

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
BFGC ARCHITECTS PLANNERS, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and BFGC Architects Planners, Inc., a California corporation DBA "IBI Group Architecture Planning" ("Consultant") as of September 3, 2013.

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 30, 2015, 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. Consultant shall not make any changes to the specific personnel assigned under this Agreement without City

written approval. 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 Sixty-Two Thousand dollars (\$62,000.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit 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, if any, 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 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 Julie Waldron 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:

Dean Aron Tatsuno, AIA
180 West Santa Clara Street, Suite 800
San Jose, CA 95113

Any written notice to City shall be sent to:

Jeff Moneda, Public Works Director/City Engineer
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

Dean Aron Tatsuno, AIA, Sr. Principal
Architect/associate

David R. Carnal, FAIA, Director

APPROVED AS TO CONTENT:

Alistair Baillie, Operating Director

Jeff Moneda, Public Works Director/City Engineer

Taxpayer Identification Number:

77-0166282

APPROVED AS TO FORM:

Corporate Entity Number:

C1398379

Michael J. Ogaz, City Attorney

EXHIBIT A

SCOPE OF SERVICES FOR MSC LOCKER ROOM RENOVATION

General:

The Milpitas Sports Center Facility Improvements, Project No. 3408, is included in the approved City of Milpitas Capital Improvement Program. The work involves renovation of the men's and women's locker rooms including; repair of damage caused by leaking showers, reconstruction of the showers to provide for adequate drainage, update ventilation and lighting, replace flooring with a lower maintenance system, patch and paint entire locker room, repair sanitary sewer line, correct deficiencies to provide for compliance with Americans with Disabilities Act (ADA) requirements and other code related upgrades.

Through the City's consultant selection process, CONSULTANT has been selected to provide the design services for the Milpitas Sports Center Facility Improvements. CONSULTANT agrees to complete each of the task outlined below in strict accordance with this Agreement and subject to City review and approval.

The Sports Center is equipped with a set of locker rooms for adults and a set for the youth. During the improvements the youth locker rooms would serve as the locker rooms for adults and the youth would not be allowed to use the locker rooms. The locker rooms typically see 100 patrons a day with the lowest levels during the months of November thru February and this is the time frame that City would want to target the improvements during.

CONSULTANT and the CITY recognize the importance of the need to maintain the CONSULTANT's key personnel throughout the entire duration of this Agreement. CONSULTANT shall not make any changes to the assigned personnel listed below without City written approval:

Principal, Patricia Lock
Project Architect, Steve Sowa
Job Captain, Kyle Huynh

Task 1 - Concept Design:

1. Initial Project Design Meeting – CONSULTANT shall meet with CITY staff to (i) review concept design and scope, (ii) review project goals, expectations, budget, scope and schedule, (iii) verify regulatory items, approval process and administrative procedures, and (iv) clarify CITY preferred materials, equipment and available maintenance resources.

DELIVERABLE:

- Attend one (1) meeting in person to discuss concept design and scope.

2. See Task 2 for assessments and investigations.
3. Prepare preliminary design plans that includes each of the following:
 - a. Preliminary layout of improvements.
 - b. Preliminary improvements for ADA compliance and current California Building Code regulations as adopted by the City of Milpitas.
 - c. Preliminary construction estimate.
 - d. Preliminary construction schedule.
 - e. Sketches of/images/cut sheets of proposed materials.
 - f. Prepare outline of technical specification.
 - g. Evaluate to determine if the renovation project would fall outside the requirements of a categorical exemption.
 - h. Comply with environmental requirements for the project. City will provide a separate Consultant to perform material testing for mold and hazardous materials based on recommendations from CONSULTANT and the materials testing Consultant.
 - i. The use of cost effective design, materials that require minimal maintenance.
 - j. Identify permits and project approvals that will need to be obtained.

DELIVERABLE:

- Preliminary design plans for City review and comment.
4. Using program elements and Task 2 findings from the site investigation and information gathering prepare two (2) concept plans for the improvements. Each concept plan shall address all regulatory compliant improvements then the balance of the improvements budget can be applied toward betterments.

DELIVERABLE:

- Two (2) Concept Plans for City review and approval.
5. CONSULTANT shall meet with CITY staff to review issues associated with each of the proposed concepts and identify a preferred alternate.

DELIVERABLE:

- Attend one (1) meeting in person to review concept plans.
6. CONSULTANT shall develop final concept plan within the City's Not to Exceed construction budget of \$350,000 for MSC Locker Room Renovation.

