

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	390-2940	\$ 317,310	390-116-4237	\$ 317,310
<input type="checkbox"/> Budget Transfer				

**Explain the reason for the budget change:**

Check if City Council Approval required. Meeting Date: May 04, 2010

**Background:** On March 2, 2010 the City Council unanimously selected Group 4 Architects for the proposed Milpitas Silicon Valley Conference Center. Deliverables for the first phase will be to complete a Market Demand Study to determine the types of uses, other than a meeting room to seat more than 350 persons, which could be included in the project. Group 4 will work with Convention Sports and Leisure (CS&L) for the first task. Their work includes a similar study for the South San Francisco Conference Center and more recently the San Francisco 49ers in their evaluation of a Santa Clara stadium.

If the Council determines, after the Market Study is completed, to proceed with the remaining tasks to complete the feasibility planning and design for the proposed conference center at 540 and 570 Alder Drive, the additional work will be able to proceed without delay. Staff negotiated a scope and fee for the complete Feasibility Analysis and Design with Group 4, including the Market Demand Study, for a total not to exceed \$317,310.

**Fiscal Impact:** Funds for the proposed contract of \$317,310 are within the unencumbered Redevelopment Agency Fund Balance.

**Recommendation:** Approve a Contract with Group 4 Architecture, Research + Planning, Inc. Feasibility Analysis and Design of the proposed Milpitas Silicon Valley Conference Center.

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head: <i>Diana Beunhardt</i>	Date: <i>4/27/10</i>	
Reviewed by:	Finance Director: <i>M. C. Karl</i>	Date: <i>4/26/10</i>	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS AND  
GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC.**

THIS AGREEMENT for consulting services is made by and between the Redevelopment Agency of City of Milpitas ("Agency") and Group 4 Architecture Research + Planning ("Consultant") as of April \_\_\_\_, 2010.

**AGREEMENT**

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2010, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Agency's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant a guaranteed maximum price not to exceed Three Hundred Seventeen Thousand Three Hundred Ten Dollars (\$317,310.00) for all services to be performed and reimbursable costs incurred under this Agreement. Agency shall pay

Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

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

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on percentage of completion or the cost for services performed, depending on whether Lump Sum or Time and Materials as stipulated in Exhibit B, 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 Agency's option and as a billable expense of Consultant, 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;
- For Time and Material Tasks billed at an hour rate the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 **Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the Agency to pay Consultant. In the event that an invoice is not acceptable to the Agency, said invoice shall be returned to Consultant within thirty (30) days of the Agency's receipt of the invoice with a detailed explanation of the deficiency. Agency's obligation to pay a returned invoice shall not arise

earlier than thirty (30) days after resubmission of the corrected invoice. After receipt of a compliant invoice, the Agency shall pay to Consultant 1.5% monthly interest on unpaid balances related to that invoice within 90 days. This does not apply to payments withheld or unpaid due to non-performance of Consultant.

- 2.3 **Total Payment.** Agency shall pay for the services and expenses to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement that are above and beyond the Scope of Service approved by the Agency.. Agency shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the Agency and shall provide a written not-to-exceed price for performing this additional work.

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

- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Twenty Six Thousand Nine Hundred Dollars (\$26,900). Expenses not listed in Exhibit B are not chargeable to Agency. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

- 2.6 **Additional Services.** This Agreement includes a Contingency Amount not to exceed Ten Thousand Dollars (\$10,000). No Payment for Additional Services will be allowed unless the Agency Authorizes Consultant in writing in advance of the performance of the Additional Services. Additional Services, if any, shall be preformed for mutually agreed upon rates or they shall be performed on a Time and Material basis not to exceed the amount authorized for those services. Rates shall be as indicated in Exhibit B.

- 2.7 **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.

- 2.8 **Payment upon Termination.** In the event that the Agency or Consultant terminates this Agreement pursuant to Section 8, the Agency shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The Agency shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.9 **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 Agency.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Agency shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Agency employees and reviewing records and the information in possession of the Agency. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Agency. In no event shall Agency be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance except professional liability which is "claims made" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to Agency of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the Agency. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the Agency upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to Agency. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Agency Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the Agency and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

A certificate of insurance 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 mail has been given to the Agency.

