

65% submittal - electronic copies of up to 10 plan sheets, up to 5 technical specification sections, and 1 cost estimate

95% submittal - electronic copies of up to 10 plan sheets, up to 5 technical specification sections, and 1 cost estimate

100% / final submittal - electronic copies of up to 10 plan sheets, up to 5 technical specification sections, and 1 cost estimate

#### **SCOPE ASSUMPTIONS FOR NON-OPTIONAL TASKS**

- The Biotic Study for CEQA covers the downstream 3 reaches and Reach 4 is covered under VTA BART EIR.
- A Section 7 Consultation on Federal Endangered species will not be required.
- We are permitting a single project across all 4 reaches.
- The project will qualify for a USACE, NWP (e.g. less than 300 ln ft and less than 0.5 acres of impact to USACE jurisdiction).
- The project will not impact wetland habitat and therefore, will not require wetland mitigation.
- We assume that there will be adequate available and feasible area on the creek banks within the project reaches to accommodate the quantity of riparian mitigation that will be required by the resource agencies to compensate for the project's impacts (i.e. soils on the creek banks are suitable with minor amendments to planting holes, property rights and utility constraints allow for adequate mitigation surface area).
- The design effort for the PSE tasks assumes the mitigation footprint to be approximately 1 acre in size and consisting of one contiguous site. If the mitigation site size increases or multiple locations are required, H. T. Harvey may need to negotiate for additional design services.
- If an automatic irrigation system is desired, H. T. Harvey assumes that a water supply is readily available at the mitigation site. Coordination with adjacent utilities, railroads or

other property owners to develop an irrigation supply across their facilities has not been included in our scope. If a water source is not readily available, an irrigation system may be designed with a standpipe to be charged by a water truck or other portable means.

## OPTIONAL TASKS

The following optional tasks cover an expanded project that would dredge the channel bottom, thereby resulting in permanent wetland impacts and the need for an Individual Section 404 permit from the USACE (i.e. project would exceed Nationwide Permit conditions) and separate permit applications to the RWQCB and CDFG (i.e. we would not be able to use the JARPA process).

### **OPTIONAL TASK 1. WETLAND MITIGATION SITE SEARCH AND MITIGATION BANK RESEARCH**

H. T. Harvey & Associates will collaborate with the City of Milpitas to identify a suitable wetland mitigation site. We will work closely with City staff, that are familiar with appropriate City-controlled lands, to review potential wetland mitigation site(s). It is assumed that the riparian mitigation can be accommodated by establishing woody riparian vegetation on the upper banks of the dredged creeks. Thus, the search will focus on a potential wetland mitigation site. Because H. T. Harvey & Associates does not currently know the extent of potentially appropriate lands under the control of the City, the level of effort will be based upon our attached fee estimate and may need to be adjusted pending the actual level of effort required.

As part of this task, H. T. Harvey & Associates will consult with the resource agencies and research potential mitigation banks that have credits available as a potential avenue to mitigate the project's impacts. To our knowledge, there are no wetland mitigation banks with credits available whose service area includes the project site. Nonetheless, we will confirm this and explore with the resource agencies the idea of mitigating the project's impacts with the nearest potential bank(s) to see if they may consider allowing use of bank credits whose service area does not include the project site.

***Deliverable:*** Technical Memorandum that provides a qualitative assessment of the pros and cons of wetland mitigation options.

### **OPTIONAL TASK 2. WETLAND DELINEATION**

H. T. Harvey & Associates will prepare a wetland delineation of all areas potentially impacted by the proposed dredging, as required by the U. S. Army Corps of Engineers (USACE) and Regional Water Quality Control Board (RWQCB) for their respective permit applications. This task includes the following:

#### **2a. Review of Background Information**

We will review available information on biotic resources that occur in the project vicinity to help focus field surveys on the determination of jurisdictional waters on site. This information includes U.S. Geological Survey Maps, National Wetland Inventory Maps, the Santa Clara County Soil Conservation Survey, and miscellaneous information available through the U.S. Fish

and Wildlife Service (USFWS), California Department of Fish and Game (CDFG) and any previous EIR's (or Initial Studies) completed for projects in the vicinity.

This task will also include acquisition, review and preparation of basemaps (in GIS or AutoCAD) for the survey using available aerial photographs and project plans. Once we've mapped the wetlands on site, we will use GIS or AutoCAD to quantify the surface area of wetlands in the study areas. Our final report will include a recent aerial photograph overlaid with our map of jurisdictional wetlands within the project site.

## **2b. Identification of Waters of the United States--Field Surveys**

We will survey the project site for areas that meet the regulatory definition of Waters of the United States (i.e. jurisdictional wetlands and tributary waters). This level of effort will require the collection of field data relative to vegetation, soils and hydrology in order to document site conditions. All work will be completed according to methodologies outlined in the *USACE Wetland Delineation Manual* (Environmental Laboratory 1987). We will conduct the delineation within the City's specified dredging project boundaries.