The budget is intended to cover the following improvements:

- Reconstruct shower stalls to prevent water from migrating past the water barrier and provide for low maintenance and operations costs. Looking at man made solid surface or engineered quartz.

- Replace floor with a low maintenance system that will minimize bacteria growth, consider concrete or terrazzo.
- Correct any deficiencies within the Men's & Women's locker rooms and path of travel to the locker rooms for compliance with ADA.
- Update ventilation and lighting within the Men's & Women's locker rooms to current standards.
- Repair any structural and cosmetic damaged caused by the leaking showers.
- Patch and paint the entire Men's & Women's locker rooms.
- Replace all shower stall valve sets and heads and ADA appurtenances.
- Repair SS line issues.

DELIVERABLE:

- Final Concept Plan incorporating all City comments.
7. CONSULTANT shall assist CITY Staff in the preparation of a power point presentation to the Council subcommittee and City Council for approval of the project Conceptual design and attend when requested by the City. CONSULTANT shall assist the City and be present at the meetings to answer any questions as requested.

DELIVERABLE:

- Power Point presentation for City Council and Council subcommittee meetings.
 - Attend Council subcommittee meeting in person as requested by City.
 - Attend City Council meeting in person as requested by City.
8. CONSULTANT shall, with the CITY'S input, develop a project schedule for the Design and Construction phases of the Project. CITY wishes to put the project out to bid for construction in **Fall 2013, with construction to be completed prior to March 2014.**

DELIVERABLE:

- Project Schedule for design and construction phases.

Task 2: Field and Document Investigation for Design

1. Condition assessment and evaluation of MSC locker rooms and surrounding areas to evaluate condition of the structure, mechanical, plumbing, and electrical. This will include but is not limited to opening walls, ceilings, floors, and other finishes to evaluate the structure, MPE, inspecting for water damage and mold. Temporary repairs will need to be made to allow the rooms to continue to be operated normally.
2. Evaluate the locker rooms, surrounding areas, and path of travel to the locker rooms for compliance with the current ADA standards.

3. Field investigation and data collection of existing conditions at the MSC and shall also including review of as-builts, and any other information available for the project site.
 - a. CITY will provide, but can not guarantee the accuracy of:
 - i. Available as-built plans in hard copy and/or CADD.
 - b. CONSULTANT to perform:
 - i. Field survey for
 1. Size and location of improvements
 2. Size and location of existing structures
 3. All hardscape (related to path of travel)
 4. Any other information that is necessary to design the improvements.
 - ii. Preparation of additional As- built CADD drawings not provided by the City must be approved in writing prior to proceeding with the work.
 - c. CONSULTANT shall verify locations and inverts of existing underground piping related to the locker rooms and all “as-built” plans provided by the City.
 - d. Any additional underground utility locating required shall be performed upon receipt of written authorization from the City.
4. Based on the findings of the field investigation and condition assessment additional design scope may be necessary including; structural engineering & sewer line remediation. This additional design scope must be authorized by the City in writing prior to proceeding with the work.

Task 2 Deliverables:

- Memorandum of condition assessment and evaluation to the City.
- Temporary repairs following opening of walls and other improvements to evaluate the existing conditions.
- Field survey report.
- Memorandum of revised design scope as required based on condition assessment.

Task 3: Final Design

Objective:

Prepare bid documents, including specifications, drawings, and cost estimates within the CITY’s cost plan and conceptual design in compliance with Public Contracts Code for a Public Works Project.

1. Prepare and submit construction plans, specifications and estimates (submittals 50%, 98%, and final design (99%) submitted to the City’s Building Department for review and approval for structures, mechanical, plumbing, electrical and ADA

site compliance work). A building permit shall be obtained for this project. A 100% set of plans which incorporate all comments from the Building Department and will be used for bidding the work. For each phase of design the consultant shall respond to and incorporate CITY's comments. CONSULTANT shall schedule a minimum of three (3) weeks for City review of each submittal. The 50% and 98% submittals shall include one (1) complete hard copy sets of plans, specifications and calculations. The 99% & 100% submittal shall include three (3) complete hard copy sets of plans, specifications, and calculations stamped by a California licensed professional. All submittals shall also be submitted on CD in AutoCAD and PDF formats. Specifications shall be in MS word format, and cost estimate shall be in MS Excel.