#### 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, if any, 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) Codes 8 or 9 ("any hired and non-owned autos"). No endorsement shall be attached limiting the coverage.

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

- a. Agency and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Agency or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

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

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

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

4.3.2 A certificate of insurance 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 mail has been given to the Agency.

4.3.3 This section is deleted intentionally.

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 Agency.
- c. A copy of the claim reporting requirements must be submitted to the Agency prior to the commencement of any work under this Agreement.

4.4 **Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish Agency with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of Agency for the self-insured retentions and deductibles that exceed \$150,000 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 Agency, Consultant may increase such deductibles or self-insured retentions with respect to Agency, its officers, employees, agents, contractors, consultants, and volunteers. The Agency may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the Agency.

- 4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to Agency at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- 4.5 **Remedies.** In addition to any other remedies Agency may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Agency may have and are not the exclusive remedy for Consultant's breach:
- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

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

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

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify defend with counsel reasonably acceptable to Agency and hold harmless the Agency and its officials, officers, employees and volunteers from and against any and all claims arising out of the performance of Consultants services on this project that arise out of and that pertain or relate to the negligence, recklessness, or willful misconduct of Consultant or its employees, sub-consultants, or agents to the extent that such liability is actually caused by the negligence, recklessness or willful misconduct of Consultant, its principals, employees or sub-consultants. Consultant shall have no obligation to pay for any of the indemnitee's defense related costs in excess of \$100,000 prior to a final determination of liability or to pay any amount that exceeds the finally determined percentage of liability based upon the comparative fault of Consultant.

**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 Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Agency, 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 Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program, provided Agency has notified Consultant of the involvement of other entity or entities.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from Agency.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

**Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** Agency may terminate this Agreement at any time and without cause upon 10 days prior 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. Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Agency in connection with this Agreement. Agency shall indemnify and hold harmless Consultant for any subsequent use of Consultant's work products.

Consultant may terminate this Agreement upon 30 days prior written notification for any breach of contract, including but not limited to non-payment of fees not due to Consultant non-performance.

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

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

- 8.4 **Assignment and Subcontracting.** Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. 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 Agency.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Cancellation of the Agreement upon 10 days written notice;

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 Agency. Consultant hereby agrees to deliver those documents to the Agency at any time upon demand of the Agency. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the Agency within the time period specified by the Agency shall be a material breach of this Agreement. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the Agency in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, 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 up to \$25,000. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In an effort to resolve any conflicts or disputes that arise regarding the performance of this agreement, the Agency & Consultant agree that all such disputes shall be submitted to nonbinding mediation, using a mutually agreed upon mediation services experienced in the resolution of construction disputes. Unless the parties mutually agree otherwise, such mediation shall be a pre-condition to the initiation of any litigation. The parties agree to exercise good faith in scheduling the meditation.
- In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.* Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

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

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

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Diana Barnhart, Economic Development Manager, who is authorized to act for, and on behalf of, Agency. 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:  
David Schnee, Partner  
Group 4 Architecture Research + Planning  
211 Linden Avenue  
South San Francisco, CA 94080
- Any written notice to Agency shall be sent to:  
Diana Barnhart, Economic Development Manager  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.11 **Professional Seal.** Where applicable in the determination of the Agency, 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 Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

AGENCY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, Executive Director

\_\_\_\_\_  
David Schnee, Partner

APPROVED AS TO CONTENT:

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

\_\_\_\_\_  
Diana Barnhart, Economic Development Manager

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, Agency Counsel

APPROVED:

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

ATTEST:

\_\_\_\_\_  
Mary Lavelle, Secretary

## EXHIBIT A

### SCOPE OF CONSULTANT'S DUTIES AND SERVICES

The City of Milpitas (City) and the City of Milpitas Redevelopment Agency ("Agency") seeks to build a new Milpitas Silicon Valley Conference Center ("Project") to fill a void in the conference center market for group meetings for more than 350 persons, increase local hotel occupancy, and bolster related city business activity and tax revenue. The Scope of this Consultant Agreement is to identify the market for a full conference center, to develop conceptual scenarios on how the demand can be met in either 540 or 570 Alder Drive or both facilities and to develop costs and conceptual designs for implementation of the recommended scenario.