The USACE's jurisdiction within tributary waters extends to the ordinary high water (OHW) marks on opposing channel banks. Therefore, the location of the OHW marks will be field-checked within the banks of the channels and ditches; it is typically indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the characters of the soil, destruction of vegetation, exposed roots on the bank or the presence of litter or debris.

Wetland vegetation is scattered in patches throughout the project area and can be time consuming to accurately map. We assume that the USACE will allow us to subsample a representative site to estimate the percentage of wetland habitat and extrapolate that estimate to the study area. If the USACE requires a detailed wetland map, additional budget would be required.

## **2c. Preparation of Jurisdictional Waters Report**

H. T. Harvey & Associates will prepare a report summarizing the wetland delineation methods and results in accordance with reporting standards developed by the USACE's San Francisco District. Our report will include a brief description of existing conditions, description of field techniques employed in the delineation, wetland data sheets and copies of aerial photographs and maps which show the extent of jurisdictional waters on the project site.

During preparation of the report, information obtained during our field survey relative to plants, hydrology and soils, and evidence gathered regarding past and current land management practices, will be compared to recent regulations/policies/agency guidance (e.g. SWAANC)/exemptions (i.e. farming and ranching activities) to arrive at an accurate and fair mapping of the extent and distribution of Waters of the U.S./State.

**Deliverables:** A technical report summarizing all fieldwork depicted on recent aerial photograph for USACE verification.

#### **2d. Site Visit With USACE Representatives for Verification**

H. T. Harvey & Associates' senior wetland biologist will meet with staff of the San Francisco District of the USACE on the project site to verify the delineation of jurisdictional waters. H. T. Harvey & Associates working relationship with staff at the San Francisco District of the USACE extends back over 15 years.

#### **2e. Revisions to Jurisdictional Waters Report**

Minor revisions will be made to the technical report and accompanying maps, if necessary, after the site visit with USACE representatives.

### **OPTIONAL TASK 3. PREPARATION OF USACE PERMIT PACKAGE, SECTION 404**

Areas meeting the regulatory definition of "Waters of the United States" are subject to the regulatory jurisdiction of the USACE. The USACE, under provisions of Section 404 of the Clean Water Act (1972), has jurisdiction over "Waters of the United States" (jurisdictional waters). These waters may include all waters used, or potentially used, for interstate commerce, including all waters subject to the ebb and flow of the tide, all interstate waters, all other waters (intrastate lakes, rivers, streams, mudflats, sand flats, playa lakes, natural ponds, etc.), all impoundments of waters otherwise defined as "Waters of the U. S.," tributaries of waters otherwise defined as "Waters of the U. S.," the territorial seas, and wetlands adjacent to "Waters of the U.S." (33 CFR, Part 328, Section 328.3).

It is assumed that an Individual Permit will be required for the project since total impacts will exceed 0.5 acres and/or 300 linear feet of channel. Individual Section 404 Permits are required for dredge-and-fill discharge activities which do not qualify for a Nationwide Permit under 33 CFR 330. The USACE issues Individual Permits based upon a case-by-case evaluation of the specific project and the proposed associated discharges. Processing of this permit involves publication of a Public Notice to notify federal, state and local agencies, adjacent property owners, and the general public of the proposal to allow an opportunity for review and comment or to request a public hearing.

H. T. Harvey & Associates will prepare an Individual Permit Package suitable for submission to the USACE. This material includes copies of the CEQA document, all correspondence with the USACE, RWQCB, and CDFG staff, verified wetland delineation, verification letter from the USACE, proposed mitigation bank credits to be purchased (if applicable), Mitigation and Monitoring Plan (MMP) (if applicable), project drawings, and the Application for Department of the Army Permit (ENG Form 4345).

In addition to these materials, an Alternatives Analysis for the project will be prepared by H. T. Harvey & Associates, in consultation with Schaaf & Wheeler and the City, pursuant to the

Environmental Protection Agency's (EPA) Section 404(b)(1) Guidelines (40 CFR 230). The USACE uses the Alternatives Analysis to evaluate the proposed activities. The EPA's Guidelines restrict discharges into aquatic areas where less environmentally damaging, practicable alternatives exist.

During preparation of the Alternative Analysis, Schaaf & Wheeler will provide 2 or 3 on-site design alternatives. This information will include detailed descriptions of each alternative, cost estimates and impact zones. We will then analyze these alternatives to determine if the preferred alternative is the most appropriate design to meet the project objectives with the least environmental impact.