DELIVERABLE:

- Fifty percent (50%) Construction Plans, Specifications, and Estimates for City review and comment.
 - Ninety-Eight percent (98%) Construction Plans, Specifications, and Estimates for City review and comment.
 - Ninety-nine percent (99%) Construction Plans Specifications, and Estimates for submittal to the City Building Department.
 - One Hundred percent (100%) Construction Plans, Specifications, and Estimates incorporating all City comments.
2. CONSULTANT shall attend Team Meeting: Present 50%, 98%, 99%, 100% (99% submittal set to the Building Department) & Construction Documents package to CITY for review.

DELIVERABLE:

- Attend team meetings in person to present 50%, 98%, 99%, and 100% Plans, Specifications and estimates, as requested by City.

GENERAL REQUIREMENTS

1. CONSULTANT shall coordinate and manage sub-consultants throughout the term of the Agreement.
2. Plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/4" = 1' for architectural and structural plans. Details shall be of a minimum size to easily read and understand the information that is being conveyed.
3. CONSULTANT shall be responsible for meeting the requirements of the City Building and Planning departments, for review local and state codes for zoning, building, and CEQA submittal and approval requirements.
4. Where applicable, the CONSULTANT shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. CONSULTANT

shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor use in preparing the project SWPPP and compliance with the State NOI requirements if the threshold of disturbed area is exceeded.

5. CONSULTANT shall prepare the Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet (City to provide title block in AutoCAD).
6. Project Specifications shall be prepared using the CITY's standard front end (City to provide in Ms Word). CITY also has several Technical Specification Sections which are also standard that may be used on the project. If CONSULTANT uses CITY provided technical sections the CONSULTANT will be required to stand behind the design. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, Construction Specification Institute "CSI" format. The technical specifications shall be coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: Current California Building Codes as adopted by the City of Milpitas, National Fire Protection Association, Title 24, ADA, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of a the necessary permits for construction. The specifications shall include measurement and payment wording. CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. The construction schedule shall be specified in working days or calendar days as approved by CITY.
7. Where applicable, CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate all utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.
8. CONSULTANT shall also prepare all submittals for Building Department permit review and approval as required. CONSULTANT shall respond to all Building Department comments. CONSULTANT is responsible to submit to the Building as many times as necessary to obtain approval at no additional cost to the City. The Building Department submittal process typically takes fifteen (15) working days for each submittal review. Each Building Department submittal requires five (5) wet signed hard copies.
9. City Council Meetings: CONSULTANT shall assist CITY Staff in the preparation of power point presentations for presentation to a council subcommittee and City

Council for approval of the project design. CONSULTANT shall be present at the meetings to answer any questions as requested. CONSULTANT shall budget for two such meetings and presentation preparation.

10. Final plans ready for bidding shall be submitted wet signed/stamped hard copy and on compact disk (CD) in AutoCAD and PDF formats.

Task 4: Quality Control/Quality Assurance (QC/QA):

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality, free of technical and grammatical errors. CONSULTANT shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

- Design and calculations are independently checked, corrected and back checked by the CONSULTANT;
- When different disciplines are involved, means to assure that conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.

CITY reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments, QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and finds that is in compliance with Tasks 1 and 3 of this scope of work.

DELIVERABLE:

- Signed QA/QC statement with each submittal in Tasks 1 and 3.

Task 5: Bidding Support Services:

CITY will be responsible for advertisement for bid of the project. CONSULTANT shall assist CITY during bid solicitation process. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following; response to bidders' inquiries, preparation of addenda, attend and assist at two (2) pre-bid meetings, review and evaluation of bids. Upon completion of bidding, CONSULTANT shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda ready to issue for contract

award and construction. CONSULTANT shall submit five (5) signed conformed sets of contract documents hard copies and one electronic copy on CD in AutoCAD, MS Word and PDF formats.

DELIVERABLE:

- Answer any questions during the bid process
- Attend two (2) Pre-bid meetings in person
- Assist and draft addenda/response to bidder inquiries, if needed
- Assist in bid evaluation as requested by City
- Conformed plans & specifications (5 signed hard copy sets wet signed/stamped by a California licensed professional, set on CD in AutoCAD, MS Word, and PDF formats)

Task 6: Construction Administration Support:

1. CONSULTANT shall provide Construction observation and project administration duties commencing with the award of the construction contract and shall terminate at the conclusion of the warranty/guarantee periods for the Contractor's work.
2. CONSULTANT shall advise and consult with the CITY in all matters and shall promptly submit all observations, recommendations, and reports to the CITY.