The work is anticipated to progress through four sequential project stages although this contract is specifically for the Building Program, Conceptual Design, and Cost Plan (scope described below)

Consultant shall provide professional, quality services and products in accordance with the AGREEMENT. All services under the scope of work shall comply with the contract provisions. Consultant shall also provide consultation to Agency staff, Redevelopment Agency and City Council and others who are involved with the Project and shall provide guidance, advice and assistance in completion of the Project.

#### **PART I: SCOPE OF BASIC SERVICES**

#### **BUILDING PROGRAM, CONCEPTUAL DESIGN AND COST PLAN**

##### **SECTION 1. GENERAL:**

At the beginning of Stage 1, the Milpitas Silicon Valley Conference Center is envisioned to be realized through the adaptive reuse of two buildings located at 540 and 570 Alder Drive in the Milpitas Office Park in the City of Milpitas. These buildings are owned by a private party and may be leased or purchased by the RDA. 540 Alder is a two story office/R&D building of approximately 52,800 square feet and 570 Alder is a single story manufacturing/R&D building of approximately 45,100 square feet. The project site includes an outdoor area between them and

parking areas around the building. To be converted into the new Conference Center the project scope may include some combination of selective demolition, renovation, and new construction.

The Agency's Project staff (Project Manager) shall manage the design of this Project and performance under this Agreement. Consultant shall receive final direction from the Project Manager or authorized designee only. The Project Manager shall resolve any conflicting direction from other groups, departments or agencies.

**A. General Performance Requirements:**

1. Consultant shall coordinate the scope of services described herein with the Agency and Agency's separate consultants and contractors as needed and as directed by Agency.
2. Consultant and the Agency recognize the importance of the need to maintain the Architect's key personnel throughout the entire duration of services, and therefore will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner.
3. The schedule for the performance of the Consultant's services included in Exhibit A may be adjusted by mutual agreement as the Project proceeds. Consultant shall manage the Consultant's services, manage its Subconsultants and administer the Project. Consultant shall consult with the Agency, research applicable design criteria, communicate with members of the Project Team, and issue periodic progress reports, or as otherwise mutually agreed to with the Agency.
4. Consultant shall prepare, and periodically update, a Project Schedule for the Agency's review. The Project Schedule shall identify milestones, dates for decisions required of the Agency, design services furnished by the Consultant and the Consultant's Sub-consultants, dates of reviews and approvals required by all governmental agencies that have jurisdiction over the Project, deliverables to be furnished by the Consultant, completion of documentation provided by the Consultant, commencement of construction and substantial completion of the Work. The schedule shall include adequate periods of time for review and consideration by Agency/City and shall incorporate pertinent calendar information including all Consultant Holidays, City Holidays, dates of the Redevelopment Agency/City Council, and City Council Economic Development Subcommittee. The project

schedule shall proceed according to the schedule in Exhibit B or as otherwise mutually agreed to with the Agency/City.

5. As described below, Consultant shall make presentations to explain the design of the Project to representatives of the Agency/City, as necessary to inform the Agency/City's various bodies (Redevelopment Agency/City Council, Commissions, Subcommittees, and Departments) to support the Agency/City's development and Capital Improvement review process, at each of the phases.
6. Consultant shall not rely on the accuracy of Agency/City Record Documents. The Agency/City does not warrant the accuracy or completeness of its Record Documents. Consultant shall verify all appropriate information to their professional satisfaction and disclose any information that may require verification in later project stages.
7. Consultant shall prepare team Organizational meetings to introduce team members, to establish Project communication, and to discuss the participants' roles, responsibilities, and authority.
8. All work shall be done in an electronic format, appropriate to the work product. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a paper hardcopy.