The basic outline to be followed during this analysis includes:

- 1) Describe the need for the Alternatives Analysis document;
- 2) Describe the location, situation etc.;
- 3) Describe the need for the project;
- 4) State the project purposes (basic and overall);
- 5) Develop criteria which relate the 404(b)(1) Guidelines, which the project must meet and on which alternatives can be evaluated;
- 6) Describe alternatives;
- 7) Compare alternatives in terms of the evaluation criteria;
- 8) Demonstrate that the preferred alternative complies with the 404(b)(1) Guidelines and is the least environmentally damaging practicable alternative by showing that it meets all criteria while others fail, or meet to a lesser degree, and;
- 9) Support document with appropriate data, drawings and or tables.

#### **OPTIONAL TASK 4. CDFG 1602 STREAMBED ALTERATION AGREEMENT APPLICATION**

CDFG jurisdiction generally extends to the "hinge points" on the top-of-bank of opposing channel banks and/or the full lateral extent of riparian vegetation beyond the top-of-bank. Definitions used in the identification of CDFG jurisdiction are contained in various documents including the Fish and Game Code, Title 14 of the California Code of Regulations (Hernandez 1999), and *A Field Guide to Lake and Streambed Alteration Agreements, Sections 1600-1607, California Fish and Game Code (1994a)*. These areas generally include rivers, streams, creeks, or lakes. In addition, canals, aqueducts, irrigation ditches, and other means of water conveyance can also be considered streams if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife. The areas on site that fall within CDFG jurisdiction will be avoided.

H. T. Harvey & Associates will prepare materials in support of a 1602 Notification for submittal to the CDFG. This includes completion of Form FG 2023, Lake and Streambed Alteration Program Project Questionnaire, all copies of environmental documentation, all correspondence with USACE, RWQCB and CDFG staff, impact assessment, mitigation and monitoring plan and project drawings. In addition, the CDFG requires a processing fee for handling the application.

The amount of this fee is based upon the cost of the proposed work that is to take place within the jurisdiction of the CDFG.

H. T. Harvey & Associates will submit a draft Notification package to the project applicant for review and comment. This scope assumes that edits will be minimal. After incorporation of any changes, the package will be submitted to the CDFG.

#### **OPTIONAL TASK 5. RWQCB PERMIT PACKAGE, SECTION 401 WATER QUALITY CERTIFICATION**

No USACE permit will be effective in the absence of state water quality certification pursuant to Section 401 of the Clean Water Act. The San Francisco Bay RWQCB is the state agency charged with implementing water quality certification in California. This water quality certification process is administrated locally by RWQCB.

H. T. Harvey & Associates will prepare a certification application for submittal to the RWQCB. The complete package is essentially the same information that is to be submitted to the USACE with some additional supplemental material required. The RWQCB requires a processing fee for handling the application. The amount of this fee is based upon the size of the fill activity proposed.

H. T. Harvey & Associates will submit a draft RWQCB Section 401 Water Quality Certification package to the project applicant for review and comment. This scope assumes that edits will be minimal. After incorporation of any changes, the package will be submitted to the RWQCB.

#### **OPTIONAL TASK 6. ADDITIONAL PERMIT PROCESSING**

After submitting the permit applications, we will maintain regular contact with the resource agencies. This task assumes a reasonable amount of time for some discussions with the resource agencies in order to clarify/answer any concerns agency staff may have regarding the project. Site visits with agency staff may be required and are included with this task. If more time is required to coordinate with the agencies, then additional budget will be necessary.

#### **SCOPE ASSUPTIONS FOR OPTIONAL TASKS**

- We are permitting a single project across all 4 reaches.
- If during the Alternatives Analysis, the project is scaled back to fit within the conditions of a Corps Nationwide Permit, our level of effort would be substantially reduced.
- We assume that the USACE will allow us to subsample a representative site to estimate the percentage of wetland habitat and extrapolate that estimate to the study area. If the USACE requires a detailed wetland map, additional budget would be required.
- We will perform a single iteration of alternatives development and analysis (i.e. the alternatives will not substantially change during the course of permit preparation). Off-site alternatives analysis will not be required because there are no off-site alternatives that would meet the project goals.

- A Section 7 Consultation on Federal Endangered species will not be required.
- The permit applications for a project alternative that results in the loss of wetland habitat from the channel bottom will require preparation of an MMP that includes a conceptual wetland mitigation design and wetland mitigation monitoring section. However, this task is not included in our scope because we do not yet know enough about the type of wetland mitigation to scope and budget the MMP. H. T. Harvey & Associates will work with Schaaf & Wheeler and the City to develop a cost estimate for the wetland mitigation portion of the project's MMP in the future when the site(s) and mitigation requirements have been identified.
- Wetland mitigation construction PSE is also not included, since the location and type of wetland mitigation is unknown at this time.