DELIVERABLE:

- Submit reports of observations.
3. CONSULTANT shall provide technical and construction administration services within professional standards to observe and determine if the CONTRACTOR is in compliance with the intent of the contract documents and the timely completion of the Project, to the extent required in this Scope of Work.
 4. CONSULTANT shall attend the Project pre-construction conference and other meetings as specified in project specifications.

DELIVERABLE:

- Attend pre-construction meeting in person.
5. CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become familiar with and to keep the CITY informed about the progress and quality of the portion of the work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the work, and (3) to endeavor to determine if the work is being performed in a manner such that the work, when fully completed, will be in accordance with the construction contract. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques,

sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the construction contractor's rights and responsibilities under the contract with City.

DELIVERABLE:

- Perform regular site visits and report deviations/observations.
6. CONSULTANT shall attend construction meetings, as scheduled, with the Contractor, or as requested by the CITY. CONSULTANT shall provide commentary to the CITY on all material issues. Construction meetings are anticipated to be held once a week for the first month and every other week after that.

DELIVERABLE:

- Attend construction meetings in person as requested.
7. CONSULTANT shall keep the CITY informed of its observations of the progress of the Project.

DELIVERABLE:

- Keep the City informed of the progress of the project.
8. CONSULTANT shall promptly report in writing to the CITY any known deviations from the construction contract and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT will not be responsible for the construction contractor's failure to perform the work in accordance with the requirements of the construction contract.

DELIVERABLE:

- Report in writing any deviations from the project schedule.
9. CONSULTANT shall review and respond to construction contractor's Requests for Information (RFI's) and submittals including shop drawings, product data, and samples, for conformance with the design concept expressed in the Project construction contract. CONSULTANT shall coordinate its review and response to these documents with the CITY and the construction contractor as needed to allow for work to proceed, and be cognizant of the construction contractor's progress and schedule. In this regard, CONSULTANT shall work in good faith with the contractor and the CITY to prioritize the processing of critical path RFI's and submittals and other contractor submitted documents as outlined in this scope of work. CONSULTANT's review and response to RFI's and submittals shall be done in a timely and expeditious manner. So long as construction contractor fully complies with the Project's approved submittal schedule, CONSULTANT shall review and respond to required submittals with such reasonable promptness as to cause no delay in the work, while allowing sufficient time to provide adequate review. Generally, such review shall take no more than four (4)

working days for RFIs and Ten (10) calendar days for all other submittals, so long as such submittals are timely and complete. CONSULTANT shall review submittals for completeness and issue any rejections of submittals on incompleteness grounds as soon as professionally possible, but in no event later than five (5) working days. If additional time is required to review and respond to RFI's or submittals due to circumstances beyond CONSULTANT's reasonable control, CONSULTANT shall notify the CITY in writing of the grounds for such delay and request additional review and processing time from the CITY, the approval of which shall not be unreasonably withheld, but such determination shall be based upon the critical path of the subject document and the overall impact to the construction contractor's progress. In such cases, CONSULTANT shall make good faith efforts to resolve or remedy the delay in an expeditious manner.

In cases where CONSULTANT's late response is due to CONSULTANT's negligence, omission, intentional misconduct, or reckless conduct, CONSULTANT shall be held liable for that portion of delay damages incurred by the CITY arising from the CONSULTANT's conduct.

DELIVERABLE:

- Submittal review and response to RFI's.
10. CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the construction contract.

DELIVERABLE:

- Maintain record of and copies of contractor submittals.
11. CONSULTANT shall review requests by the CITY for changes in the work, including adjustments to the contract price or time of completion. CONSULTANT shall provide a recommendation to the CITY in writing.
- a. CONSULTANT shall review and respond to any Contractor-submitted Change Order within five (5) working days of its receipt.
 - b. CONSULTANT shall assist the CITY in the preparation of Change Orders and Construction Change Directives with all supporting documentation and data as necessary, for the CITY's approval and execution in accordance with the contract documents. Professional services for researching and preparing Change Orders or Construction Change Directives to correct errors and omissions caused by CONSULTANT shall be provided at no additional cost to the CITY.
 - c. CONSULTANT shall identify causes for all Change Orders to the CITY in writing for CITY's review.

- d. CONSULTANT shall maintain all records relative to changes in the work.
- e. CONSULTANT shall be responsible for those costs associated with any and all Change Orders and/or delays to the extent caused by Consultant's negligent, omission, intentional, or reckless errors.