**B. Consultant Disciplines:**

Stage 1 Scope of Consultants services include input from the following technical and design disciplines for the purpose of scoping the project and determining an appropriate Project cost plan.

- Architectural Design
- Audio/Visual technology, Building Security Scope
- Civil Engineering Scope
- Cost Planning
- Electrical Engineering and Lighting Scope
- Facility Programming
- Furniture Scope
- Geotechnical Engineering Scope
- Graphic and Signage Design Scope

- Interior Design Scope
- Landscape Design Scope
- Civil Engineering Design Scope
- Market Analysis
- Mechanical Engineering Design Scope
- Plumbing Design and Fire Protection Design Scope
- Structural Design Scope

## **SECTION 2: SCOPE OF WORK**

### **TASK 1: MARKET DEMAND STUDY**

During this Task the Consultant shall conduct primary market research in order to identify the market support for conference center development in Milpitas.

#### **1.1 Local Hotel and Other Visitor Industry Conditions Analysis**

Consultant shall conduct in-person interviews with a cross-section of city management, local hotel/visitor industry, business leaders, political officials and related entities to assess their needs for event space, and their willingness to commit hotel rooms to accommodate non-local events. We will also conduct on-site inspections of existing hotel, entertainment and related visitor industry amenities. The analysis conducted in this task will also include focus on other local market conditions that impact the conference industry such as corporate base, highway/air access, retail/restaurant capacity, destination costs and related characteristics. Information collected during this task will allow us to understand the competitive strengths and weaknesses of the Milpitas market from the perspective of conference, convention, meeting and other event planners.

#### **1.2 Industry Trends Analysis**

Consultant shall evaluate recent trends in the overall economy and conference industry that may impact potential development of conference center space in Milpitas. Such trends may include:

- Changes in the types of space used for events;
- Historical and anticipated industry growth rates;
- Current and projected economic conditions impacting the industry;

- Technology use in events, center operations and marketing activities;
- Association event market changes;
- Corporate event market changes; and
- Other related issues.

### 1.3 Competitive/Comparable Facility Analysis

Consultant shall assemble and review the physical and operational characteristics of existing and planned facilities in the region that would compete with facility development in Milpitas. Projects around the country that may offer some element of comparable insight will also be evaluated. The types of data that will be assembled for comparable and competitive projects include:

- Meeting, display and ballroom/multipurpose space and capacities;
- Outdoor space (size and characteristics);
- Fixed and temporary seating components;
- Other creative space areas;
- Future expansion plans;
- Event characteristics (levels, attendance, utilization, future bookings, etc.);
- Operating revenues and expenses;
- Available parking;
- Hotel availability, quality and proximity to the facility;

This analysis will assist in providing data as to how a conference center in Milpitas could establish its competitive position and event capture within specific event markets, as well as later assisting in the evaluation of potential conference center development scenarios, financial operations and economic and fiscal impacts.

### 1.4 Market Demand Research

The purpose of this task is to develop primary industry research specific to the Milpitas conference, meeting, civic, banquet and related event markets. Consultant shall interview (via telephone) a sample of potential users of the conference center from a local, state, regional, and even a targeted national basis. The analysis may include organizations or individuals from the following event segments:

- Corporate events (training, product demonstration, customer relations, executive Board meetings, etc);
- State, regional (and targeted national) association conferences;

- Government sponsored events;
- Meetings, civic events, cultural events, outdoor activities and related events; and
- Other events that could support the utilization and financial operating levels for the Center.

Consultant shall prepare an analysis of above data that may include:

- Likelihood of using a Milpitas Silicon Valley Conference Center for future events;
- Reasons for not choosing the Milpitas area;
- Banquet, display, meeting and other space levels required to attract the event;
- Technology, equipment and other required center amenities;
- Overall hotel room requirements;
- Parking requirements;
- Other important community requirements to attract the event;
- Event seasonality;
- Length of event data; and
- Event attendance data.

#### 1.5 Deliverables

Consultant shall prepare a draft Market Demand Study report. Responses to Agency/City comments will be incorporated into a revision that will be included as a chapter in the Phase 7 Feasibility Report.