**Project Name:** Wrigley-Ford Creek Flood Control Project- OPTIONAL TASKS

**Proposal Number:** 5999

**Project Number:**

**Date:** 1 April 2010

Task	Personnel Hours by Task								HTH Cost by Task	HTH Direct Expenses	Total Project Cost
	Dan Stephens Principal, Restoration Ecology	Pat Bourstler Principal, Plant Ecology	Max Busnardo Associate Restoration Ecologist	Brian Cleary Senior Plant Ecologist	Kelly Hardwicke Senior Plant Ecologist	Scott Demers Wildlife Ecologist	Graphic/GIS	Support			
Task 1. Mitigation Site Search and Mitigation Bank Research	8		36				4	2	\$8,744	\$190	\$8,934
Task 2. Wetland Delineation									\$0	\$0	\$0
Task 2a. Review of Background Information	1	4		10			12	2	\$3,965	\$86	\$4,051
Task 2b. Identification of Waters of the United States - Field Surveys		12		40					\$8,460	\$184	\$8,644
Task 2c. Preparation of Jurisdictional Waters Report	2	6	2	40			24	24	\$12,398	\$269	\$12,667
Task 2d. Site Visit with USACE Representatives for				16					\$2,352	\$51	\$2,403
Task 2e. Revisions to Jurisdictional Water Report	1	1	1	8			3	4	\$2,420	\$53	\$2,473
Task 3. Preparation of USACE Permit Package, Section 404	2	18	16		52		20	8	\$17,548	\$381	\$17,929
Task 4. CDFG Streambed Alteration Agreement	1	2	2		24		12	6	\$6,795	\$148	\$6,943
Task 5. RWQCB Permit Application for Section 401 Water Quality Certification	1	6	2		24		8	6	\$6,642	\$149	\$6,991
Task 6. Permit Processing	4	6	32		16		4	4	\$10,970	\$238	\$11,208
Total Labor Hours	20	55	91	114	116	5	87	56			
TOTAL COST	\$ 4,300	\$ 11,825	\$ 16,289	\$ 16,758	\$ 17,052	\$ 655	\$ 9,135	\$ 4,480	\$80,494	\$1,749	\$82,243

**EXHIBIT B**

**COMPENSATION HOURLY SCHEDULE**

**Schaaf & Wheeler**  
CONSULTING CIVIL ENGINEERS

Charles D. Anderson, PE  
Peder C. Jorgensen, PE  
David A. Foote, PE  
James R. Schaaf, PE  
Kirk R. Wheeler, PE

100 N. Winchester Blvd., Suite 200  
Santa Clara, CA 95050-6566  
408-246-4848  
FAX 408-246-5624

Offices  
Santa Clara  
Sacramento  
San Francisco  
Monterey Bay

## Exhibit B

### Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

<u>Classification</u>	<u>Rate/hr</u>	<u>Classification</u>	<u>Rate/hr</u>
Project Manager	\$200		
Project Engineer	\$188	Construction Manager	\$188
Senior Engineer	\$170	Senior Resident Engineer	\$170
Associate Engineer	\$153	Resident Engineer	\$153
Assistant Engineer	\$134	Assistant Resident Engineer	\$134
Junior Engineer	\$121		
Designer	\$121		
Technician	\$114	Construction Inspector	\$114
Engineering Trainee	\$ 83		

Principal time is \$250 per hour and is charged only for work done in preparation for litigation and other very high level-of-expertise assignments. Court or deposition time as an expert witness is charged at \$350 per hour with a minimum of four hours per day.

### Materials and Services

Subcontractors, special equipment, outside reproduction, data processing, computer services, etc., will be charged at 1.10 times cost.

These rates are subject to revision semi-annually.

Effective 1/1/10

**EXHIBIT C**  
**INSURANCE DOCUMENTS**



NAMED INSURED: Schaaf & Wheeler

**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

Jeffery Leung  
455 E. Calaveras Blvd.

Milpitas, CA 95035  
USA

The City of Milpitas and the Milpitas Redevelopment Agency, and their respective officers, employees, agents, contractors, consultants, and volunteers.

**PROJECT/LOCATION OF COVERED OPERATIONS:**

**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 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.



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (00) -- 001

POLICY NUMBER: UB-830Y730

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT - CALIFORNIA  
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be % of the California workers' compensation premium otherwise due on such remuneration.

**Schedule**

**Person or Organization**

ALL PERSONS OR ORGANIZATIONS  
THAT ARE PARTIES TO A CONTRACT  
THAT REQUIRES YOU TO OBTAIN  
THIS AGREEMENT, PROVIDED YOU  
EXECUTED THE CONTRACT BEFORE  
THE LOSS

**Job Description**