DELIVERABLE:

- Draft Change Orders and Construction Change Directives, as requested by the City.
12. CONSULTANT may, after receiving approval from the CITY, reject work that does not conform to the contract documents. Whenever CONSULTANT considers it necessary or advisable for implementation of the intent of the contract documents, CONSULTANT will notify the CITY when Consultant feels additional inspection or testing of the work in accordance with the provisions of the contract documents is necessary.

DELIVERABLE:

- Notify City when additional testing and/or inspection are necessary.
13. CONSULTANT shall review reports, summaries, instruction books, operational manuals, warranties, and other construction contractor provided documents to determine in general, whether or not the construction contractor is in compliance with the contract documents.

DELIVERABLE:

- Review contractor provided reports, manuals, warranties and other documents.
14. As directed by the CITY, CONSULTANT shall assist the CITY in fulfilling the legal requirements and mandates of third-party regulatory agencies.

DELIVERABLE:

- Assist City in fulfilling legal requirements.
15. CONSULTANTS certification for payment shall constitute a representation to the CITY, based on the CONSULTANT's evaluation of the work and on the data comprising the Contractor's Application for Payment, that, to the best of the CONSULTANT's knowledge, information and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the construction contract documents. The foregoing representations are subject (1) to an evaluation of the work for conformance with the construction contract documents upon substantial completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the construction contract

documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

DELIVERABLE:

- Review construction contractor progress payments.

16. CONSULTANT shall respond to CITY's questions in writing when such questions are necessary to provide clarification to the plans and specifications.

DELIVERABLE:

- Respond to City questions.

17. CONSULTANT shall generate supplemental drawings and clarifications, as necessary, or as may be requested by the construction contractor or the CITY to clarify the design intent at no additional cost to the CITY.

DELIVERABLE:

- Generate Architectural Supplemental Instruction (ASI), as necessary.

18. CONSULTANT shall review Notices of Potential Claim and render written decisions, subject to City review and approval, on all Notices of Potential Claim, claims, disputes or other matters in question between the CITY and construction contractor relating to the execution or progress of the work as provided in the contract documents within five (5) working days or as agreed to by CONSULTANT and CITY.

DELIVERABLE:

- Review notices of potential claims, claims, or disputes.

19. CONSULTANT shall prepare a final punch list of any discovered incomplete and/or unaccepted items of the construction work for the CITY's review and approval. CONSULTANT shall make, with the CITY, a final close-out walk-through of the Project when all punch list items have been corrected in accordance with the requirements of the construction documents.

DELIVERABLE:

- Punch list walk and punch list.

Task 7: Record Documents and Project Closeout

1. CONSULTANT shall review all Contractor supplied operation and maintenance manuals, and warranties.

DELIVERABLE:

- Review and provide comments on all operation and maintenance and warranties manuals.
2. CONSULTANT shall maintain up to date record drawings throughout project construction. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the Contractor's as-built drawings and specifications, and shall return them for Contractor revision if they are not accurate and complete. CONSULTANT shall incorporate all changes shown on the Contractor's As-Built Drawings, executed RFI's, submittals, and Contract Change Orders from the Conformed set into a final Record Drawing set. CONSULTANT shall also draft and initial the official Record Drawings and submit both a hard copy on Mylar and an electronic copy in the latest AutoCAD format, PDF and TIF on digital video disc (DVD) to the CITY within 25 days of receipt of completed Contractor red line drawings.

DELIVERABLE:

- Record drawings (1 hard copy on Mylar and 1 electronic copy on DVD in AutoCAD, PDF and TIF formats)
3. Prior to the expiration of each of the Contractor's warranties and guarantees, CONSULTANT shall perform a careful review of the work subject to each warranty and guarantee. CONSULTANT shall immediately report any discovered defective materials or workmanship to the CITY so that the CITY may make timely demand to the Contractor to repair the defects.

DELIVERABLE:

- Review and report any deficiencies prior to the expiration of the Contractor's warranties and/or guarantees.
4. CONSULTANT shall meet with the CITY or the CITY's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

DELIVERABLE:

- Attend meeting in person as requested by City.
5. Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the

CITY and the CITY's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

DELIVERABLE:

- Attend meeting in person as requested by City.