#### 1.6 Agency/City responsibilities

- Provide Consultant with contacts of previously contacted hotelier and other stakeholders.
- Provide scheduling assistance to Consultant to increase participation of local stakeholders.
- Provide input on Market Study and direction of type of market approach to pursue.

### **TASK 2: BUILDING PROGRAM**

During this Phase the Consultant shall prepare an Outline Building Program for the proposed project.

#### 2.1 Preparation of Outline Building Program

Based on information developed in the Phase I Market Demand Study, the Consultant shall develop one preferred program model to a level that can be used to scope project feasibility. The Outline building program will include:

- Detailed Space Allocation Table identifying each type of space by function and size.
- General Space Proportions defining minimum and preferred room heights and proportions.
- Service and support areas, mezzanines, and unenclosed pedestrian and vehicular access requirements.

## 2.2 Agency/City responsibilities

- Agency/City shall provide input and direction on the outline program.

### **TASK 3: EXISTING BUILDINGS EVALUATION**

During this Phase the Consultant shall evaluate the existing building and site conditions and suggest improvement options.

## 3.1 Observation of Existing Conditions

Consultant to tour existing building and observe visible building and site conditions including:

- Building envelope, walls, glazing, doorways, and roofing.
- Site features including adjacent parking, landscape, and hardscape areas.
- Structural vertical and lateral support systems.
- Mechanical systems.
- Electrical service, and distribution systems
- Lighting systems,
- Plumbing and fire protection service and distribution and systems
- Telecom service

Consultant will observe above listed systems and will estimate general condition for purposes of general life-cycle analyses and appropriateness for reuse. Consultant's services do not include surveying, as-built measurements, measured ADA assessments, functional testing of any systems and observation of hidden conditions, destructive testing or other investigations not specifically included above.

## 3.2 Opportunities and Constraints Analysis

Consultant shall prepare a site evaluation describing opportunities and constraints related to built and natural factors of the buildings and context.

### 3.3 Zoning and Building Code Analyses

The Consultant shall prepare preliminary zoning and building code analyses to determine development requirements and scope of code upgrades required as a result of the adaptive reuse of the existing buildings. Consultant shall meet with the City Building Official and Planning Director to review analyses.

### 3.4 Development of Building Upgrade Options

The Consultant shall develop conceptual approaches to upgrade existing building to comply with current codes including structural upgrades, building envelope, plumbing systems, HVAC, and fire protection.

### 3.5 Preparation of Cost Models for Building Upgrade Options

Consultant shall establish a cost model for existing building upgrades and determine residual value of building reuse.

### 3.6 Deliverables

- Consultant shall prepare a summary of existing building conditions
- Consultant shall prepare a preliminary code analysis.
- Consultant shall prepare a summary of building upgrade options.
- Consultant shall prepare upgrade cost models.

### 3.7 Agency/City Responsibilities:

- Agency/City shall arrange with building Owners for Consultant access to the project site.
- Agency/City shall provide scanned copies of existing building construction documents.
- Agency/City shall provide existing building structural calculations, if present.

## **TASK 4: FEASIBILITY DESIGN:**

During this Phase the Consultant shall establish the conceptual design direction for the Project.

- 4.1 Consultant to conduct a design values session with the Agency/City and/or stakeholders to determine a range of aesthetic goals for the project.
- 4.2 Consultant to prepare up to two bubble diagrams based on the outline building program prepared in Task 2.

- 4.3 Consultant to prepare up to two conceptual site plan alternatives that address, at minimum: grading, flood zone, existing building's floor elevation, access, relationship to street, pedestrian and vehicle access, parking, deliveries, refuse collection, and related concerns.
- 4.4 Consultant to prepare preliminary cost models for each option using rule of thumb construction and development cost per square foot.
- 4.5 Consultant shall meet with Planning Department to get preliminary input on parking and circulation strategy.
- 4.6 Consultant to finalize Agency/City selected alternative.
- 4.7 Deliverables  
Consultant shall prepare
  - Illustrated site plan.
  - Illustrated floor plan diagrams.
  - Interior and exterior conceptual renderings.
- 4.8 Agency/City Responsibilities:
  - Agency/City shall give input and direction on the development of the conceptual design.