**Exhibit B
Compensation Schedule
Milpitas Sports Center Locker Room Renovation - Project No. 3408**

TASK DESCRIPTION	IBI GROUP PERSONNEL					ATCE PERSONNEL (MEP)					VULCAN PERSONNEL (DEMO & PATCHING)				H-L PERSONNEL (STRUCTURAL)					
	PRINCIPAL	PROJECT ARCHITECT	JOB CAPTAIN	TOTAL	TASK TOTAL	PROJECT MANAGER	ENGINEER	TECHINCAL	TOTAL	TASK TOTAL	PROJECT MANAGER	SUPERIN-TENDENT	CARPENTER	TOTAL	TASK TOTAL	PROJECT MANAGER	ENGINEER	TECHINCAL	TOTAL	TASK TOTAL
Task 1 - Concept Design																				
Project Meetings	2	2	0	4	\$730	2	0	0	2	\$400						0	0	0	0	\$0
Preliminary Design Plans	0	4	8	12	\$1,700	2	2	0	4	\$730						0	0	0	0	\$0
Task 2 - Field and Document Investigation for Design																				
Project Meetings	0	2	0	2	\$330	2	0	0	2	\$400	0	0	0	0	\$0	0	0	0	0	\$0
Conditional Assessment and Evaluation	0	8	8	16	\$2,360	0	4	4	8	\$1,180	2	2	8	12	\$1,320	0	0	0	0	\$0
Task 3 - Final Design																				
Project Meetings	0	4	0	4	\$660	0	4	0	4	\$660						0	0	0	0	\$0
Construction Documents 50%	0	4	40	44	\$5,860	0	4	20	24	\$3,260						0	0	0	0	\$0
Review City Comments	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Construction Documents 98%	0	2	16	18	\$2,410	0	2	8	10	\$1,370						0	0	0	0	\$0
Review City Comments	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Construction Documents 99% Building Department Submittal	0	2	8	10	\$1,370	0	2	6	8	\$1,110						0	0	0	0	\$0
Review City Comments	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Construction Documents 100%	0	2	8	10	\$1,370	0	2	6	8	\$1,110						0	0	0	0	\$0
Task 4 - Quality Control/Quality Assurance																				
Project Meetings	0	0	0	0	\$0	0	0	0	0	\$0						0	0	0	0	\$0
OC/QA Review and Revisions	0	4	4	8	\$1,180	0	4	4	8	\$1,180						0	0	0	0	\$0
Task 5 - Bidding Support																				
Attend two pre-bid meetings	0	2	0	2	\$330	0	0	0	0	\$0						0	0	0	0	\$0
Response to Bidders Inquiries	0	0	4	4	\$520	0	4	0	4	\$660						0	0	0	0	\$0
Preparation of Addenda	0	0	2	2	\$260	0	0	0	0	\$0						0	0	0	0	\$0
Evaluation of Bids	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Preparation of Conformed Plans & Specifications	0	0	8	8	\$1,040	0	0	4	4	\$520						0	0	0	0	\$0
Task 6 - Construction Administration Support																				
Three (3) Construction Meetings	0	0	6	6	\$780	0	6	0	6	\$990						0	0	0	0	\$0
Review and respond to Contractor Submittals	0	0	8	8	\$1,040	0	4	0	4	\$660						0	0	0	0	\$0
Task 7 - Record Documents and Project Closeout																				
Create Record Drawings	0	0	8	8	\$1,040	0	0	4	4	\$520						0	0	0	0	\$0
Project Close Out and Field Testing	1	1	1	3	\$495	1	0	0	1	\$200						0	0	0	0	\$0
Subtotal Hours	3	45	129	161		7	46	56	103		2	2	8	12		0	0	0	0	
	\$200	\$165	\$130			\$200	\$165	\$130			\$105	\$95	\$115			\$150	\$125	\$90		
PERSONNEL COST	\$600	\$7,425	\$16,770		\$24,795	\$1,400	\$7,590	\$7,280		\$16,270	\$210	\$190	\$920		\$1,320	\$0	\$0	\$0		\$0

Subtotal: \$24,795 \$16,270 \$1,320 \$0

Total: \$42,385

Potential Additional Scope (To be used only with written approval by the City) :

Potential Structural Engineering: \$5,000 Assumes replacement of 40 feet of wall
 Potential Sewer Line Remediation: \$2,500 Assumes replacement of the sewer line
 Potential Underground Utility Locating: \$1,500 Assumes one day of field work

Contingency: \$10,615

Grand Total: \$62,000

On completion of the Assessment and Evaluation Task, if additional Scope of Work is identified; additional fees will be negotiated and the Agreement amended.

EXHIBIT C
INSURANCE DOCUMENTS