#### **TASK 5: FUNDING OPTIONS ANALYSIS:**

During this Phase the Consultant shall quantify the approximate amount of funds that could be generated for capital and or operations through various funding mechanisms.

- 5.1 Consultant shall meet with Agency/City to review base line data for the following possible primary funding mechanisms:
  - Possible increase in existing Transient Occupancy Tax (TOT).
  - Possible application of excess Tax Increment Financing (TIF), if any, in project's Redevelopment District.
  - Possible new Business Improvement District (BID)
  - Revenue bonds/Certificates of participation or other secondary funding mechanism leveraging the primary funding options below.
- 5.2 Consultant shall calculate up to three preliminary scenarios for each of the above funding mechanisms and will review these with Agency/City.
- 5.3 Consultant will refine and rerun each funding scenario one time based on input given by the Agency/City.

- 5.4 Consultant shall evaluate funding characteristics for conference and convention center project within the region and nationally and include a summary of other similar funding strategies employed for other conference or convention facilities.
- 5.5 Industry standards for net operating income or loss will be used as an input for funding options unless a Financial Operating Analysis is authorized as Additional Services. BID assessment engineering is not included.
- 5.6 Deliverables:
- Draft summary memo of funding options.
- 5.7 Agency/City Responsibilities:
- Agency shall provide City and Redevelopment District financial data for Consultant to use in calculating funding scenarios.
  - Agency/City to provide input and direction to Consultant on setting of various funding variables including but not limited to rate and timing of assessed value growth, market interest rates, etc.

**TASK 6: COST MODEL AND CONCEPTUAL DESIGN REPORT:**

In this Task the Consultant shall prepare a capital cost model and a Conceptual Design summary report.

- 6.1 For the preferred conceptual design option the Consultant shall prepare a capital cost model that includes the following hard costs:
- Parking
  - Landscape
  - Hardscape and site lighting and furniture
  - Allowance for utility upgrades
  - Demolition
  - Renovation
  - New Construction
  - Technology
  - Fixtures, Furniture and Equipment
  - LEED certification
  - Signage
  - Allowances for other hard costs requested by the AGENCY/CITY

- 6.2 For the preferred conceptual design option the Consultant shall prepare a capital cost model that includes the following soft costs:
  - Engineering and design services
  - Construction management
  - Permitting
  - Stakeholder participation
  - LEED certification
  - Allowances for other soft costs requested by the AGENCY/CITY
- 6.3 Consultant shall prepare a Phase 1 Conceptual Design summary report that has compiled edits to the various deliverables of Tasks 1 through 5.
- 6.4 Deliverables
  - Cost Model
  - Conceptual Report
- 6.5 Agency/City responsibilities
  - Provide soft cost figures for City forces if to be included in cost plan
  - Provide costs for land purchase or lease if to be included in cost plan
  - Provide costs for local permitting

**SECTION 3: ADDITIONAL MISCELLANEOUS REQUIREMENTS:**

**1. Project Meetings:**

The number of meetings and presentations indicated in each phase below shall be included in the Consultant's Services. Specific numbers may be reallocated between phases by mutual written agreement between the Consultant and Agency. If the total number of meetings and presentations for all phases is exceeded, further meetings and presentations shall be provided as Additional Services. Consultant shall conduct and or participate in a total of:

- 1.1 Agency/City Input:
 

Project Management Team	up to 8 Meetings or webcons
Staff Coordination	up to 6 meetings
City Council Economic Development Sub Committee	up to 3 presentations
City Council	1 presentation
- 1.2 Hotelier/Other Stakeholder Input:

Hotelier meetings	up to 2 group presentations
Hotelier interviews	up to 25 face to face interviews
Event planners	up to 10 telephone interviews

## **PART II: ADDITIONAL SERVICES**

The following services are not included in the Consultant's basic services and may be provided by the Consultant as Additional Services per the terms described in the Agreement:

1. Phase 2 or Phase 3 services.
2. Hazardous material assessment or mitigation design or removal
3. Environmental assessment (phase 1 or phase 2)
4. Analyses of other sites or buildings
5. CEQA related services
6. Real Estate services including but not limited to property assessment, lease or purchase representation or negotiation services
7. Boundary or Topographical Survey
8. As Built drawings – measuring or surveying existing conditions
9. Soil borings and/or Geotechnical report
10. Energy modeling
11. Bond council
12. Business Improvement District or Benefit Assessment District Engineering
13. Conducting, participating in or attending meetings or presentations beyond the numbers indicated in basic Services.

### Additional Services Meeting Rates

- 13.1 Additional meetings, Group 4 only, no sub consultants, no new presentation materials

\$1,800 Half day meeting at Milpitas  
 \$3,000 Full day meeting at Milpitas  
 \$1,200 Half Day meeting at Group 4:  
 \$2,000 Full Day meeting at Group 4:

- 13.2 To the above amounts add:

\$1,000 new PowerPoint material  
 \$1,500 for each local subconsultant attending half-day meetings  
 \$1,750 for each local subconsultant attending a full-day meeting  
 \$2,500 for each out-of-state consultant attending a full day meeting plus travel expenses

14. Providing services required because of significant Agency/City directed, or approved changes in the Project including, but not limited to, size, quality, complexity, the approved project schedule or budget.
15. Providing services in connection with the arbitration proceeding or legal proceeding except where the Consultant is party thereto.

## EXHIBIT B

### 1.0 COMPENSATION FOR BASIC SERVICES

1.1 For Basic Services Phase 1 Tasks 1 through 6 as described in Exhibit A Section 2, and Task 1 of Section 3 the Agency shall pay Consultant a maximum not to exceed amount of Two Hundred Eighty Eight Thousand Four Hundred Ten Dollars (\$280,410.00).

1.1.1. Payments to the Consultant for Basic Services shall be invoiced and paid monthly in proportion to the percent services rendered of the following LUMP SUM fees per Task.

1.1.2. Lump Sum Fees per Task

Task 1 Market Demand Study	\$ 38,950.00
Task 2 Outline Building Program	\$ 15,000.00
Task 3 Existing Building Reuse Feasibility	\$ 37,500.00
Task 4 Feasibility Design	\$ 93,700.00
Task 5 Funding Options	\$ 10,150.00
Task 6 Cost Model & Feasibility Report	\$ 33,550.00
Participation	\$ 51,560.00

Total Lump Sum Tasks: \$ 280,410.00

1.2 Adjustments to Scope of Work: If mutually agreed by the Consultant and Agency, Basic Services Scope of Work Phases and Tasks and associated Fees may be adjusted to address changing project circumstances. Such authorization must be in writing by the Consultant and Agency.

### 2.0 COMPENSATION FOR ADDITIONAL SERVICES

2.1 This Agreement includes a Contingency Amount not to exceed Ten Thousand Dollars (\$10,000.00). No Payment for Additional Services will be allowed unless the Agency authorized Consultant in writing in advance of the performance of the Additional Services.

2.2 Additional Services, if any, shall be performed for mutually agreed upon rate or they shall be performed on a time and material basis not to exceed the amount authorized for those services. Rates shall be as indicated in Exhibit B.

2.2 Subconsultants to the Consultant will be invoiced at a rate of 1.10 times the amounts billed to the Consultant.

### **3.0 COMPENSATION FOR REIMBURSABLE EXPENSES**

3.1 Reimbursable expenses are in addition to compensation for Basic Services in Exhibit A and include expenses incurred by the Consultant and subconsultants in the interest of the project, as identified in the following clauses.

Reimbursable expenses related to the project, whether for consultant, subconsultant, or client use, are billable at 1.10 times direct cost or at the rates indicated below. Such costs include, but are not necessarily limited to:

- CAD plotting of check sets and presentation drawings larger than 11"x17" foot.
- Outside service printing/copying of drawings and documents of any size.
- In-house black and white printing/copying of drawings larger than 11"x 17".
- In-house black and white printing/copying for draft and final reports and specifications.
- In-house color and grayscale printing and photocopying up to 11"x17" for in-house, consultant or client use.
- Software purchase and licensure on behalf of the client with prior client approval.
- Postage, delivery and messenger service.
- Photographic and digital imaging, including color and gray scale copies of any size.
- Outside telephone conferencing services.
- Overtime expenses with prior client approval.
- Architectural renderings, physical and digital scale models and animations.
- Travel expenses for out of state sub consultants including airfare, car rental, food and lodging at current published IRS per diem rates.
- Presentation boards.
- Facilitation tools.
- Workshop accessories and facilitation materials.
- Videos, web services, opinion surveys.

The following expenses are included in the hourly billing rates and are not billed separately:

- General in-house black and white printing/copying of 11"x 17" or smaller, except as noted above.
- Local Telephone and fax usage, unless stipulated otherwise by Agreement.

3.2 Compensation for Reimbursable Project Expenses shall not exceed Twenty Six Thousand Nine Hundred Dollars (\$26,900.00) without approval of the Agency.

3.3 The Agency and the Consultant agree that the rates for Additional Services and Reimbursable Expenses, including subconsultant and Reimbursable Expenses markup, shall be reviewed and adjusted annually for future project phases.

## **4.0 HOURLY RATES**

### **4.1 Group 4 Architecture Research + Planning, Inc. architects & planners**

Principal in Charge	195.00 per hour
Principal	175.00 per hour
Associate	150.00 per hour
Project Manager	140.00 per hour
Professional I	135.00 per hour
Professional II	125.00 per hour
Professional III	115.00 per hour
Technical I	120.00 per hour
Technical II	105.00 per hour
Technical III	90.00 per hour
Technical IV	80.00 per hour
Project Support	75.00 per hour

### **4.2 Conventional Wisdom Corporation - programmer**

David O'Neal	300.00 per hour
Richard Schmidt	250.00 per hour
Tracey Short	225.00 per hour
James Ward	225.00 per hour

### **4.3 Conventional Sports and Leisure International – market analysis**

Project Partner	\$295.00 per hour
Project Manager	\$205.00 per hour
Project Analyst	\$170.00 per hour

### **4.4 Davis Landon – cost planner**

Principals	\$255.00 - \$305.00 per hour
Associate Principals	\$205.00 - \$230.00 per hour
Senior Associates	\$180.00 - \$220.00 per hour
Associates	\$155.00 - \$165.00 per hour
Cost Planners	\$80.00 - \$150.00 per hour
Clerical	\$65.00 per hour

### **4.5 Rutherford & Chekene - structural**

Executive Principals	\$215.00 per hour
Principals	\$180.00 - \$190.00 per hour
Senior Engineers	\$140.00 - \$180.00 per hour
Engineers	\$115.00 - \$140.00 per hour

Designers \$90.00 - \$115.00 per hour  
CADD Specialists \$85.00 - \$135.00 per hour

**4.6 Guttman & Blaveoet – MP-FP**

Principal \$220.00 per hour  
Associate Principal \$210.00 per hour  
Associate \$185.00 per hour  
Senior Engineer \$165.00 per hour  
Engineer \$135.00 per hour  
CAD Manager \$125.00 per hour  
Designer \$120.00 per hour  
Drafter \$110.00 per hour  
Administrative \$66.00 per hour

**4.7 Royston Hanamoto Alley & Abey - landscape**

Principal \$175.00 per hour  
Associate \$130.00 per hour  
Assistant \$95.00 per hour

**4.8 O'Mahoney & Meyer - electrical**

Principal \$190.00 per hour  
Project Electrical Eng. \$125.00 per hour  
Proj Lighting Designer \$125.00 per hour  
Elec/Lighting Designer \$110.00 per hour  
CAD Supervisor \$95.00 per hour  
CAD Technician \$85.00 per hour  
Administrative \$65.00 per hour